



CITY OF
PORTLAND, OREGON

**OFFICIAL
MINUTES**

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **3RD DAY OF DECEMBER, 2014** AT 9:30 A.M.

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

Commissioner Fish arrived at 9:31 a.m.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Linly Rees, Deputy City Attorney; and Jim Wood, Sergeant at Arms.

Item Nos. 1235 and 1240 were pulled for discussion and on a Y-5 roll call, the balance of the Consent Agenda was adopted.

		Disposition:
COMMUNICATIONS		
1227	Request of Barry Joe Stull to address Council regarding his father (Communication)	PLACED ON FILE
1228	Request of David Red Thunder to address Council regarding hunting on Hayden Island (Communication)	PLACED ON FILE
1229	Request of Kirsten Everett to address Council regarding homeless issues (Communication)	PLACED ON FILE
1230	Request of Norman Yonemura to address Council regarding Makerspace / Fablab collective common (Communication)	PLACED ON FILE
1231	Request of Crystal Elinski to address Council regarding City deals on zoning and property on residents' backs (Communication)	PLACED ON FILE
TIMES CERTAIN		
1232	TIME CERTAIN: 9:45 AM – Recognize Ignacio Paramo as the recipient of the 2014 Steve Lowenstein Trust Award (Presentation introduced by Commissioner Fish) 15 minutes requested	PLACED ON FILE

December 3, 2014

<p>1233</p>	<p>TIME CERTAIN: 10:00 AM – Create the Portland Street Fund and establish a non-residential transportation fee to fund Portland's street maintenance and transportation safety needs (Second Reading Agenda 1213; Ordinance introduced by Mayor Hales and Commissioner Novick; amend Code Chapter 7.02 and add Code Chapter 17.21) 1 hour requested for items 1233 and 1234</p> <p>Motion to put on the table the amendments in Bureau of Transportation December 2, 2014 memo regarding sunset provision and allocation of pavement budget: Moved by Novick and seconded by Fritz. (Y-5)</p> <p>Motion to accept the amendments on the table: (Y-5)</p>	<p>CONTINUED TO DECEMBER 10, 2014 AT 9:30 AM AS AMENDED</p>
<p>1234</p>	<p>Establish a residential transportation income tax to fund Portland's street maintenance and transportation safety needs through the Portland Street Fund (Second Reading Agenda 1214 ; Ordinance introduced by Mayor Hales and Commissioner Novick; add Code Chapter 5.76)</p> <p>Motion to put on the table the amendment in Bureau December 2, 2014 memo regarding sunset provision: Moved by Novick and seconded by Fritz. (Y-5)</p> <p>Motion to accept the amendments on the table: (Y-5)</p>	<p>CONTINUED TO DECEMBER 10, 2014 AT 9:30 AM AS AMENDED</p>
<p style="text-align: center;">CONSENT AGENDA – NO DISCUSSION Mayor Charlie Hales</p>		
<p>1235</p>	<p>Proclaim Measure 26-159 Bonds to fix playgrounds, trails; improve park facilities, safety, accessibility, enacted and in effect (Proclamation introduced by Mayor Hales)</p>	<p>PLACED ON FILE</p>
<p>1236</p>	<p>Reappoint Lisa Faust to the Portland Community Media Board of Directors for a term to expire November 30, 2016 (Report) (Y-5)</p>	<p>CONFIRMED</p>
<p>1237</p>	<p>Reappoint Justin Delaney to the Bureau of Fire and Police Disability and Retirement Board of Trustees for a term to expire December 31, 2017 (Resolution) (Y-5)</p>	<p>37096</p>
<p style="text-align: center;">Bureau of Planning & Sustainability</p>		
<p>*1238</p>	<p>Amend Intergovernmental Agreement with Metro and Gresham for the Powell-Division Transit and Development Project to accept additional Construction Excise Tax Grant funds of \$72,599 and increase Portland match funds by \$4,938 (Ordinance; amend Contract No. 30003807) (Y-5)</p>	<p>186906</p>
<p>1239</p>	<p>Authorize an Intergovernmental Agreement to provide the Multnomah County Department of Health Services \$60,435 in FY 2014-15 for efforts related to the enforcement of specified animal regulations in the City (Ordinance)</p>	<p>PASSED TO SECOND READING DECEMBER 10, 2014 AT 9:30 AM</p>
<p style="text-align: center;">City Attorney</p>		
<p>1240</p>	<p>Authorize City Attorney to appeal the Judgment in <i>Michael Boyle v. City of Portland</i>, Multnomah County Circuit Court Case No. 1305-07824 (Resolution) (Y-5)</p>	<p>37097</p>

December 3, 2014

Office of Management and Finance		
*1241	Create a new Nonrepresented classification of Archives and Records Management Coordinator and establish a compensation rate for the new classification (Ordinance) (Y-5)	186907
*1242	Change the salary range for two Nonrepresented classifications of City Archivist and Archives and Records Management Specialist (Ordinance) (Y-5)	186908
Commissioner Steve Novick Position No. 4 Bureau of Transportation		
*1243	Authorize application to Metro Regional Travel Options for a grant in the amount of \$800,000 for Active Portland: Open Street, Connected Communities (Ordinance) (Y-5)	186909
Commissioner Nick Fish Position No. 2 Bureau of Environmental Services		
*1244	Authorize a Permit and Right of Entry from the Port of Portland to the City to allow Bureau of Environmental Services and its contractor to access Port-owned property for the Lower Columbia Slough Refugia Habitat Enhancement Project (Ordinance) (Y-5)	186910
City Auditor LaVonne Griffin-Valade		
1245	Certify abstract of votes cast, proclaim measure approved at the Municipal Non-Partisan General Election held in the City of Portland on November 4, 2014 (Report) (Y-5)	ACCEPTED
REGULAR AGENDA		
Mayor Charlie Hales		
*1246	Authorize the Mayor to enter into an Agreement for Purchase and Sale of Credits with Portland Harbor Holdings II, LLC in the Alder Creek habitat restoration project up to a total of \$2,625,000 plus escrow fees (Ordinance) (Y-5)	186911
Bureau of Planning & Sustainability		

December 3, 2014

1247	Amend accessory short-term rentals regulations to allow multi-dwelling structures, multi-dwelling development, triplexes, attached duplexes, manufactured dwellings and houseboats; establish fee for accessory short-term rental permits in multi-dwelling structures (Second Reading Agenda 1211; amend Title 33)	RESCHEDULED TO DECEMBER 18, 2014 AT 2:00 PM TIME CERTAIN
Office of Management and Finance		
1248	Accept bid of R&G Excavating, Inc. for the Lower Slough Refugia Habitat Enhancement (Procurement Report - Bid No. 117280) Motion to accept the report: Moved by Fish and seconded by Fritz. (Y-5)	ACCEPTED PREPARE CONTRACT
Commissioner Steve Novick Position No. 4		
1249	Establish as binding City Policy that the City of Portland shall not allocate less resources for street maintenance than in the current fiscal year (Ordinance)	REFERRED TO COMMISSIONER OF PUBLIC SAFETY
Bureau of Emergency Management		
*1250	Accept and appropriate the FY 2014 Urban Areas Security Initiative Grant in the amount of \$846,598 from the Department of Homeland Security to enhance emergency preparedness through planning, training and equipping emergency responders (Ordinance) (Y-5)	186912
Bureau of Transportation		
1251	Amend Lease Agreement with Union Pacific Railroad Company for pedestrian and bicycle path facilities on the east bank of the Willamette River and the Steel Bridge (Previous Agenda 1221; amend Contract No. 51354)	PASSED TO SECOND READING DECEMBER 10, 2014 AT 9:30 AM
Commissioner Dan Saltzman Position No. 3 Portland Housing Bureau		
*1252	Accept a federal grant in the amount of \$162,532 from the Department of Housing and Urban Development for Continuum of Care planning (Ordinance) (Y-5)	186913

At 12:10 p.m., Council recessed.

December 3, 2014

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND,
OREGON WAS HELD THIS 3RD DAY OF DECEMBER, 2014 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Hales, Presiding; Commissioners Fish, Fritz,
Novick and Saltzman, 5. Commissioner Saltzman left at 4:43 p.m.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Lisa
Gramp, Deputy City Attorney; and Mike Cohen and Jim Wood, Sergeants at Arms.

<p>1253 TIME CERTAIN: 2:00 PM – Transmit report to the City of Portland on Portland Police Bureau Officer-Involved Shootings and In Custody Deaths by the Office of Independent Review (Report introduced by Auditor Griffin-Valade) 1 hour requested</p> <p>Motion to accept the report: Moved by Fritz and seconded by Saltzman.</p> <p>(Y-5)</p>	<p>Disposition:</p> <p>ACCEPTED</p>
<p>1254 TIME CERTAIN: 3:30 PM – Accept report from the Urban Renewal Area Amendment Advisory Committee (Report introduced by Mayor Hales) 1 hour requested</p> <p>Motion to accept the report: Moved by Fish and seconded by Fritz.</p> <p>(Y-4; Saltzman absent.)</p>	<p>ACCEPTED</p>

At 5:46 p.m., Council recessed.

December 4, 2014

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 4TH DAY OF DECEMBER, 2014 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Hales, Presiding; Commissioners Fish, Fritz and Novick, 4. Commissioner Saltzman was absent due to conflict of interest.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Kathryn Beaumont, Chief Deputy City Attorney; and Jim Wood, Sergeant at Arms.

<p>1255 TIME CERTAIN: 2:00 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 20th and 19th Avenues and SW Main and Madison Streets (Previous Agenda 1128; Hearing introduced by Commissioner Fritz; LU 14-105474 CP ZC) 1 hour requested for items 1255 and 1256</p>	<p>Disposition:</p> <p>CONTINUED TO JANUARY 8, 2015 AT 3:00 PM TIME CERTAIN</p>
<p>1256 Amend the Comprehensive Plan Map designation and amend the Zoning Map for property in the vicinity of SW 20th and 19th Avenues and SW Main and Madison Streets at the request of Sam Rodriguez, Mill Creek Residential Trust, LLC (Previous Agenda 1129; Ordinance introduced by Commissioner Fritz; LU 14-105474 CP ZC)</p>	<p>CONTINUED TO JANUARY 8, 2015 AT 3:00 PM TIME CERTAIN</p>

At 4:10p.m., Council adjourned.

LAVONNE GRIFFIN-VALADE
Auditor of the City of Portland



By Karla Moore-Love
Clerk of the Council

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

December 3, 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.

DECEMBER 3, 2014

9:30 AM

Hales: Good morning, everyone. Welcome to the December 3rd meeting of the Portland City Council. Karla, please call the roll.

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

Hales: Welcome, everyone. We have a couple of announcements up front, then we have communication items, and then we have the council calendar. If you're here to speak on a council calendar item, we allow typically allow people three minutes to testify. You just need to give us your name, not your address, necessarily. And of course, we also maintain civility in this chamber, so if you agree with someone and want to indicate that, give them a thumbs up or a wave or something, but we ask that you not make vocal demonstrations in favor or against the opinions of our fellow citizens so that everybody has a chance to have their say. If you're here professionally having your say as a lobbyist, let us know that fact under City Code and who you're representing. First, before we get to the council calendar, we have a couple of announcements, both good things. First, I have the pleasure of announcing that a little later this morning, in fact, in about a half an hour, the White House is going to announce that the first cohort of climate action champions has been selected around the country, and that the city of Portland will be singled out as a regional leader for our work on greenhouse gas reduction and climate change mitigation. So, that's a nice feather in our cap as a city, as a leader in that movement nationally, but we're also a leader globally. As you may remember earlier this year, we were recognized by the C40 climate summit group of cities around the world for this work. This particular recognition is something that the White House launched as a competition to identify and recognize local climate leaders, and then to provide targeted federal support for those communities. We're looking forward to that part as well. That includes learning and mentorship; targeted support from a range of federal programs; a coordinator that works with each city to foster work between federal agencies, national organizations, foundations, others that might actually contribute to help fund the good work that we're doing. Again, this is our second major victory on this kind of recognition in the last few months. In September, we received this city climate leadership award for 2014 from the C40 climate leadership group, along with Barcelona, Buenos Aires, London, Amsterdam, and others. This time, there is a variety of other winners in the first cohort, large cities like Boston, small ones like Montpelier, Vermont. Seattle, our rival in some things, was one of those recognized cities as well, so we have to give props to our neighbor to the north that they're also doing a good job in the climate leadership. I'm very proud of the work that we as a community have done, previous City Councils, this City Council, bureaus, citizens, nonprofits, all working together to actually walk our talk in terms of the climate leadership in our city and it's nice when we get that recognition. So again, we get to steal a march from a few minutes before the White House announces this, I think, at 10 o'clock. So, good news from Washington for the good work being done here. With that, let me turn it over to Commissioner Saltzman for a proclamation that goes with the season. Dan?

Saltzman: Thank you, Mr. Mayor. I'd like to call up Chief Janssens and others to mark the hundredth anniversary of Portland Toy & Joy. And we'll have a presentation, and then I'll read the proclamation from the Mayor.

December 3, 2014

Erin Janssens, Chief, Portland Fire and Rescue: Excellent, thank you. Good morning, Mayor, Commissioners. It's an exciting day that we have the opportunity to present the Toy & Joy leaders here with me today. This is President Dean Johnston. Dean is a retired firefighter from 1996, and has been the president of the Toy & Joy Association since 1984. So, 30 years now he's been leading the organization volunteering his time throughout the entire year. We also have Lieutenant Pat McMahon with Portland Fire and Rescue, and he serves as the liaison between the bureau and the Toy & Joy to help coordinate and facilitate functions and activities. A hundred years ago today -- actually, tomorrow -- is the birthday of Toy & Joy and firefighters having the opportunity to give back to the community and to kids in need through the holiday season. We're very proud of the work that they do year-round. I wanted to share one other thing before Commissioner Saltzman reads the proclamation celebrating this anniversary. We had the opportunity to get some new logo made. LeAnn Locher and Associates created a new logo for Toy & Joy that brings us into this new century, and I think will be long lasting for Toy & Joy and the city of Portland. If anybody can see it here --

Hales: Very good.

Janssens: It's a nice logo. And with that, I'm going to turn it over to Commissioner Saltzman.

Saltzman: OK, I'll read the proclamation. Whereas, in 1914, a child brought his broken wagon to a Portland fire station and asked the firefighter on duty, Edward Boatright, to fix it so he could give it to his brother for Christmas; and whereas, firefighters at the station did fix it, and soon, crowds of children came to the station with their broken toys asking for help, thus the firefighters fixed the toys and the annual tradition of Toy & Joy Makers was born; and whereas, since 1914, Portland firefighters and dedicated volunteers have worked tirelessly to provide toys to children in need during the holiday season; and whereas, Toy & Joy Makers has become a sophisticated, independent nonprofit operation that delivers thousands of toys every year to youth who might otherwise go without, and in 2013 alone, almost 15,000 children received toys, over 40,000 families were helped, and 50,000 toys were distributed; and whereas, Portland firefighters have a strong desire to help others and come to the job with a can-do community-minded attitude that has kept Toy & Joy Makers spirit of giving alive for 100 years; and whereas, Toy & Joy Makers appreciates all the generous Portlanders who drop off donated gifts at their neighborhood fire station every December; and whereas, Toy & Joy Makers celebrates 100 years of helping families in need and hopes there will be a day when its services are no longer required. But until then, Toy & Joy Makers stands ready to serve the community as long as families in Portland need assistance. Now therefore, I, Charlie Hales, Mayor of the city of Portland, Oregon, the city of roses, do hereby proclaim December 2014 to be Portland Toy & Joy Makers Month in Portland and encourage all residents to observe this month. And if I might add, to bring a toy to your local fire station -- or several toys.

Hales: Hear, hear. Thank you very much. Congratulations for 100 years. [applause] [photo taken] Good work. Alright. Let's move on to the regular calendar with the first of the communications items, which is 1227.

Item 1227.

Hales: Barry, come on up, please. Good morning.

Barry Joe Stull: Good morning. I should probably clarify that my father named me Barry Joe before I was born. It's a two-name name. Betty Lou was my neighbor, her name was not Betty. Karla is going to affect the photograph here, but I'll go ahead and get started. Harrison Marshall Stull, rhymes with owl. Western Pennsylvania is known for having a lazy mouth. Here in Portland, I go by Stull. Was born on September 10, 1926, son of a coal miner, and in the Depression he ate lard on bread. Had a number of careers, including a coal miner with draft animals, doing landscaping, and ultimately for my lifetime, he was employed by the United States Steel in

December 3, 2014

Saxonburg, Pennsylvania at sintering plant, which is basically affecting the process of iron ore into globules of iron nuggets that were then shipped down to Pittsburgh. His job was to operate a car dumper, which we can look at on the picture here, which turned the railroad car upside down. In May of 1976, the fellows working with him decided that their [indistinguishable] was more important than following the safety rules, and they sent a railroad car down which almost killed my father. Fortunately, a fellow with a caboose saw my dad's hard-hat flying and found him lying on his back when he investigated with his right foot on his chest with his toe pointing in his right shoulder. His knee was exploded. On the way to the hospital, he was saying to the ambulance attendants over and over again, my arm, my arm. They said oh, Harry, he's so screwed up, he thinks it's his arm and it's his leg. No, it was, in fact, his arm and his leg. And he saved his own life by using his good hand to do affect a tourniquet. Now, I've been a social justice activist going up against the whitest city in America and most corrupt city in America -- Portland, Oregon. And if you think I'm going to quit, just because you don't know what I'm talking about -- and like my father's paramedics, think that he doesn't know what he's talking about -- you've got another thing to learn. I am not going to give up. My father is now celebrating his 88th December. He's still alive and well -- and with his prosthetic leg, still kicking. Thank you.

Hales: Thank you.

Item 1228.

Hales: Good morning.

David Red Thunder: Good morning, Council. Amanda, the community of Hayden Island and myself, we send our condolences to your family. I am David Douglas Red Thunder, an American Indian, a member of the Sisseton Wahpeton Sioux Tribe. I am named after the great Scottish botanist, David Douglas, who was honored by the conifer species, Douglas Fir, that bears his name. After years of expert testimony before several city-sponsored commissions, the facts are well established that West Hayden Island will not succeed economically as a marine industrial development, and the Port agrees. They said it was just too expensive to build there and [indistinguishable] annexation and zoning proposal early this year. The expert testimonies and commission studies also established that West Hayden Island is a high-valued urban natural wildlife habitat for Portland, truly one of the great assets of the city, along with 81 bird species, nine different mammals, four kinds of amphibians, and important forest areas. It is also critically important to Columbia River shallows for the juvenile salmon and other migrating fish. For me, as an American Indian, I practice animism as my spiritual tradition. We believe that non-human entities -- animals, birds, plants, rocks, trees, sands, waters -- as well as humans, all possess spiritual essence. I embrace these, and the Judeo-Christian tenets as well. For me, West Hayden Island is my sanctuary, my place of worship, a place where the spirits teach me more righteous ways. My tribal brothers and sisters of the Yakima and the Grand Ronde Federation share these traditions with me. And for us, the Columbia River conditions surrounding West Hayden Island support us spiritually and communally and physically through our fishing practices, all protected by the United States treaty. Many argue West Hayden Island will be -- many argue West Hayden Island must be developed for more jobs and greater world trade while others argue development will degrade livabilities for all islanders and the environment. For me and mine, it's a spiritual place, one of the very few left for us to practice our faith in communion with the full range of our spiritual teachers. Over the next several months, consider carefully how the draft comprehensive plan categorically excludes all your carefully researched and written requirements. Come next summer when you are making your decisions about the plan and its value to Portland, have the courage of your wisdom and completely remove all of West Hayden Island from the DCP industrial land supply. Please remember me, David Douglas Red Thunder, and know that West

December 3, 2014

Hayden Island is my sanctuary and it could and should be a sanctuary for all of Portland. Thank you.

Hales: Thank you very much.

Novick: Mr. Red Thunder?

Red Thunder: Yes.

Novick: I hope I'm not wrong about this, but did you take hundreds of pictures of eagles that proved to be instrumental in Audubon's treatment and ultimate release of endangered eagle [indistinguishable] last year?

Red Thunder: Yes, I did.

Novick: Thank you very much for that.

Red Thunder: I appreciate that. Like I said, I live only a half a mile from everything that goes on back there, and there's four out of five creatures that are sacred to the Sioux that exist back there. Just missing the grizzly bear. So, yeah. Thank you very much.

Hales: Thank you, thanks a lot.

Item 1229.

Hales: Good morning.

Kirsten Everett: Good morning. Thank you for having me. I just want to say, Amanda, I am sorry for your loss. I still think of you and I'm sure that others do as well. It's a cold morning, and I just - it brings to me why I am here. I've been homeless for a little over a year now. I'm a dreamer at Right 2 Dream Too and a member of Right 2 Survive. Last year was my first winter out on the streets, and one of the things that I did was with my partner, take blankets designated for the rest area and put them on people who were either on the sidewalk sleeping or just didn't have a place to go. Our resources had been tapped. The warming shelters were full or they hadn't predicted the weather properly because weathermen can be wrong and give us bad information. But put blankets on them, and never made it more than five blocks without exhausting all of our resources. I do know also that on the flip side, Clean and Safe confiscates every day like 50 pieces of bedding material from the homeless and other people who ban them, and these are designated for a landfill. My hope is that somehow I can get your support in getting the cooperation of Clean and Safe to somehow get some of the materials that are more appropriate for the warm weather into the places in the rest area where they can be laundered just one time and saved for days that are like 39 degrees and below, possibly. Or just -- I think that there's still time this year to get enough for people. It would save them on the landfill costs. Eventually it would end up being in the landfill but at least they can be used for a night or during some kind of cold spell. That's why I'm here -- just to hopefully get your support in getting these blankets to people that will freeze, as they did last year and years before. And I'll personally make sure that they get to the right people. Thank you very much for your time this morning.

Hales: Thank you, thanks for what you are doing. Commissioner?

Fritz: Kirsten, thank you very much for coming in and highlighting this need. Josh Alpert on the mayor's staff and I met with members of the board yesterday, as I know that you are aware, so thanks for coming to tell the rest of the council. I think we've made some progress in terms of Park Rangers and police with our night-time activities, but there's the Clean and Safe, so Josh is going to address that. This additional suggestion where there are things that could be laundered and reused to bring them to the rest area. I think that that's a great suggestion. Thank you.

Hales: Good idea. Thank you very much.

Item 1230.

Hales: Good morning and welcome.

Norman Yonemura: Good morning. My name's Norm Yonemura and I'm going to be speaking specifically about a property -- that's 3366 SE Powell Boulevard -- but the ideas I'm putting

December 3, 2014

forward are not exclusive to this property. My thinking is that we need to reorganize the way we live in a big way, and I think that with the large store of knowledge that we have on building small and living in co-housing situations, and what I was envisioning for this place was possibly integrating that with the makers space. Makers spaces are places where a lot of innovation comes, and you get a certain trade of density and talent, and hopefully from -- if we as a city could be supportive of this sort of thing, we could attract talent here. I've noticed a lot of the avenues of development that you have, like on Williams Avenue and Division, you have a residential up and you have the retail down, but this would be something different. This would be where people would, in their collective commons from many different institutions or individuals or resources, and they would have access to CNC machines and plasma tables and computer labs. And in fact, one of the early people in the development of the printers was in ad hoc type of development, this sort of community. In fact, one of the more famous ones is the Langton labs in the bay area, and they just took a big warehouse. What they did was they kind of made some outlaw living spaces, and then some tech people came together and started having start-up projects. The fashion industry was involved, the music industry was involved, and it just kind of evolved. But I think that if we could partner some of the resources of the private sector with that of the public sector and we could become known for that, you know, we could be a draw of talent from across the nation to bring the critical mass where new ideas for the new jobs and the future and basically what the human experience is. You know, but there's a book called *The Wisdom of Crowds* that talks about how the best answers come not from specialists on a panel. The best ones come from an eclectic mix of people, and the type of populations that we could put in these type of facilities could be wide ranging, from homeless to the entrepreneurial. The thing with small space is it would make it such that we could streamline and be efficient, and we could have common areas. We wouldn't be completely devoid of taking care of the middle brain, you know. A lot of this is talking about dollars and cents, streamlining and being efficient, but you know, we have the middle brain, the mental health and that part of it needs to be taken care of. We have 71 -- [beeping] -- oh, I'm up. Anyway. Thank you for your time. Another time.

Hales: Appreciate the creative suggestion. And actually, it's very timely because we are in the process right now of working on our revisions to our comprehensive land use plan, and we're trolling looking for creative ideas like this right now. So, one, I would urge you to get involved in that process. For example, you're talking about this property on Powell. The Planning Bureau staff has sort of sketched out three new mixed use zoning designations with sort of details to be figured out. We know we want to do a more nuanced version of mixed use and to try to accommodate these kinds of ideas better than the first mixed use zone that we've had in the zoning code for 20 years. But they honestly don't know how those details are going to work, and they're waiting for creative ideas to come from the community. So, if you're not involved in that process, I would suggest that if you can find the time to do it, it would be useful because we're trolling for creative ideas. Secondly, it just happens that the president of Southeast Uplift neighborhood district coalition, Robert McCullough, is sitting in the front row smiling. And if you're not yet connected with Southeast Uplift, I would urge you to because they have a land use committee that are thinking about these ideas generally, and about Powell in particular. So, you know, these two folks ought to know each other. But I am serious, this is a moment in the city's thought process where we're literally looking for creative ideas for mixed use from the community, and yours are in the right place at the right time.

Yonemura: Well, thank you very much.

Hales: Thank you. One more communication item, 1231.

Item 1231.

December 3, 2014

Hales: Crystal, are you here? OK. Then let's move on to the consent calendar briefly. I think that we have a couple of items. There's been a request to pull 1235 from the consent and put it on the regular calendar. Is that correct, Commissioner?

Fritz: Yes, thank you.

Hales: Also, a request for 1240 to go over to the regular calendar. Any others? OK. Let's take a vote on the balance of the consent calendar, please.

Roll on consent calendar.

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

Hales: OK. Time certain item 1232.

Item 1232.

Hales: Commissioner Fish.

Fish: Thank you, Mayor. Before I begin my formal remarks, I want to welcome our honored guests today, Michelle Harper and the award recipient Ignacio Paramo. This is the sixth year that I have had the honor of presenting the Steve Lowenstein Trust Award. The award is named for attorney, author, and civil rights activist Steve Lowenstein. As I think all my colleagues know, Steve was the founding director of Oregon Legal Services. He was a Peace Corps volunteer. He was an advocate for social justice. And perhaps most important, the former chief of staff to Mike Lindberg. Steve wrote that the recipient of the trust award, quote, shall be that person who demonstrated the greatest contribution to assisting the poor and underprivileged in the city of Portland, Oregon. The past recipients have included Sandra Guyot, Mariah Taylor, Kayse Jama, and Marc Jolin. This year, the board has selected Ignacio Paramo. Ignacio is the heart of the Voz worker center on Dr. Martin Luther King Jr. Boulevard. He works tirelessly to advocate for and empower hard working immigrants and day laborers in our community. Here to tell us more about the award-winner is our friend, Michelle Harper. Michelle, greetings.

Michelle Harper: Good morning, Mayor, City Council. It gives me great honor to come before you every year. Because this is the thing I think that is so extraordinary about Portland. It's how we come together and build community in such creative ways. It's people making sacrifices every day to make lives better and to make the city better. I don't do this work alone, and so I would like to acknowledge my board members and have them stand this morning.

Fritz: Let's give them a round of applause.

Hales: Thank you all. [applause]

Harper: I'd also like to acknowledge Chris Wilkinson [spelling?]. She is our staff support. She's been our dedicated person to make sure that this happens for the entire 23 years of this event. And she's just extraordinary. She's going to be retiring in March. We're not freaking out yet. But she's been a trooper. She keeps us together, and very, very humble. I'd also like to acknowledge, if there are any members of the Ignacio's family, his co-workers, staff people?

Hales: Good morning. [applause]

Harper: Ignacio has been dedicated to this area of service for many years. He has been through the same experiences as those in the community that he serves. He's a great example of someone who has elected to dedicate his life to helping others have an easier path to stability than he had. He's helping to make a difference to empower a sometimes often invisible and ignored population in our community. Ignacio moved here to be closer to his family, and it wasn't very shortly thereafter that he started to roll up his sleeves. He saw a need and decided to figure out how he could fill the need with the Voz center. This project, the worker's right education project, which is a part of the Voz center, is a worker-led organization that empowers immigrants and day laborers to gain control over their working conditions through leadership development, organizing, and community education. It was formed to address the issues of safety and civil rights of workers. Usually, immigrants who stood on the street corners often where he was out there night and day, trying to

December 3, 2014

help people connecting with him, listening to what their concerns were, trying to find work. Day laborers do everything from moving heavy appliances to roofing to overgrown vegetation, and the like. Sometimes they're injured and they're not paid. And he has been such a strong advocate for making sure that the right employer is matched, it's a safe environment that they are working in, and that they also get paid as well. The Voz center provides a safe and inclusive community where workers can find work, gain their skills, and learn about worker and civil rights. He has been the director of the center since it opened. He has worked tirelessly, endlessly in making sure that the rights of others are protected. Ignacio has been a very strong advocate in working for and with the immigrant and the Latino immigrant community in the Portland metropolitan area for more than 15 years. He came to this project initially as a volunteer. He worked as a case manager for 10 years ensuring stable housing and health and employment for the Latino community. Currently as the director, he develops employment opportunities for day laborers, matching employers, workers, jobs; ensuring their safety and that they're treated fairly and paid a decent wage, and they have safe work environments. He supervises a group of volunteers who teach ESL classes, who teach computer skills, who teach job safety. And he also works in conjunction with the Lewis and Clark Law School to help workers collect unpaid wages as well. He's been dedicated to community service, serving everywhere, whether it's street corners or talking to workers about their wives in passing. He investigates unpaid wages in finding a multitude of resources, as well as teaching ESL classes himself. He works endlessly to ensure that this is a place of safety for people who are often looking for a safe haven. It's with this time that the Lowenstein Trust is honored to be able to honor Ignacio for his dedication, for his service, for his selfless dedication to benefiting others. I found a quote that I thought is fitting for him from Cesar Chavez. We cannot seek achievement for ourselves and forget about the progress and prosperity for our community. Our ambitions must be broad enough to include the aspirations and needs of others for their sakes and for our own. It is with that I give you Ignacio.

Hales: Good morning, congratulations. [applause] [cheering]

Ignacio Paramo: Thank you, thank you. First of all, I want to share this award with my co-workers, a big group of volunteers who help us run all our programs. Just to give you a little -- and especially you, because six years ago, with Mayor Tom Potter, we opened the center. And some of you became our champions now. I want to give you a little overview of what we are now. Since we opened the center, we have a connecting 2500 [indistinguishable] between the day laborers and local business, basically, homeowners. Most of those jobs are temporary ones, but some of them become permanent. We also provide safety trainings, skilled trainings where our day laborers get ready to go to more permanent jobs. Since we opened, our legal group is recouping about \$500,000 on stolen wages from bad employers. So, we know it's a lot of way to go, but a little by little, we're getting better to do better with our community teaching, and then became more productive in Portland city. So, thank you again. Thank you very much for your support. And again, I want to share this award with all my co-workers, all the volunteers that are making this possible. Thank you so much.

Hales: Thank you. [applause]

Harper: It is with great pride that I will present this award to Ignacio Paramo with a cash award of \$750,000 from the Lowenstein Trust. And it is an honor for me, like I said, to come before you and to be in his presence. Because he is the type of person that Steve -- I can almost feel his presence here today -- that he's the person that gives of himself endlessly, selflessly, always looking out for someone, and Steve was that type of person. He was always looking out for someone, whether it was a person passing by on the street -- he never let anyone pass him by on the street. He was just extraordinary, and I see Ignacio as that person, and it's come through with the work that he's done and the accomplishments with the Voz center that, as I said before, this is the thing that makes

December 3, 2014

Portland very unique. We have an extraordinary city, and we have amazing people that give of themselves selflessly to make sure that we have a better city.

Hales: Thank you Michelle. You're one of them. We appreciate you and your board and carrying this great tradition on. And Ignacio, congratulations from all of us. Well done.

Paramo: Thank you.

Fish: Why don't we get a picture with the board members joining the council and the honoree?

Hales: That would be great. [photo taken] Thanks, Commissioner, and all of you. That's great work. For those of us that knew Steve, yeah, I think Michelle, you got it right -- he's here and he likes what you have just done.

Fish: And by the way, Mayor, just to embarrass Michelle quickly. For those who are here that have not worked with her, a lifetime of service to the city as a leader in Portland Parks and Recreation, and then the first thing that she took up as she was transitioning to the well-earned retirement was she championed the renaming of the community center in north Portland, the University Park community center after Charles Jordan. So, she continues to keep giving to us, and we're very grateful.

Hales: Thank you. Take care. OK. Let's move on to our next time certain item. Karla, read 1233 and 1234 together, please.

Item 1233.

Item 1234.

Hales: Let me queue up this work session with opening comments, and then I know Commissioner Novick has some as well. First of all, we had an excellent public hearing on November 20th -- about five hours of testimony. The choices as I see them remain the same three, but we did get some good ideas. The same three choices are in front of this council that have been in front of this council for many years, which is do this, do nothing, or do something else. I'm in favor of items one and three, but not item number two. And we've been doing that quite effectively for a very long time, and the results are obvious. The action we're going to take this morning is to take a look at these ordinances. I think there's some amendments about to be proposed that we're going to take up, and that therefore we'll take testimony on those amendments and move the items forward for final action later. First of all, there's an item on the council calendar, item 1249, which will be referred back to Commissioner Novick's office because the contents of the proposed ordinance that's in item 1249 are going to be brought forward as an amendment to one of the ordinances that we have in front of us. So, that's a procedural change, not a substantive change. The question of a floor for spending that item 1249 was talking about is now going to be addressed by an amendment to item 1233, rather than as a separate ordinance. So again, the question is going to be in front of the council today about a floor under the spending level, but it's going to be taken up as an amendment rather than as a separate item. That's what's in front of us this morning. I'll turn it over to you, Commissioner, for some opening comments, and then we can call on staff to walk us through what's in front of us today.

Novick: I'll just briefly reiterate what we discussed the other week, which is that these proposals are very different from what we came forward with last May. On the business side, we have a proposal that's largely the product of a lot of discussions between representatives of large and small businesses, and this reflects their work. On the personal side, instead of a proposal where -- as in our proposal in May -- rich people and middle class people would have paid exactly the same amount for the most part. We now have a proposal that is more progressive, where rich people do pay more than middle class people. And also because it's an income tax rather than a user fee, it is tax-deductible on your state and federal tax forms.

Hales: OK, thank you. We have some revisions to City Code in front of us in item 1233, that's the proposal to create a transportation code that establishes the Street Fund as part of this. It will be

December 3, 2014

creating a citizen oversight committee to monitor and ensure that the fund stay true to the mission, and that committee will provide annual reports to the council. In the ordinance, we'll also direct the Office of Management and Finance to establish a new sub fund under the transportation operating fund where this new revenue will flow. The sub fund is additionally subject to an annual audit conducted by Moss Adams, who's our external auditor. Also in item 1233, we'll amend the existing revenue code because the Revenue division will be the city agency that's charged with billing and collecting the transportation revenues. So again, those are the formal changes that will be affected by item 1233 if it's passed. In item 1234, we create a new revenue code to establish the residential transportation income tax. And as I think that everyone knows, the bureau has some additional documents that were distributed on Tuesday. Celia Heron is here to explain those changes and to walk everyone through the amendments. So, Celia, Mark, good morning.

Celia Heron, Office of Management and Finance: Good morning. Celia Heron with the Office of Management and Finance working with PBOT on the street fee. Since the documents were amended yesterday and distributed, we have one more minor amendment. So, we need to distribute those.

Hales: OK. Walk us through -- [speaking simultaneously]

Heron: Absolutely. And we have copies for the public as well. So while those are being distributed -- and they're color-coded to make it a little easier to follow along. They are essentially two policy issues that are being addressed by these amendments. One is -- as the commissioner and the mayor were saying -- setting up the floor for spending, what we call the maintenance of effort. So, in the first amended ordinance --- which is the document that is slightly different than yesterday -- there's language that talks about while the Portland Street Fund is in place -- and you've got the words in front of you -- the changes will continue to fund the street preservation budget and the additional language was the general transportation revenue budget to be clear about the number we're talking about.

Hales: Let me read that language just so people hear it. It says, for so long as the Portland Street Fund program is in effect, the city shall spend no less from sources other than the amount collected through the Portland Street Fund than the city preservation general transportation revenue budget allocated in the fiscal year 2014-2015. So in other words, we do this work now at a certain level -- not enough, but at a certain level -- based on the funds that we receive from the state and federal government, through gas taxes, parking revenues, and everything else. This says that base continues and the new funds are on top of that.

Heron: Right.

Novick: And to clarify a point about that. What this amendment says is not that we will spend the same amount from PBOT general transportation revenues. What this says is that it's an obligation of the city as a whole to continue to spend the same amount that is now coming from general transportation revenues, even if general transportation revenues collapse.

Hales: Right, good point.

Heron: Right. So it does in fact set the floor.

Fritz: Is there a reason why don't actually say the number? What is the amount?

Heron: The amount is \$11.318812 million -- so \$11.3 million and some change.

Fritz: A friendly amendment to add that? Because otherwise somebody in two years of time will be trying to look that up.

Novick: We could do that. We sort of went back and forth about this the other day, actually, like, does it make sense to put a dollar amount in a statute? But if that's Council's will, I don't think that we have an objection.

Hales: But it's in parenthesis.

Heron: Yeah. This won't be included in the city code. It's a policy statement.

December 3, 2014

Hales: It's a Council directive, and we can direct a number as well as words. So if that's clearer, then clarity is one of the goals here. I'm fine with that as long as you are, Commissioner.

Novick: Mm-hmm.

Hales: OK, makes sense to you. OK. So, let's assume that we will put that dollar amount in the language of that amendment.

Heron: Great, thank you. So of all the other documents, the only amendment relates to adding a sunset provision. And so in the different sections of city code that we create in the transportation code and in the two sections of the revenue code, we add language that says that this will sunset. Basically, not be in effect in the tax years, starting on or after January 1, 2021.

Hales: And this is one of the issues that got raised frequently.

Heron: Yeah, in the public hearing there was a lot of concern about that, and so --

Saltzman: This is a sunset for both the residential and non-residential?

Heron: Yes.

Saltzman: OK.

Hales: Alright, keep going. Or maybe you covered it.

Heron: I can walk you through where in each of those places, but the only changes in each of those has to do with the sunset. So, if you look at in exhibit A, your blue exhibit A.

Hales: Actually, ours aren't color-coded.

Heron: Well, alright then. My apologies. If you look at exhibit A, it starts out, Portland City Code 702-100. If you go to the second page of that, you're looking at Chapter 702, subsection 570 non-residential transportation fee. The last sentence in that first paragraph states, the non-residential transportation fee will end for all tax years beginning on or after January 1, 2021.

Novick: And Celia, just to clarify. For most individuals, that means that the calendar year 2020 is the last year, but there's some people in businesses in a different tax year, so that's why we have language that might look kind of odd.

Heron: Right, exactly. Moving onto exhibit B, the next page, Portland City Code 1721, upon the Portland Street Fund. If you go to the second page of that, the eagle eye, you'll notice there is a new provision, 1721, subsection 100. Sunset provision. This has to do with the fact that when the Portland Street Fund ends, there'll be collections going on still because it will have been earned during that time, but this will close it down once the fund receipts coming in are basically de minimis. So, that's the sunset language for the code there.

Novick: The Revenue Bureau gave us some tax compliance history and explained that like for the Multnomah County tax, returns were dribbling in for years after it officially sunsetted.

Heron: Right. And then moving onto the other exhibit A, which is for item 1234. The second page, section 576.030, effective dates. There's a new second sentence that says, the residential transportation income tax will end for tax years beginning on or after January 1, 2021. And then some minor edits in the second paragraph that again talk about the termination and the sunset. Again, this is language between Revenue and the City Attorney to close it down. Those are the nature of the only changes from what you discussed and the public discussed.

Hales: Alright. I've got a couple of questions, and maybe there are others as well. So, there are other items that were mentioned in the public testimony that I believe -- there's public testimony about whether we should do this or not or do something else instead. I understand that argument. But then there were also points brought up about whether at a technical level, we've gotten some things right or not. And Mr. McCullough is here to talk about the transportation firms. There was a question about large medical institutions. I assume that if these ordinances are passed, there is still rule-making to do in terms of how the bureaus -- both Transportation and Revenue -- will calculate the business fee for a given business or institution, right? So, it's not all dictated by the ordinance.

December 3, 2014

In other words, I think we don't have to complete the work on making those repairs to how it affects an individual taxpayer in the ordinance, but I want to check on that fact.

Novick: Well, Mr. Mayor, I think one thing the Revenue Bureau is going to have to do is make sure that businesses are appropriately classified.

Hales: It's a classification in different categories.

Novick: Yeah. And that's something that I don't think -- I don't know if we need the separate administrative rules to address that.

Hales: How does that work get done, Thomas, particularly since that will be your role here?

Thomas Lannom, Director, Revenue Division, Office of Management and Finance: I'm Thomas Lannom, Director of the Revenue Division. That's correct. We would need to promulgate some administrative rules, in particular, regarding the categories of the businesses and making sure that we've got definitions that make sense and that are tight and clear. So that, through a number of administrative rules, would be promulgated as a result of both of the code changes.

Hales: OK. And that's done through OMF under your direction?

Lannom: That's correct.

Hales: OK. I just wanted to make sure that we knew how those -- people want answers to those questions, and the answer isn't necessarily that it's in the ordinance.

Lannom: Right.

Hales: But you have authority, as you already do in dealing with business income tax revenue, to write definitions and put businesses in certain categories based on those definitions.

Lannom: Right. So, for the residential income tax and for the business fee, there's existing code authority in the Revenue Division to do just that, to implement administrative rules to satisfy disputes, appeal processes, penalties, interest, all those structures, right down to due dates. So, you may recall that we needed to adjust the arts tax due date a few years ago. We made that adjustment in administrative rules, and it was quick and easy to do that.

Hales: Thank you. Other questions?

Fish: I have a procedural, sort of housekeeping matter. You'll be moving to put the amendments on the table and take testimony today?

Hales: Correct.

Fish: And then your intention is to bring both ordinances back for a final vote next week?

Hales: Next week or the week after, which is the --

Novick: Well, Commissioner, that brings me to a point that I was going to mention shortly, which is that at least on the non-residential side, I actually think we'll be cooking up another amendment over the next week. Because although I do not read as many constituent emails as Commissioner Fritz does, I do read some. And one of the themes that we've heard over the past months is we've heard from people who own their own businesses and are residents of the city saying that they're concerned about being taxed twice, both as residents and business owners. And my response to that has generally been, if you own a separate business, then you're probably generating more traffic than if you simply live here, so I thought that it makes sense to have the fees for businesses even owned by Portland residents. However, in recent days, we've gotten some emails from people who run very, very small businesses. In particular, Tom and Jane have been emailing us, and they said that they have a tiny business, which based on our current schedule, they'd be paying \$15 a month, which would be a significant portion of the overall revenue. So, we are taking a look right now at doing kind of a fix for that, whether we can come up with some language that addresses the special circumstance of very small, and perhaps particularly home-based businesses. So, that means that we will wind up postponing a final vote, and we'll get you specific language as soon as possible.

Fish: Commissioner Novick, this may go back to May, or I forget what hearing we got a lot of testimony on at a later point, but I'm interested not only in that fix -- which we have not, you and I

December 3, 2014

have not really discussed at any length -- and also the suggestion that some had that perhaps below a certain threshold, we would exempt certain businesses in year one, that is the start-up years of very small businesses that were sort of on the bubble. So, as part of this discussion, I would welcome a chance to talk to you about that piece, as well as the piece, the fix that you're looking at.

Novick: We will arrange to speak expeditiously.

Hales: There might be a size threshold that solves both problems. I don't know.

Novick: There might be.

Fish: It seems to me one is a year one issue, one is a structural issue. But they both get at the same point, which is there are some small businesses that in year one, in particular, are vulnerable with cash flow issues. We want to minimize the impact on them below a certain threshold.

Hales: Is that above -- speaking of thresholds -- is that above the threshold of what you can do by rule?

Lannom: That would be, yes, because we're going to establish the effective tax year in the code so that would be something that would need to be an amendment to the City Code.

Fish: I look forward to having that conversation.

Hales: In other words, if that gets done, it has to get done by amendment here, not by rule-making there.

Fish: Just so I'm clear -- we will not be voting on this next week. We may be taking amendments the next week or the following week?

Novick: We may.

Hales: We'll need to continue it to next week in case you do develop that amendment, and we can consider that amendment then, and then move it to the second reading on the 17th.

Novick: By the way, we're on the subject of things that we will not do today. I wanted to add that -- I think we said this before -- but Mr. Romain and others have raised the question, could we apply the income tax on the residential side to in effect commuters, to people who work here and earn income here, but do not live here? So we will be bringing forth a resolution next week directing the Revenue Bureau to examine the legal and practical feasibility of that option. That examination is something that can't be done overnight, but we're committed to asking them to do that. That'll be a separate resolution.

Fritz: I need to state that I'm sure that some folks are wondering what we're doing here. And what we're doing is making law in a very public way with a lot of discussion before the cameras so that people can know. Some will say that it's a moving target. And I would say that in fact, what's happening is that we're responding to public testimony, both the testimony at the hearing and what we're hearing in person and by email. So to me, this is an excellent public process that is very transparent, and citizens' comments are making a difference, particularly the ones -- as Commissioner Novick pointed out -- that are giving specific examples and suggesting particular changes. Those are more helpful than the ones that say, just let us vote. As I said at the hearing, we may certainly have a vote one way or another. The question is on what. And so, I encourage folks to continue engaging with the council and giving us your feedback, because it's obvious that all of us are working very hard to try to find the best possible proposal. Then when the final vote comes, we will say this is the proposal and see what happens after that.

Novick: Commissioner, following up with that, I just want to give another shout out to Tom and Jane. They did not just say that we think this proposal treats us unfairly. They had a very specific suggestion as to how to address it. I don't know if practically we'll be able to do exactly what they suggested, but it certainly was a reasonable suggestion. As the commissioner said, we do listen to the constituent feedback, and sometimes constituents have not just complaints but excellent ideas on how to fix them.

December 3, 2014

Hales: Further questions for staff? So then what we'll need to do is have a motion to adopt the amendments, put them on the table, and then we'll take public testimony on the amendments. Is there a motion?

Novick: So moved.

Fritz: Second.

Hales: Further discussion on putting the amendments on the table? Then a roll call on that, please, Karla.

Roll on motion to put on the table the amendments in the Bureau of Transportation December 2, 2014 memo regarding sunset provisions and allocation of pavement budget.

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

Hales: OK. So, that's what's before us today. Thank you all, we obviously might have more questions. Let's start with the public testimony, and again, we want to ask you to speak to the amendments. Many of you were here for a long discussion about the threshold question of what we should do, but while we are working on these ordinances, we'd like your thoughts about whether these amendments improve them or make them worse in your opinion, or whether there are other amendments that we should consider. So, with that, if you have sign-up sheet?

Fritz: Let me just restate the amendment so we're clear on what we're requesting testimony on. The one is the sunset, and the other is establishing the baseline for the funding for transportation from other sources will be no less than this year. We'll put the number of 11 million into the language next week.

Hales: Thank you. Good. Do you have sign-up sheet, Karla?

Moore-Love: I do. We have about 11 people signed up. The first three, please come on up.

Hales: Good morning. Craig, I think you were the first testifier at the last meeting. Congratulations.

Fritz: Knows the rules and to come sign up early.

Hales: Good morning, Mr. Rogers. Go ahead.

Craig Rogers: My name is Craig Rogers. Mayor, Commissioners. A little bit of my history is that I spent 35 years at the bargaining table negotiating contracts between Coca-Cola and teamsters. I learned a lot. Protective language, enforcement -- words are very important. As an example, there's a difference between may be or will be in a contract. You asked me, Charlie, to take a look at the oversight committee. And from my experience, I'll say it's a fox-guarded henhouse. It's really wide open. It's kind of like the Wild West with regards to protective language and enforcement. You know, we need people who have experience with finance.

Hales: Mm-hmm.

Rogers: People who perhaps have engineering backgrounds to sit on this. And just moving along, I see some real problems with the oversight committee. I think that it's taken lightly, and yet, it's not like they need to be running around putting out fires all the time. It just needs to be some leverage there to get people to do the right thing.

Hales: Let me stop you just for a second to make sure -- you don't think that we're specific enough about the qualifications of that committee?

Rogers: Correct.

Hales: OK, good, thank you.

Rogers: And actually, I'll see how fast I can read this. I'm sorry.

Hales: That's OK, go ahead. I interrupted you.

Rogers: The oversight in management jargon is equated with supervision in the sense of being a general review of institutional performance with particular attention to failures to carry out mandates to preserve discipline, inefficiency, and poor productivity. Oversight is performed by bodies, units, and processes that provide supervision and watchful care to an organization. Through

December 3, 2014

its fundamental elements of audit, evaluation, monitoring, and inspection, investigation oversight helps an organization to enhance the effectiveness, productivity, and integrity. Now, on the sunset provision, am I correct -- and I hope that I'm wrong -- is that it just takes a vote of the city council at the end of this, and then it is all done again? We get right into it, or does this absolutely --

Hales: That's correct. It's an ordinance. We can't pass an ordinance that binds a future Council in a way that they couldn't un-pass it.

Rogers: You know, at the very beginning of this, one of your staff people said that -- when I said what we need is some hard language here written in words, and we don't want to tie the hands of the future City Councils. What about our hands? See because you're tying our hands by thinking this thing -- you've said here it can just basically go on forever.

Fritz: No. No, there's a sunset. So there's a stop date.

Roger: But you can just renew it.

Fritz: There would need to be a public hearing, a public process. You'd hope folks would engage at that point.

Rogers: But there is no vote of the people.

Hales: Right.

Rogers: That's all that I have to say. What I'm watching here is democracy die at the level of City Council in Portland. Democracy is dying in this city, and I'm witnessing it. I attended all those meetings in the summer. It is a real show.

Hales: We and future Councils can refer things, but we can't bind a future Council to refer something. So, we can put a sunset provision on it, and they will have that choice of do they re-enact this because the revenue is still needed, or do they repeal it because it is not needed?

Rogers: You don't want to tie their hands, but you'll tie ours.

Hales: We make actions, we take action here. Thank you. OK, go ahead.

Richard Donin: Hi, I'm Richard Donin, I'm a concerned citizen. I was here back in November, and I have one question because you've stated that you're looking for positive input that is constructive, and if not this, then something else. Well, I presented and each of the council people received my email -- or at least my email said it was received -- regarding a parking sticker permit. And my objection to what's going on currently is that it's so complicated. You have so many tiers and levels of income tax for this group, reduced income tax for another group, PERS people are not going to pay -- which includes me -- and those who are on fixed incomes. You're creating a huge edifice which is going to be bulky to deal with. You're going to need to increase the people to deal with it in the Revenue Bureau. I think that my whole purpose here is to create a simple process, which other municipalities in America have been using for their street fee. Why hasn't that at least been spoken of openly in Council rather than me having to attend the meetings to bring this up? So, if I could hear from the commissioners and the mayor why -- you know, is there a reason why you have not looked at this thoroughly?

Hales: We did, after your suggestion.

Novick: We actually have looked at it, and there's two issues, one of which seems to be insurmountable. One is that in order for this parking sticker -- this vehicle sticker thing to work for everybody who comes into the city, we would need to significantly expand parking enforcement, because we would need to send people not only onto the street, but into private garages in order to get all the cars. It would be offensive, and I don't know what the jurisdiction is. The more difficult point to overcome is that state law gives counties the sole authority to impose a vehicle registration fees. And we had our City Attorney take a look at the law that does that and see if it would preempt us from doing a vehicle sticker, which looks a lot like a vehicle registration fee, and our City Attorney responded that there would be a very good argument that we are preempted by state law as the city from having a vehicle sticker.

December 3, 2014

Donin: Did they contact the city of Chicago to see how they worked with that?

Novick: Well, I don't think -- the city of Chicago is the state of Illinois, which has different state law. My assumption is that Illinois doesn't have the same kind of law limiting to counties the ability to have something like vehicle registration fee.

Donin: But that's an assumption, it's not a fact.

Novick: But whatever Chicago does, it doesn't change what our state law is.

Donin: I understand that.

Hales: That was the problem. That the Oregon legislature has been pretty specific about transportation revenues. Gas taxes have to go to roadways. And unfortunately, they were also pretty specific about this. So, absent a change in state law, we don't think that we could implement that idea.

Donin: So, the ORS statutes that deal with parking that I handed out that I had researched --

Hales: Yeah, it's not so much the parking, it's the vehicle registration. This would be construed as a registration system.

Fish: Can I ask a question of Commissioner Novick? Because he shared this view in a briefing with me. Is there a way around the legal bar by engaging the county and see whether they're interested in partnering with us on this?

Novick: Well, I think that they would not just have to partner, they would have to pass the vehicle sticker ordinance. And I don't know that there is that much appetite on the county commission for taking over what we've been doing here for the last year and taking on themselves the responsibility for funding transportation.

Fish: The other question is, is there a legislative fix? Because in my mind -- while I think the legal advice we've been given is sound -- in my mind there is something analytically different between a sticker for this purpose that has been suggested by some folks and a vehicle registration fee, since a vehicle registration fee usually accompanies an inspection and effects the privilege to drive. We can't condition this in terms of the privilege to drive, but we can -- what we're thinking about is as a revenue source, which I think is slight different than a vehicle registration fee. I'm not pushing, I'm just asking.

Novick: I think that would be a heavy lift, which would obviously postpone our taking action until the legislature took that action. And again, it would require a significant additional investment in enforcement in order for this to work. And also, a vehicle registration fee, a vehicle sticker fee is exactly the kind of flat, non-income-based proposal that we brought forward in May, and I think it would be subject to the same objection from the homeless advocates and others who object to something that's not based on income.

Fritz: I was going to add that. The third real reason that is challenging to look at that sticker program is that I would only support it if it was some kind of low income exemption, and that gets us back into the realm of the things that we've been discussing --

Donin: My point was --

Fritz: Because it does not matter whether you have a Cadillac or a --

Donin: Right. No, I agree. But my point was that if you have an oversight committee that can look at compliance with the sticker -- and it is a parking sticker, it's not a DMV sticker for the whole state of Oregon. It's strictly for the folks that drive into Portland. So, it's a parking sticker, not unlike the folks that are on Sauvie Island or any of the other parking permits that are in the city of Portland already. You already have jurisdiction to charge people in Portland a sticker fee or a sticker permit to park in the industrial southeast, in southwest around what used to be PGE Park. That's what this would basically piggy-back on top of. So, it would not have anything to do with the vehicle registration. It's just that perhaps if somebody was going through DEQ and they were there for sale, they could buy them there but they could buy them at any retail outlet. It has

December 3, 2014

basically nothing to do with the law dealing with vehicle registration. And yes, this is just an opening salvo. This is not the answer for the problem of how to fix our streets.

Fritz: We have looked into that pretty extensively. I know having been part of the northwest parking permit discussions and various other parking permit areas, the purpose of those permits is to regulate parking, and they're not revenue generators. The city doesn't profit, and when they do, they put back the money into the program. So, it would take a lot. I mean, if you think about doing a permit program in every neighborhood in the city, there'd be more staff required that would then cost money and take it away from the transportation improvements.

Fish: Can I just test -- I want to understand something. I remember back in 2004, a candidate for City Council suggested that we put a surcharge on parking downtown to fund other worthy purposes. So, is your position -- and I am not asking -- I'm not advocating your position one way or another --

Donin: Mm-hmm.

Fish: But is your position you think that you think we should put a surcharge on parking in the areas that we can and use that money to cover roads?

Donin: If that works. If that's going to generate enough funds to repair this.

Fish: Well it's regressive and it may not work. I'm trying to get a sense of what you're pitching.

Donin: Again, what I'm saying is this is just a concept and a conversation and an alternative to an income tax, which I find a little problematic dealing with what the issue of me providing you with my federal income tax and just security issues that bother me. I was looking for something that was simple, that works elsewhere, and that could meet the needs -- or at least the beginning needs -- to repair the roads over the funds that you currently get.

Hales: I really appreciate you putting some thought into this. We'll continue to probe the legal issue, because you raised more good questions here. We always ask our city attorneys at least twice if we're trying to make something new happen.

Donin: I'm not an attorney.

Hales: I'm not, either, but that's why we ask them hard questions. So, I appreciate you putting thought into this and coming up with an original idea, and we'll keep testing it and seeing if there's a legal way to do it.

Donin: Thank you.

Hales: Thank you.

Bob Clark: Bob Clark. We spoke a while ago. As to the amendments, the overall picture is that --

Fish: Bob, before you get started, we require people to say if they are speaking on behalf of an organization. And you send very thoughtful testimony, but you always close it by saying that you're a volunteer with the Taxpayer Association of Oregon. Just out of respect, I want to make sure that we always know whether you're speaking as you the individual, or Taxpayer Association of Oregon, or both so that you don't run afoul of any of the disclosure rules.

Clark: Oh, yes. I am speaking for both.

Hales: Thank you.

Clark: The amendments have to be looked at in a relative sense in that you are going to be putting like lipstick on the proverbial pig, called the street income tax. And I call it that because it's very intrusive in that you're requiring hundreds of thousands of folks to file their income tax filings now with the city. I know that was one of the things that irked me about the Multnomah iTax was doing that extra thing and divulging more of your personal information to more government. Whereas we have existing mechanisms of the gasoline tax. Also, I reiterate that the city's finances are improving, and that they should be able to fund a lot of these safety projects that were listed there in the documents. I mean, we're talking a million here and a million there. I mean, we have noise in the budget that's a million dollars here or there. So, I reiterate the budget itself I think will over

December 3, 2014

time fulfill a lot of these safety projects that you have ending in six years. As to the amendments, the sunset is really not too effective. It's like the lobster, and you put in -- you take it and put it in your pot and put it on the simmering heat. At first you come back out. There's six minutes and you say, how're you doing, lobster? The lobster says, well, I first was feeling kind of faint, but now I think I'm digested. And then you say, well, I'll just keep the simmering going on here, take care. That's the analogy after six years, that's what the council -- everybody has kind of adjusted to the pain of this new thing. And they just keep it going. As to the level of your funding, it doesn't account of the growth that will occur in those general funds -- or in the PBOT funding that is currently existing. So you can give an absolute amount, but it's going to be growing. So that could be diverted, as well.

Hales: Why would that be growing? I'm sorry. It's coming from state and federal gas taxes, which are frozen at a fixed level. So, why would it be growing?

Clark: Yeah, but the state gasoline tax has a very good chance of getting lifted. Of --

Hales: So, if they raise the tax at the state level.

Clark: Right. I doubt that the federal gets done, but there's also a vehicle registration fees that can be upped.

Hales: I think that those are down, also.

Clark: But also, like I said, the price of gasoline is down, and it's probably going to be down for a while. Because it goes through the long-term cycles of 10 to 15 years, and you will see -- already people are going to the SUVs instead of buying the hybrids there, the smaller cars.

Hales: So I've heard.

Clark: So, you're going to have growth in that fund, so you're not really -- you're letting that growth go away.

Hales: Thank you. By the way, if you want to check, you talked about our fortunes improving. Our city economist, who works for Andrew Scott who's in the back of the room there, he can email you the document, but has done a forecast for the general fund that shows very modest improvement over the next few years, primarily due to better business climate and rising property values.

Clark: Right.

Hales: I don't know if we've specifically done a forecast for state and federal gas tax revenues that flow to the city, but again, they have to raise that tax.

Clark: I know, but we were surprised this year with the \$10 million --

Hales: That was one-time money.

Clark: But these are occurring on a regular basis.

Hales: They've got a forecast for that as well. So, we do have a forecast for what we think the general fund will be --

Clark: I'll also note that the COLA for the city is about -- the cost of living adjustment -- is about 2.7%, and the rest of the retirees are getting 1.5% at most, and federal employees went several years without even an increase. And most of these people we're talking about are making six figures in total compensation. And so, if you're going to give them almost a 3% increase in an inflation environment in one and half, I think you're being overgenerous in your COLA benefit.

Hales: OK, thank you very much.

Clark: You're welcome.

Hales: Next three? Good morning.

Robert McCullough: Good morning, Commissioners. Thank you very much for the opportunities to come. I'll be very brief today.

Hales: Just put your name in the record, Robert.

McCullough: Sorry, I'm so inexperienced as a testifier. [laughs] Robert McCullough, president of Southeast Uplift. Thank you. I'll be very brief today. Several items. The first is rising tide rises all

December 3, 2014

ships. The discussion at Southeast Uplift on Monday had some doubts about the precision of the minimum. Mainly concerned about choosing an already low year as a base. We are certainly concerned about the issue of the sunset. As you know, I have Don Gardner advising me on many things -- he knows more than I do. And he reminds me that we've had many funding mechanisms for transportation, all of them promised, and all of them eventually removed which then leads to today's underfunding. But I'm also going to cheat very quickly and raise a couple of other issues. Southeast Uplift did take a formal position for a public vote on Monday. That's a first for us. We had raised the issue as a potential if you didn't meet certain conditions on documentation and policy. Eastmoreland, not surprisingly, is also in a position although I think that will be blamed more on the income tax than anything else. And that by the way is not correct. Somewhat more to the news that some of you may not know is that we started litigation on the Oregon public document law on Friday. We filed with the Multnomah District Attorney. That's the first step and that gives us seven days. On Friday, we'll be filing with the court. Now, this applies to the question of errors in the calculation. Your own documents show there are no large transportation companies or agencies in the city. That's your document, not ours. We requested the work papers for that 30 days ago. We have not received them. We have now had a temporizing response from Mr. Rivera that explains that it will be massively difficult to answer these questions and probably violates secrecy. As you all know, this is nothing new in public documents. They have not contacted us to refine the request. We have no desire for anyone's secret documents. We do know that this is an area which changes every number in the proposal. It cannot be fixed by the staff. Every number is currently wrong.

Novick: Mr. McCullough, what do you mean by "every number is currently wrong"? Because what happened was the work group came up with a structure where businesses were divided into different groups and then divided into different sizes, and then said businesses of X group and X size would pay X amount. So, what does that mean? That was their choice as to how to allocate responsibility among businesses, so how can that be wrong in an objective sense?

McCullough: Well, number one, I disagree with you that we have signed off on this and I think you should direct that question to Ms. Sanderson, who was on the committee. As you remember, we were not invited.

Novick: I said the work group -- and I understand Ms. Sanderson didn't like the result, but we have not heard objections from, for example, the Portland Business Alliance and Venture Portland, which represent small businesses.

McCullough: Now, we're discussing public involvement. The primary avenue of public involvement in Portland is the neighborhood associations. I think I heard that once from Commissioner Fritz. But we were not invited. None of us were invited --

Novick: Mr. McCullough, you could have come to any of the numerous public meetings that we had on this topic. My question for you --

McCullough: We do have members that did.

Novick: Given that the allocations for particular businesses are based on that formula that came out of the work group discussions, how can a calculation be, quote, "wrong"?

McCullough: OK. I've talked to you and your staff quite a bit and have them walk through that calculation. I apologize, Commissioners, this will be longer than my presentation.

Hales: That's alright. We asked you a question, and you get to answer.

McCullough: The first step was to divide the bill into two. It was done arbitrarily, half to residents, half to commercial. That's actually the wrong number. That isn't actually the way we do transportation in Portland, it's more 60-40. Accept it. After that, then you broke it into a number of different businesses categories. We've heard many times that was done on the basis of trips. Now,

December 3, 2014

I'm quoting directly from your staff here. In fact, I can bring you emails on this directly from your staff. In fact, you've seen them.

Novick: Mr. McCullough, it was actually --

McCullough: Please don't interrupt me, because you asked me a question. Let me answer. One of the problems with arguing with an expert witness is that they're so darn stubborn. So, at that point, they were divided according to trips and entities. The entities were taken from the Portland business license database. The trip counts were taken from the ITE manual. Both of those are public, even though Mr. Rivera now says secrecy prevents you from answering. OK, so let's take a look at the number of entities. The number of entities is taken from the Portland business license. The Portland business license database has never been audited for this purpose. One very abusing story of this is very simple. The Portland Oregonian's entry into the Portland business license is for the agent for sports and political speakers. Willamette Week is actually recorded as a newspaper. The Union Pacific railroad is not counted as a railroad. Your own staff commented to me that TriMet, one of our largest institutions in transportation, wasn't included at all because they don't have a business license. [beeping] So, that 1.9% allocated to that category was wrong. Now, that means that if you had put in the correct number, which was probably something on the order of 20%, that'd be the number of vehicles, 40% would be fuel, 5%-7% employment or revenue. You would have reduced the allocation to all those other categories.

Novick: But Robert, we started off with a recommendation last May that was based on trips. And there was information relevant to that that was provided to the work group at the beginning. But it was quite clear over the summer that we were moving away from allocations based on trips. We all now understand that we do not have a trip-based mechanism. So, it's not that we said we're going to have a trip-based mechanism and this is the product of that. We all knew that we were deliberately moving away from a trip-based mechanism.

McCullough: Unfortunately, Commissioner Novick, you may not be correct because the information provided in numerous occasions is that the allocation between categories had a component from, quote -- and this is a direct quote and Mark's here I think if you want to pull him up to ask -- the ITE manual. Number two on that, I have a direct quote -- again, from your own staff -- that they went to the business license database to get the number of entities. Now bear in mind, the reason why you are going to be in court defending the secrecy of this information is because we would like to see that number. Not interested in anyone's secret data, absolutely not. If you look at our request, we've not asked for any secret data. But you and I are very well-educated, very intelligent people who have exchanged, what, 50 emails on this subject? Still do not know the right answer. And I respect you a lot for talking to me this much. But that we could debate this question at this late date is evidence that you should turn over that calculation. If you're correct, Southeast Uplift will apologize.

Novick: Robert, the staff is trying to figure out how to give you as much as possible without releasing confidential business information. But I do want to say that if we are going to be making sure that businesses are assigned to the proper categories, and the schedule the work group came up with said transportation business of such-and-such size pay such-and-such an amount -- so, if we identify a business that has been misclassified, then under that schedule, they will pay the amount consistent with their category and their size.

McCullough: However, you're confusing two different steps in the calculation. The first was to derive that table which, by the way, is now part of the legislation. It's actually included in the legislation. The staff can't change it. That is, in fact, the monthly amount that will be charged. That monthly amount appears to be an error because we dropped off -- among others -- TriMet, the major trucking companies, the major railroads, the Port of Portland. That allocation is in error. Now, we can solve this problem immediately, Steve. As you know, Mark Lear promised the work

December 3, 2014

papers literally one month ago. We have only received a response from your office last night after the close of business. We've reviewed it, we will have a formal response later today, a judge will probably have to rule on this. But the best move is much better. Let us simply delete any data you think is secret. Delete every piece of secret data. Bear in mind, I submit a business tax -- a rather large one -- and I know exactly what can be deleted. Income is fine. No interest in that, no interest in the balance sheet. None of that shows up in your spreadsheet, and we just get to the bottom of your answer.

Novick: The work group came up with a construct where no business location will pay less than X amount. They said 120, we've now talked about 144. So, the only way your complaints would have significant relationship to what any business is charged is if there are thousands of misclassified entities that are now are paying, say, \$20 and would now have to pay \$144. How many large transportation businesses do you think there are in the city?

McCullough: Number of transportation with over 50 employees? Quite a few. But I don't know because, again, you haven't responded to our --

Novick: Do you think that it's thousands?

Hales: Let me ask you both to end this here.

McCullough: Yes, sir.

Hales: First, I appreciate you having this debate publically. Two, I want to request that the commissioner let us know what the results are of the discussions with the bureau about what can be released to you when, as you've got the prerogative of saying yes, no, or here's some of it. But more importantly, Thomas I think is still in the room. You don't need to come up, Thomas, but I just want to flag the question of do we need to move the threshold of the ordinances of what's addressed by rule versus what's addressed in the ordinance itself? It may be the case that this kind of technical debate will occur after its enacted, as well as before. My preference would be to have as much ability to tune this thing by rule as possible. Obviously, the council has an oversight responsibility. So will the oversight committee. But in tax policy, it's not unusual to have a technical argument. And I suspect we're not done after this morning. The question is, where will we have them and how? And I'm open to a suggestion, or at least taking a look at the question of where these issues get resolved downstream. I appreciate you two having this debate now, and we wanna hear the results of it. But the question is six months, a year from now, are we still going to be doing this in Council, or is it going to be done before a hearings officer at the Revenue Bureau? I don't know.

McCullough: May I make one sentient plea?

Hales: Sure.

McCullough: Southeast Uplift supports you strongly. We do not want to litigate. We can solve this in the next few days. Call me. I have 30 years of experience in public document requests. We can solve the legal question immediately, and we will move on and not waste any of the city's money and time. Thank you.

Hales: Thank you very much, appreciate that. Good morning, welcome.

Ann Sanderson: Good morning. My name's Ann Sanderson. I'm a small business owner, I'm a founder of the Stop Portland Street Fee Facebook page, and I was a member of one of the summer work groups. Although, every time you say that, Commissioner Novick, I cringe. The rates and the policies that have come out of that group, ostensibly, really came from your staff, which are really hard-working people, and I appreciate all that they have done. But there was no sign-off. I really would appreciate it if you would stop blaming us for rates that you quote that aren't ours. But here we are again after six months, and among the work group, town halls, the open houses and all of the public testimony, we're still addressing changes. I'd that submit that this -- both taxes, now, two of them -- are not ready for prime time. If we're discussing it a week before your potential

December 3, 2014

vote -- and even two weeks before -- you haven't worked out the bugs. And to say there wasn't any kind of push-back on the business license fee is wrong, because now you're already making changes on it. So, I think that we're not ready for prime time, and if the roads are like teeth, it is like pulling teeth to get you to get any changes. I am heartened by the changes you're talking about today, but they're significant and we need to study them more and we need to have a chance to respond to them as well. We came here to talk about a sunset clause, although we have gotten off track. I think it's a step in the right direction. But you know, we're not confident that a future City Council won't want to continue that even if there are problems with it the meantime. But a sunset is better than no sunset and it's still not enough. You're asking us for a blank check, you can raise it at any time, and I think we need to be more sure of what you want to do before that happens. So before we -- before you take the money from us, I think we need to talk about the criteria that you're using, because a survey to decide that it's 50/50, or between residents and businesses, or that it's this amount of money because the survey said it's not good enough. We need to use some common sense to determine what really a good plan would be. And some of the things we need to talk about, the sunset -- finally, thank you for that. But also, any plan needs to have lower administrative costs. A 25% administrative cost is just not enough. One of the things that did actually organically come from the work group that I was on was skin in the game. We talked about the phrase as a way to have more general fund dollars -- not PBOT dollars, but general fund dollars -- going into PBOT in a ratio that would actually mean something. You know, you guys decide what's a priority, and if you are saying this is a priority to you, then you need to show us. Finally, I was going to say about a vote on this. [beeping] I think there has been a lot of anger and a lot of concern from citizens everywhere. Every day, someone comes up to me and thanks me for putting up and pushing back on this issue. And I think to heal the rift you have caused with how you have mismanaged this for the last six months, you need to ask us for the money and not just take it. We're here to work with you.

Hales: Thank you very much. Good morning.

Lightning: Good morning. My name is Lightning, I represent Lightning Humanitarian Lab. On the sunset clause -- as I stated at the last meeting -- I'd like to see that at three years. I don't think going out farther is necessary at this time. Again, what I suggested is more of a step-up plan on this whole proposal. What I wanted originally, as I stated last week, was 25 million for year one, 35 million year two, and 45 million year three. That begins the process forward. We know we need cost for transportation, so we know what we're fixed at and we set a cap. These other suggestions, again, on the gas tax, I wanted that to be more of an incentive to you to try to push that through if you want to hit your \$47 million per year. You go out there and get that gas tax approved and you calculate that from 25 million to 47 million. That's your incentive each year to get that done. If we're looking at other areas, also -- which again, think this gentleman on the parking sticker fee -- I want more studies to be provided. I talked to him briefly. He said it's your responsibility to provide those studies. Somebody needs to provide those studies. I think it's a great area to look at when we're calculating in the step-up plan for the first three years. And that sunset clause determines who is going to get reelected also in the next few years. And we're going to be looking at this very close and we're adjusting that price to see how much you're going to follow through on that gas tax. How much you'll follow through on possibly the sticker fee. How much you'll follow through maybe on PERS, social security, other avenues to raise more revenue. But you'll have that three years. You'll get reelected if you perform. If you don't, you won't get reelected, as you stated -- and that's my opinion. We need to step this up with more incentives from your side to perform, but we need to come through with something now to get the process moving forward because we could debate on this for the next one to two years. And we're already drawing a lot of time on this. So, from my position, again, I want that sunset clause reduced to three years and I don't want that

December 3, 2014

extended out. And your election will be dependent upon this overall plan and proposal going through and you implementing either the gas tax or some other forms of revenue. And again, I'll make this clear, Mr. Novick, in charge of the transportation, I don't think the mayor should not get reelected on anything to do with the Bureau of Transportation if this comes unraveled. You are in charge of that. You are the commissioner. If it becomes unraveled, it's your responsibility at the end of the day, not the mayor's. Thank you.

Hales: Thank you. Thanks very much.

Fritz: I just want to share something that dawned on me and it should have dawned on me much earlier, and that is that we won't actually be collecting any revenue until 2016 under the current proposals. So, if we were to have a -- the money starts getting collecting in 2016, it would be unrealistic to expect all of the projects to be done immediately, even if we got all of the money on April 15th, 2016.

Lightning: OK, but if I can answer that. On these other types of fees, the parking fee-type structure, gas tax or any other type of revenues. My understanding is that we'll begin to get that into place to have it implemented upon the proposal dates. So, I do understand that. We still need to move forward as we were doing on this whole proposal to make sure that we could meet the dates and come up with the revenue that we need because we haven't done that in the last 10 years in the Transportation department for some reason. That's why I want to hold people accountable for what they're saying and have an incentive there to push that through. If they don't, you don't get reelected, Mr. Novick.

Novick: Lightning, I appreciate your thoughtful comments, as always. You're right. I am the Transportation Commissioner, so I have more responsibility than the mayor. I also cannot resist saying we're hearing from Lightning an hour after we heard from Thunder, and I think this is further evidence of climate disruption. [laughter]

Fish: Lightning, can I jump in for one sec? Because I'm confused now on an important detail, so I'll turn to the commissioner-in-charge. Under the proposal before the council currently, when is the earliest point in which a taxpayer is either required to make a payment or voluntarily could make a payment?

Novick: Required to make a payment is April 15th, 2016. However, Revenue is going to work assiduously to try to set something up so that people can make earlier payments as quickly as possible.

Fish: Sort of like withholding.

Novick: Right.

Fish: And when is the earliest that will trigger?

Novick: Thomas, what's your best guess?

Hales: Thank you all very much. We'll give Thomas a chance to follow-up here.

McCullough: I'm sticking here for one second if I could make one quick comment on it.

Hales: Quick.

Lannom: Briefly, it will take time to get the IT infrastructure up so that we can accept payments and properly credit them to accounts. That said, we may be able to take voluntary payments in the third quarter of 2015, so that would be pre-payments to the April 15th of 2016 due date. In terms of employer withholding, there's two ways we can go, voluntary or mandatory. We want to take a look at that. We did do employer withholding for the Multnomah County iTax back in 2003, 2004, 2005 -- actually, just the latter year or do. So, we would be looking at that. I'm not prepared to tell you today exactly when we would have withholding up and running.

Fish: But the tax year would start when?

Lannom: The tax year would be January 1st of 2015.

Fish: If the council acts this calendar year.

December 3, 2014

Lannom: That's correct.

Fish: And that would be due on April of 2016, and there may be either a voluntary or mandatory withholding requirement to be discussed. But there certainly would be a voluntary payment program like anyone who wants to pre-pay their arts tax or anything else can do that, correct?

Lannom: That's absolutely correct. As to mandatory, I don't see mandatory for tax year 2015, maybe 2016 or 2017. We really would want to look at the impacts of that to businesses, to make sure that we're coordinating that activity and doing it in a way that's not excessively impactful.

Fish: Given that Commissioner Novick has previously talked about the deductibility of some of the taxes we're talking about here, don't you anticipate a lot of people, if required to make this payment, would want to be able to choose the tax year they make the payment so that they can then determine for themselves how they get the tax benefit?

Lannom: Yes. Yeah, that's true. So, we're going to move as rapidly as possible to bring this up. I can't tell you today when we would absolutely be able to take a payment. Could be fourth quarter of 2015.

McCullough: One sentence to respond to Commissioner Fish and Commissioner Fritz. If we took one of the alternatives, the revenue stream occurs years earlier. The gas tax does not require the massive implementation process, and the recovery rate will be much higher. Thank you very much, Mayor.

Hales: Thank you.

McCullough: Thank you Commissioners. Thank you very much, Steve.

Novick: Thank you.

Hales: The next three, please. Go ahead. Good morning.

Eric Fruits: Thank you, good morning. My name is Eric Fruits, I'm a small business owner, homeowner, I sit on two boards of nonprofits here in the city. But I'm speaking for myself as a crazy dude who runs the nostreetfee.com website. Let's start off. I had some prepared remarks, but there's been so many changes in the past couple hours that I had to throw them out the window. First, on the sunset. I love sunsets, they're beautiful, but we've gotta be careful. If you've ever driven out to the Oregon coast on a Friday evening, you know sunsets are dangerous because they take your eyes off of the other dangers on the road. And despite the sunset we have here, this is still a very, very flawed measure. One of the other amendments that has been in here that hasn't been discussed much is the oversight committee. I know Mr. Rogers mentioned it, but I think there is a small technical issue that we should look at on the oversight and that is that -- it's my understanding of how the oversight provision is written, it is only providing oversight on the spending side and I think that there's a lot of opportunities for mischief and problems on the collection side of these two new taxes. And so, I would urge you to tweak that language at least on the oversight to be sure that there is some oversight on the collections. When we talk about collections, we're talking about assessment. How is it assessed? And Mr. McCullough flagged some big problems on how it is assessed. How is it collected and how is it enforced? Will people go to jail? Go to collections? How will we enforce the collections of this tax? I'm a small business owner, and I have probably generated more trips talking about this street fee than I have in eight years of operating my business out of the smallest, darkest corner of my basement. And so, I certainly hope as we re-jigger the street fee that we tax government activities a lot heavier than mine. I have actually generated exactly zero customers at my business because I can do everything by teleconferencing. On the business side, I've had some real concerns about the business side of the tax and I was 99% certain that there was a big problem. Today I now can say I am 100% certain that there is a huge, huge problem on the non-residential side. Commissioner Novick said, and I quote, we do not have a trip-based mechanism on the business side. That means that what we have now is essentially a property tax that will fall under the property tax limitations. I suggest that you

December 3, 2014

talk to the city attorney about that. When you have a mechanism that is no longer based on any notion of trip generation, you now have something that could be considered a property tax, and that can cause big problems down the line. Another thing. I know that Mayor Hales loves to talk about his three options, and I've said over and over that there are other things we can do. One thing that I suggested over and over again is that we tap PDC. [beeping] We have a 30% set-aside for affordable housing on the Portland Development Commission. Portland Development Commission is sitting on about \$100 million of money that it can use for developer and real estate subsidies. Why don't we have a 30% set-aside for roads in urban renewal areas? About half their projects are in urban renewal areas. I think that is money that can be tapped and can make a serious dent in the road paving problems without increasing taxes. One last thing for Commissioner Fish. I really appreciate you reaching out -- and believe me, I have actually thought about this nonstop and I have an idea on dealing with the gas tax. Your issue was the gas tax is regressive, and I agree with you, it's not based on income although you may drive less if you have lower income. But still, it hit me. We have about 20 to 25% of the population that carries an Oregon Trail Card, what we used to call food stamps. I also have the Fred Meyer card that I can stick in the pump. And I thought, if there is a way to work with the state and feds to use the Oregon Trail Card to stick it in the gas pump to provide a credit against the gas tax, that might be a way of dealing with that regressively. I know under the federal law, you can't use your SNAP card to actually buy gas, but I don't think there's any prohibition to use that card to obtain a credit. For example, RACC, the regional arts and council commission, has a program of offering \$5 theater tickets. And the way you can get the \$5 theater tickets is by simply showing your Oregon Trail Card. So, I think there is a way we can do this. I don't know about technologically whether it's feasible, but I think we can start the conversation on that.

Fish: Mr. Fruits, can I just get clarification on your urban renewal proposal? I want to be very clear that you're not suggesting that any portion of the 30% set-aside for housing would be dedicated to roads, you're saying 30% of the 70%?

Fruits: I'm saying -- I'm not even saying 30%. I'm saying we have a set-aside for affordable housing that's 30%, and we should have a similar -- I don't know what the number is -- but a similar set-aside for streets and roads within urban renewal areas.

Fish: Because we have spent a lot of time defending the 30% set-aside for housing, you're suggesting --

Fruits: I don't want to take your money.

Fish: It's not my money. The money goes right out the door to support low income families, veterans, and homeless people. I just want to be clear that you're suggesting to us that we take some portion of the 70% that is not allocated for housing and consider investing that in infrastructure.

Fruits: Well that's correct, Commissioner Fish. And if you look up there, we've heard Mayor Hales and Commissioner Novick give testimony here in Council about how lighted roads and road improvements are a key component of urban renewal. And so I think we have agreement among City Council that road improvements are urban renewal. And I think there's absolutely no reason why PDC should not be in this room with its wallet ready to provide some support for the streets and roads within those urban renewal areas.

Fritz: To be clear, a large amount of the money from urban renewal areas does go into roads.

Fruits: Well, there's over \$100 million in subsidy money sitting out there. We spend \$1 million to subsidize a microbrewery in a place where we had a failed bakery.

Fritz: Come on back this afternoon, we're going to be discussing urban renewal districts.

Fruits: Oh, I gotta work. I have to generate some trips.

December 3, 2014

Fritz: Well, I will ask the question then as to what proportion of current urban renewal funding goes to transportation, but my experience has been a lot of it does.

Hales: We'll check on that. Couple of clarifications, Eric. One, by state law, only 15% of the land area of the city of Portland can be in urban renewal districts. As a matter of fact, your neighborhood and my neighborhood are not in urban renewal districts.

Fruits: Don't remind me.

Hales: So we cannot spend urban renewal money outside of those districts. I think you know that.

Fruits: I understand that.

Hales: Secondly --

Fruits: But if you look at the projects, half of the projects are in urban renewal areas.

Hales: Well actually, secondly, state law restricts the use of those urban renewal funds for capital expenditures, not maintenance. We can spend urban renewal money on new streets in urban renewal districts or on major street improvements in urban renewal districts, like the one on Foster Road --

Fruits: Exactly.

Hales: And the Lents urban renewal district or new streets that were built in the Pearl District or the South Waterfront by urban renewal money. We can do that. And as Commissioner Fritz just noted, we'll ask what percentage of those revenues are going to --

Fruits: Well, I'm not saying we should cover all of it now. I'm just saying it can make a big dent. And I think what happens is that the council gets hung up on this idea that if we don't have a proposal that raises all \$46 million, then forget it, it's a dumb idea. What I'm saying -- we talked about a cocktail a long time ago. I think a big part of the cocktail, perhaps the vodka in the cocktail, could be urban renewal money. There was a long time -- I remember Fred Miller talked about transferring streetcar operations out of PBOT and putting the general fund -- and that's gone. I don't know what happened to that discussion.

Hales: It's not gone, it's a good idea. So, we'll check on that number because it is a fair question. What are we doing now and how much more could we do with urban renewal money in those districts --

Fruits: Right, and they love to spend money.

Hales: Well, the council is taking action this afternoon on a package of proposals that actually reduces the number of urban renewal districts by two and put a billion dollars of value that used to go into PDC's budget into the general revenue streams.

Fruits: Exactly, you're shaking loose the pockets and the change is coming out, and some of that change should end up on our roads.

Hales: Well, some of it probably will. But it's going back into the general funds of the city, the county, and the school district. Not much publicized, but it's the biggest change in urban renewal in 25 years.

Fruits: And I appreciate that, I think it's a very good idea. And when you first proposed it, I said, wow, he's doing something right. And then you did the street fee.

Hales: Win some, lose some. Thank you. [laughter]

Fish: Let's be clear. We like ideas, but let's put numbers on them. The total value of the urban renewal money that comes back to the city over the next 16 years under the changes we're going to contemplate is about \$16 million.

Fritz: 1-6.

Hales: Right, just a start.

Fish: Next 16 years, it's a little under \$1 million a year. It doesn't really make much of a dent in the problem, but might be part of the cocktail you're talking about.

December 3, 2014

Fruits: That's right. And I think there's always opportunities. And you know, does the Pearl District really need an urban renewal area anymore?

Hales: We're taking 40% of it out. You've made a good suggestion, we'll check on the numbers. It might be more like the vermouth rather than the vodka.

Fruit: Or the sniff of vermouth, or whatever. I think part of it is the idea of a cocktail is we can piece together something that I think avoids having to raise taxes. Thank you.

Hales: Thank you. Mr. Walsh?

Joe Walsh: That was great. My name is Joe Walsh, I represent individuals for justice. We take the position -- even though Commissioner Fritz cringes on this -- is that what we want you to do is come with the package and then put it to the voters. So, we see your job as doing all of this, and getting all of this great information that happened today. But it bothers us that you seem to be rushing all of the time to do these things. And all of the sudden, one week before the vote -- and I guess it is going to be postponed again -- you have an interesting idea about the development and how to look at that and could we get the money and maybe we could get the money and you would have to look at that. So, our position is that you're rushing this. You're going to do a vote and god help you if it goes down 3-2 and you take \$40 million away from the people of Portland. There's only so much money in the pot, folks. And if you keep taking it, it's going to be empty. And the voters have a right to say yes or no. And we think that we pay you to come with a package and say, Mr. Walsh, how do you like this? Yes or no? And I say yes or no. That's the way democracy works. But Commissioner Novick is afraid of that. And the mayor, you're afraid of that. That's not democracy. I don't know what that is. It's elitism at the very least -- that you guys know better than 60,000 people in the city. If you don't put this to a public vote, and it goes down 3-2, or if you seduce the other two commissioners and you get everybody on board and this thing goes south, I'm going to have to learn the names of all of the new commissioners and the mayor. Because this is a lot of money that you're taking -- \$47 million is a lot of money. I could have a great time in Vegas for at least a weekend on that. I'm saying democracy demands that you give it to the voters and you do the package. Amanda, what I'm suggesting is not just, well, just vote on it. I'm saying you guys work to get the package together and put it before us. That's your job.

Hales: Thank you. Charles, welcome.

Charles Johnson: Good morning, Commissioners. For the record, Charles Johnson. I'm not such a hardcore opponent of the street fee, but I very much appreciate the gentlemen's remarks and the way they were presented. As Mr. Walsh's remarks about democracy and the way this is working -- of course, the biggest problem we have with taxes as taxpayers is probably that we don't have direct democracy controlling our federal taxes, so when you, as quasi-legislature, executive blend -- however that works in city government -- do this, it's certainly not without precedent. We usually don't get direct democracy on taxes in Oregon. We do a little bit better than that. And the reason we're actually having this anxiousness about this tax and had the anxiety and drama about the arts tax is because to some extent, you're not calling for enough accountability from the taxpayers. Us taxpayers are willingly sending gobs of money to Egypt and to Israel for violence or to bribe them into quasi-peace, and we don't complain about that. But when it comes time to fix the pothole, all of the sudden we want to put some kind of armor around our own wallet. Whether you make this street fee work or not, I encourage you to talk about the broader justice picture this applies to in that we as citizens need to get re-engaged through this process, maintain our streets, and put our money into building our communities and not financing a military-industrial complex that always makes ourselves tax-exempt. We're unfortunate in that we don't have a big Boeing presence here that we can look to recoup some of that money. And I don't want us to get into the drone business. But we need to pay our own way and the real reason this might be painful for some households is because we both you over there and us as citizens have not stepped up and put the pressure on the

December 3, 2014

federal government to not just rely on the gas tax to keep our streets in order. So, I look forward to continued dialogue between the citizens and us to get the streets in good working order so that we can have strong local economies and keep less of that money from leaving Oregon and going through Washington. A lot of it comes back in block grants that we approve here, but that's not really the way it should happen. We don't really have accountability and good citizen involvement when so much money goes through the federal budget. Thank you.

Hales: Thank you. Good point. Thanks very much. Next three, please, come on up. Go ahead, Barry.

Barry Sutton: Hello, Mayor Hales. Barry Sutton, and I'm homeless. And I've been here a number of times wanting to talk about the three blocks in the back of Washington High School --

Hales: We want you to talk about this issue today, if you could. I know you've got an interest in that property and we're working on that. But we're talking about just the street fund issue today.

Sutton: Oh, no, this isn't for the street fund.

Hales: You need to just testify on that. You need to talk with us at another time about the --

Sutton: I need to talk with you because the cold weather is setting in.

Hales: We know that, we know that, Mr. Sutton.

Sutton: This would be a very good place for an encampment for all of the homeless people.

Hales: We are looking at that that question.

Sutton: But no one is talking with me directly about it. This is what I ask right here of you, Mayor Hales and Commissioner Fritz, if I could talk with you directly about this. This has worked out before at St. Patrick's Church.

Hales: We know. Let's talk after Council, OK?

Sutton: May I talk with -- may I get a time to talk --

Hales: Just after the meeting is over.

Sutton: OK, thank you.

Woody Broadnax: Good morning, Commissioners and Mayor. I have listened to a lot of what has been said this morning. I want to appeal to humanity in each and everyone one of you. I'm talking about the human humanity of each and every one of you. When I hear from the very onset of this a commissioner come out as Novick did and say, we may lose our jobs behind us, speaking about the Mayor and his position, it sends out a signal to me that says that this is not correct. And it leads and feels oppressive. We look at what's going on around the United States of America. Oppression has become a fad. And that oppression is based on the fact that people are subjected to not have the ability to vote, not have the ability to completely receive all of the information necessary in order to make a decisive vote. I think that when we move to the point where the mayor doesn't have to allow the people to vote, then we move to a level of oppression. We have fought oppression all of our lives as a member of the African American community, from the civil rights struggle to today. And today, we are looking at another oppressive issue because this is not only going to affect the grassroots people, but what you are looking at in northeast Portland is a redesign of San Francisco. If you are making \$150,000 to \$200,000 in San Francisco, you have to be subsidized. There are people there that are on Section 8. You are talking about 2021, 2015, 2016 -- it goes up as a progressive tax. It goes up. It pushes people out of this community. And what I'm saying is that this board, the humanity on this board has to be one that is not built on oppressing people. Now, I know each and every one of you are good people. I don't have a doubt in my mind. But I know business as usual, and business as usual can kill off any type of productive effort we have to move forward. We're sitting in here consistently talking about this and talking about that, and having playing chess games with conversations and shell games where we're coming up with this amount of money and that amount of money to get you to buy into and not talking to it and appealing to the humanity in Ms. Fritz, and the humanity in Mr. Fish. Don't be swayed. Stand your ground. Don't

December 3, 2014

buy into this and sit back and go into closed rooms and come up with deals. You give me this, I give you that. No, that is not the process. That is oppression, and it is secretive, and it is not right, and we are looking at you. We're looking at you with a heart. We are suffering as a community. We're suffering with the streets. There are ideas that you have in your heads and you listen to all of these people who come up with suggestions that will allow us to be able to move beyond this point and deal with the not oppressive issue of just saying, we're going to have a street tax, we're not going to have a vote. That's not the American way. It is not how you got into office. And it is not how you will sustain yourself while you are in office as the gentlemen said. Thank you.

Hales: Thank you. OK. Anyone else who signed up?

Moore-Love: That's all who signed up.

Hales: OK, then we have the amendments in front of us. I think all we need to do at this point is continue to next week, right? We don't have to take final action on those amendments. We will continue these two ordinances until next week.

Fish: Mayor, can I just -- [speaking simultaneously]

Hales: Do I have that wrong? Do we have to take action on the amendments?

Linly Rees, Deputy City Attorney: If you want them to be in place.

Hales: We did.

Rees: You moved them but you've not voted on the question. It's whether you want to vote on those amendments before next week.

Hales: So, we can adopt those amendments, and put them into the ordinance, that's the amended ordinance that comes back next week. OK. Then I take a motion to adopt the amendments.

Fritz: We already did that. We just have to call the roll.

Hales: OK, roll call on the previous motion. Sorry.

Novick: Aye.

Roll on motion to accept the amendments on the table.

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

Hales: OK. Those amendments are adopted and this is continued for one week. Thank you very much.

Fish: Mayor, can I address that for a second? Because this is -- I'm losing track of how many hearings we have had. They're all excellent hearings. By continuing it next week, what we're saying is to all of the people that have been joining us and testifying at each of those, come next week, but what we're not telling them that we intend to do anything next week. And I think at a certain point we have to be more respectful of people's time.

Hales: What would you suggest?

Fish: It goes back to the question I asked earlier, which is, when do you intend to bring a package to Council for vote? Because if we're continuing it and simply announcing that we are continuing it again, we're at risk of inconveniencing people and also doing some violence to our agenda. So, is next week going to be a vote on something or is next week going to be a placeholder to decide to postpone?

Hales: I think the plan is to either take up another amendment or not, right?

Novick: I think that we are going to take up an amendment on the issue of micro-businesses. So, that means that we not have a vote next week on the business side, at least.

Hales: And that's because we can't take action on something unless it's an emergency ordinance and act on it.

Novick: I anticipate we will have a final vote on the 17th.

Fish: You intend to bring a package to Council --

Hales: Not a package, a single amendment to what's already in front of us.

Fish: No, I --

December 3, 2014

Novick: Based on the fact that I have at least one amendment next week, I anticipate we have a final vote on the 17th.

Fish: Final vote on this package.

Novick: Yes.

Fish: Next week, you would be presenting at least one more amendment to the issue you described about the anomaly on the business side.

Novick: Correct.

Fish: Commissioner Novick, again, just doing some agenda management and time management, is it your intention to post that amendment prior to the hearing so people can decide whether it is something that they choose to come testify about?

Novick: Yes.

Fish: So sometime by early --

Novick: Well, you and I have to have a conversation about it, actually.

Fish: I'm going to clear my afternoon --

Novick: I would say no later than Monday, and I would hope we can have something on Friday.

Fish: And it may go to Monday to get it right, so I'm not trying to pin you down. So, you would then post that so people can see whether it's something that they want to come and testify about.

Novick: Exactly.

Fish: And Mayor, that hearing would be limited to that amendment.

Hales: To that amendment, please. Yes.

Fish: Specifically. We're not opening up the whole package for next week.

Hales: Nope.

Fish: And then, it's your intention to have a vote on the entire package the 17th.

Hales: Second reading.

Fish: No, that's not what I asked Commissioner Novick. What comes to Council on the 17th?

Novick: Yes. My intention to have a vote on both ordinances on the 17th.

Fish: OK. And that will be a time certain or in the regular order of how it falls?

Fritz: We have about 20 time certain on the 17th.

Hales: It's in the regular calendar because it's the second reading.

Fish: Yeah. On the 17th, I'm bringing my sleeping bag and toothbrush on the 17th.

Hales: And for just about every other meeting this month.

Fish: Thank you.

Fritz: And I'd just like to flag another issue that I've asked Commissioner Novick to look into and he's doing so. One of the issues that was raised in testimony on the residential side was the fact that if it's within the brackets, there's some disparity in terms of a fixed amount. So, from the bottom of the bracket to the top of the bracket, there's a different percentage allocation, which goes against our desire to make it progressive. What I've asked Commissioner Novick to do is to look into percentages rather than a fixed dollar amount, still at the same approximate levels, and so he and his staff continues to work on that so it's possible there may be an amendment on that the next week.

Saltzman: I'm puzzled, and I'm looking at our city attorney, although I can't see her. How can we do amendments next week and a final vote?

Hales: The final vote is the 17th.

Fritz: Next week is the 10th.

Saltzman: Oh, I was off a week. OK. We still have the 10th.

Hales: Rushing the end of the year.

Saltzman: Yeah.

December 3, 2014

Hales: That's the plan. We will come back and consider amendments next week if they're filed and timely, and we will have a final vote on the 17th. Thanks very much. OK, let's move on. Karla, could you read the next item for us?

Item 1246.

Hales: Jan -- Ms. Betz.

Jan Betz, City Attorney's Office: Thank you, Mayor, Commissioners. Jan Betz with the City Attorney's Office. Just a few quick things about this ordinance. It authorizes the city to enter into an agreement with a developer who is building a habitat restoration project on the tip of Sauvie Island, the Adler Creek project. It's the site of a former lumber mill operation. This project has been approved by the natural resource trustees for Portland Harbor as credits for natural resource damages in the Portland Harbor superfund site. We are very pleased to have the opportunity to participate in this project, to develop -- well, the project itself will develop channels for salmon habitat, upland habitat for other species, and will also eliminate the structures on the property. This is a very important opportunity for the city to participate in an early restoration project in Portland Harbor, and we are very pleased to be part of this project and also to complement the city's watershed restoration efforts in the Willamette basin.

Hales: Great. Questions for our city attorney? Thanks very much.

Betz: Thank you.

Hales: Anyone want to speak on this item?

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

Hales: Anyone want to speak? Roll call, please.

Item 1246 Roll.

Novick: Aye.

Fritz: It's interesting because this is a hugely important issue, and yet there's nobody here to talk about it or to testify on it. But good work. I'm very glad that we're moving forward on addressing these challenging issues. Aye.

Fish: I want to give a special shout out to the BES team for working diligently with others on this project. It is a complicated issue, but this is part of our commitment to early action, and I'm pleased to vote aye.

Saltzman: Aye.

Hales: Great work, thank you. Aye. OK. Item 1247. Will you read it and I think we're rescheduling it.

Item 1247.

Hales: As the calendar says, this item needs to be rescheduled. It's being rescheduled for second reading at 3:30 p.m. on the 18th of December.

Fish: Mayor, can I ask a question on that?

Hales: Sure.

Fish: We learned yesterday that you've also scheduled debate and a first reading -- or, excuse me, a hearing on the JTTF for 2 o'clock on that afternoon.

Hales: Right.

Fish: If history is prologue, that hearing will last five hours. And we are now scheduling this for 3:30. With all due respect, I think either we should move the JTTF to a time that gives people the full opportunity to be heard, or not put something on the calendar that we're unlikely to get to.

Hales: OK, this is a second reading.

Moore-Love: I'm not sure why they wanted a time certain.

Hales: Not sure, either.

Moore-Love: There's room on the morning on the 17th.

December 3, 2014

Fish: Well, there's two issues, Mayor. We're going to take up the first reading of the enforcement ordinance.

Hales: I hear you. Let's see. I believe we can do this, Karla. Why don't we reschedule this for December 18th. And the City Council Clerk and I will determine whether it is a time certain or not.

Linly Rees, Deputy City Attorney: So, the reason we scheduled this for a time certain is this is a land use item and we required sending notice out and I think the desire was to make sure that we didn't feel the need to re-send notice out to people.

Hales: Scheduled for December 18th on the regular calendar, then it's scheduled, right?

Linly: If it is scheduled for -- it just wasn't clear to me what you meant.

Hales: I'm not sure why there was a time certain requested for this for a second reading anyway. Let me amend my ruling and say let's reschedule this for December 18th.

Fish: Again, I'm not driving this train, but my understanding is this is being paired with another ordinance. The authorization on short-term rentals for multifamilies is being paired with the ordinance for which I think we're getting a first or second reading on the enforcement side. So, I don't know the sausage making --

Hales: It's not sausage making, it's just mechanics. I have a better idea I think on the third try. Let's hold this item until this afternoon and we'll figure out what the bureau needs and I'll bring it back then, because we have an afternoon session. So, we will hold this until this afternoon and then figure it out.

Item 1248.

Hales: Ms. Moody.

Christine Moody, Chief Procurement Officer, Office of Management and Finance: Good morning Mayor and Commissioners. Christine Moody, procurement services. You have before you a procurement report recommending the contract award to R&G Excavating. The original engineer's estimate on this project was \$2 million. On October 23rd, 2014, six bids were received, and R&G is the low bidder at \$1,359,838 which is 32% below the engineer's estimate. The Bureau of Environmental Services has reviewed all bid items and believes the price offered by R&G is good. The city identified three divisions of work for potential minority, women, and emerging small business subcontracting opportunities. Subcontracting participation on this project is at 1.9% and they are responsive to the city's good faith effort requirements. R&G is self-performing a majority of this work, and is only subcontracting out two divisions of work, one of which is crane services at \$510,000. A bid was received from a woman-owned crane service but was not used due to the scope of work. I will turn this back over to Council if you have any questions.

Hales: Thank you. Questions?

Fritz: I have a couple of questions. First of all, usually we're happy when bids come in so much less than the estimate. But in this case, it worries me that it's too low and that there then might be change orders that would get to be expensive. Could you talk to me about how do we know if a bid is too low?

Moody: I will actually ask Mark Hutchinson to come up and explain how BES is comfortable with the bid prices.

Fritz: Thank you.

Mark Hutchinson, Bureau of Environmental Services: Hello, I'm Mark Hutchinson, I'm the construction division manager for the City of Portland. Thank you for the opportunity to comment on this project. This is a pretty important project for us. It creates habitat in the slough for salmon. If you saw the front page of the Oregonian today, you can see it's a big issue for the public. We looked at this bid and we feel it's a responsive bid. We've talked to the contractor. The same contractor working adjacent to this site on our lagoon's project, so they have a competitive advantage in that they don't need to mobilize to the site. They were also able to secure a barge and

December 3, 2014

crane subcontract that gave them some competitive advantage. And so their plan is to work on this project and over at our treatment plant project at the same time. We've looked at their prices. The second bidder, BCI, who has done other work for us, which is pretty close to them, and then there is a pretty big spread to the other group of contractors. We feel that's a competitive price and the contractor has a pretty good reputation. We'll watch the change orders pretty closely. We feel that our scope of work is pretty well defined. We accomplished a project like this about three years ago. We had some risk items with the work, because it's in the water and so we need to be able to put anchors in the slough when the water is low, which we are hoping to do before March. And we need to be able to float wood in when the water is high, which we hope to do in April, May, and June. Those are a couple of our big-risk items we faced on the last project. We tried to float wood in in the summer when the water was low, and we tried to put anchors in and we had some issues with that. We've since restructured our contract to address the risk and changes we saw on the past projects, and we hope to bring this one in. We will work -- if we do get changes or claims, we'll work closely with the city attorney to defend those so that we can meet our benchmark of no more than 5% change orders.

Fritz: Great. Thank you very much for that explanation. And then I have a question for Christine. It seems like only \$10,000 out of \$1.3 million is going to a women-owned business, is that right?

Moody: That's correct.

Fritz: That's not very much, is it?

Moody: No. And like I said, they're self-performing most of the work, so they only subbed out two divisions. One of which is the crane services, which is over \$500,000, and that's going to a non-certified firm.

Fritz: Oh, so there's just one big chunk of subcontracting that's all one lump.

Moody: Well, there were two divisions. One was for the crane service and the other was for trucking. And the trucking, the \$10,000 of trucking is going to the woman-owned firm. Crane services for over the \$510,000 is going to a non-certified firm.

Fritz: Thank you.

Hales: Is there a certified crane firm?

Moody: There was one. They put a bid in, but they could not meet the barge piece that Mark was referring to.

Hales: OK.

Fish: Mark, you did a great job answering Commissioner Fritz's question specifically as to why you in your professional judgment believe it was a responsible bid. But would either or both of you remind us about what are the red flags that come to us so that we get to police the concern that she raised which is people who underbid strategically and then make it up through change orders or other things? I think I know the answer. But I think it's instructive for us since we're watching these contracts more closely than normal as to what those red flags are and at what point they come to us.

Moody: As far as the change orders, Commissioner?

Fish: Yes, to address the concerns she had that someone might be gaming the system by coming in with a very low bid and thinking they can make it up through change orders or other mechanisms.

Moody: So, our first issue is what Mark had explained. We review the bid items and make sure that the bureau is comfortable --

Fish: That's the professional judgment piece, and I have confidence in that piece. What's the piece that comes to us?

Moody: The piece that comes to you is change orders over 25% of the original contract value would come to City Council for review. In addition to that, you know we have just issued our open contract report that is coming to Council on a quarterly basis that will be flagging any construction

December 3, 2014

projects that are in the change order status between anything from zero percent on up. And that is also posted on our website. That's available for the public as well.

Fish: And that would be useful particularly if a specific contractor had a history of low balls and change orders, and you could track that.

Moody: Those could be tracked, yes.

Fish: Thank you.

Hales: Other questions? Thank you both very much. Anyone want to speak on this item? If not, I need a motion to adopt the report.

Fish: So moved.

Fritz: Second.

Hales: Roll call, please.

Item 128 Roll.

Novick: Aye.

Fritz: Thank you for the explanation. Aye.

Fish: Mark and Christine, thank you for the presentations and the transparency that you've brought to these discussions. Aye.

Saltzman: Aye.

Hales: Aye.

Item 1249.

Hales: As mentioned earlier, because this policy is now contained in the amendments that the council adopted earlier, I'm referring this item back to Commissioner Novick's office.

Item 1250.

Hales: Commissioner Novick.

Novick: Colleagues, the Department of Homeland Security provides financial assistance to selected urban areas through their Urban Areas Security Initiative, or UASI grant program. Portland in conjunction with regional partners apply for financial assistance to address the unique equipment, training, planning, and operational needs of this large urban area. An existing PBEM staff will administer, monitor, and perform oversight, as with past UASI funding. And before I hand this over to Denise and Shelly from PBEM, I wanted to take this opportunity to thank Senators Ron Wyden and Jeff Merkley for the hard work they did to ensure that Congress did not impose an arbitrary limit to the number of cities eligible for this funding, which was essential to our actually achieving this funding. Denise?

Denise Barrett, Portland Bureau of Emergency Management: I would just like to add this is going to be the eleventh time that the city of Portland has received a grant of this nature, this UASI grant which still contributes to important work in the region for preparedness.

Hales: Great. As we heard yesterday from our federal lobbying council, we have to keep making the case for Portland to be in the cohort that gets this funding. So, more work to do. OK. Any other questions? Anything you wanted to add?

Fish: What do we do with this money?

Barrett: This money is used to support specialty training, exercising, planning, and equipment that's used for disaster preparedness, what we call all hazards disaster preparedness, which essentially for any natural, manmade, or technological threat or hazard that we face in the five-county region.

Fritz: Who gets the training? Who gets the equipment?

Barrett: It ranges from police departments, fire departments, public works, emergency management, public health. There's a whole host of disciplines that are involved. And a couple of weeks ago, you approved the IGA for the regional disaster preparedness organization, and that is

December 3, 2014

the structure that actually spends the money and makes decisions based on a regional strategy that's agreed to by all of the participating jurisdictions and other partners.

Novick: Denise, for Council's benefit, could you give just a couple of examples of trainings that we've funded with the money?

Barrett: Yeah, we fund hazmat trainings, so for hazmat specialty teams to be able to do their work requires a lot of special skills. And so we do hazmat trainings. We train public information officers, the bomb squad -- there's other specialty teams around the region that are trained to be able to do their job. They're also equipped with special equipment, and we do all of the decision-making is made based on the strategic planning process.

Fritz: Presumably, you have to give an accounting on the previous grant what you spent it on. I would like to see a copy of that just to know so I can get some more of those examples. Thank you

Barrett: Absolutely. We'll do that.

Hales: OK, other questions, follow-up? Thank you both.

Barrett: Thank you.

Hales: Anyone want to speak on this item. If not, then a roll call.

Item 1250 Roll.

Novick: Thank you, Denise and Shelly. Aye.

Fritz: Thank you. Good work, Commissioner Novick. Aye.

Fish: Thank you Steve and the Bureau of Emergency Management. Aye.

Saltzman: Aye.

Hales: I listened to a chilling story on NPR this morning about a nerdy topic, but it's much more than nerdy, which is that the Cascadia subduction zone fault is silent. That's not good. So, all the more reason to get ready. Aye.

Item 1251.

Hales: Commissioner Novick.

Novick: Colleagues, the city and Union Pacific entered into a lease and operating agreement the council approved in January of 2000 that allowed construction and use of a public walkway, along with access ramps outside of the lower deck of the south side of the Steel Bridge. In March of 2000, the city and UP entered into a beautification [inaudible] for construction and maintenance of slope pavers, landscaping, and fencing, and the city's long-term maintenance access for pedestrian and bicycle path facilities on the east bank of the Willamette River and the Steel Bridge. Pursuant to the lease, UP has the option to recalculate rent after the initial 15 year term which will end in February of 2015. UP has notified the city of its intent to increase the city's rent from \$1500 annually to \$2000 annually. And after we ranted and raved for a while, we decided we'd accept that. Funding is available in the transportation fund. This ordinance would also amend the release in the indemnity section in order to update the terms to be more in line with standard city language, and amend the agreement in order for the bureau director to authorize future amendments. And Dee Walker from Right of Way Acquisition is here to answer any questions.

Dee Walker, Portland Bureau of Transportation: Good afternoon, Mayor and Commissioners. Is it afternoon yet?

Hales: Almost.

Walker: Well, Commissioner Novick pretty much stated everything. Basically, it's just an amendment to an existing lease in order for the Union Pacific railroad to increase our rent we decided to take the opportunity to update some indemnification language. And then put in a clause for any future amendments for the bureau director to be able to sign off on it. So, that's it.

Hales: OK. More questions? If not, then as a previous agenda item --

Moore-Love: We have public testimony.

Hales: Oh, do we have anyone who wants to speak on this?

December 3, 2014

Moore-Love: Yes, Mr. Johnson.

Hales: We do. I'm sorry, come on up.

Novick: Mr. Johnson, do you think they should have driven a harder bargain than \$2000 a year?

Fritz: It's a pet project.

Charles Johnson: Absolutely. In the scope of overall budgets of both of these entities which people have varying public sentiments about, Union Pacific and the city of Portland, this is a small dollar amount. But I do think it is a chance for us as a public to say that Union Pacific railroad does not have very much public outreach. And I think that if Union Pacific railroad is going to collect this \$2000, even though we're not attaching any strings, it should go back into the public outreach, public engagement, and charitable activities within the city of Portland. I think they can step it up. Although really it is unfortunate that some of our high-flying corporations, our big dollar contributors, are perhaps quiet charity donors, but we never hear very much from ESCO and Siltronic which have with some people an image problem. I hope when they receive this money, the Union Pacific railroad will say thank you and talk about how they are reinvesting it in improving our community.

Hales: Thank you very much. Anything you need to clarify?

Walker: I just want to add one thing to that. The rent has not gone up for 15 years. It has been \$1500 a year for 15 years. So, the fact that it's going up \$500 to me is not unreasonable.

Hales: Thank you.

Johnson: \$2000 for 20 years. [laughter]

Hales: We should take action on the amendment, right? Carried over. It is not an emergency ordinance, so we are just going to carry it over for a week. I'll do that and I'll note that \$2000 is actually probably cheap compared to what it cost to get this agreement in the first place. As I recall, it took our previous city engineer, a guy named Vic Rhodes, six trips to Omaha to negotiate this in the first place. This may be cheap compared to the original cost of getting them to work with us in the first place. [laughs] It wasn't easy, they're sovereign nation. Thank you, good work. Let's move on to the two -- no, sorry, we're going to move on to 1252.

Item 1252.

Hales: Commissioner Saltzman.

Saltzman: Thank you, Mr. Mayor. This is a grant from the HUD, Housing and Urban Development department for continuum of care planning work that the Portland Housing Bureau is engaged with, along with our partners of Multnomah County, Gresham, and Home Forward. Ryan Deibert from the bureau is here if you have any questions.

Hales: Sounds good to me. Any questions? Anyone want to speak on this item?

Moore-Love: Yes, we have one person.

Hales: Come on up. Good morning.

Melissa Sayson: Good morning. My name is Melissa Sayson. I appreciate your time. Giving the public the time to be able to voice our opinions and give you some insight and input into the issue that is at hand. I believe that these funds that are granted can be utilized in a better manner. If they could possibly be monitored where people are involved -- the public, the homeless. I believe that the ethics are in question, the ethical nature. Humans are being treated worse than animals. We are not being treated well at all. The funds that are being granted to these people should be monitored for someone to be able to check on and see if the people are in fact getting the necessary assistance and resources that they require to help them to become effective and efficient and be able to have a stable environment and peace where that's not found in these places. These people, myself, feel forgotten and invisible. They don't feel like anyone cares. They don't feel the love. And I know that maybe there is some hope, and I'm trying to raise hope in them. Because there are quite a number of people that are committing suicide at a high rate because they feel like there is no other

December 3, 2014

alternative and they do not know that their lives are very precious. I want to know, where is the love? I know that you all care about humanity. I know that you are working on issues at hand. I believe that there are animals treated way better than us. I question the fact that there are places that do get these grants that feed the homeless, but would you look at the labels on your food, or the food that you feed your animals or your children? I ask -- I've been to every single food bank and food place in this city, and none of them know what actually is contained in the food that we are eating. They could not tell us what's in it, has it been tested or whatnot? The water -- I've asked everybody about the water. I am aware that people have said there isn't fluoride in the water. Now, there's more issues I've heard as well with other people saying about the cold and the rain and it seeps into your pores. There are a high number of disabled adults that stem from the GMO and all the toxins in these people's bodies from the poisons they are ingesting and continue to ingest because they are hungry. And the need is so intense and it is required that someone please step up to the plate and make a change so that we can get the grant in place to be able to necessitate and rehabilitate these people to become effective humans, to become effective people, and to be effective brothers and sisters to work together.

Hales: Thank you very much.

Sayson: You're welcome, I appreciate your time.

Hales: Thank you. Yours as well. Charles?

Charles Johnson: Good afternoon again, Commissioners. For the record, my name is Charles Johnson. I had to come up here again, and the important sentiments that Ms. Melissa brought forth I think need to be echoed when we talk about this buzz word phrase, continuum of care. And I'm going to encourage some of my fellow activists and residents within Portland Housing Bureau properties, like northwest towers, to engage with Commissioner Saltzman so that we can have a very strong and resilient continuum of care program. In the private market, especially with cell phones, they talk about churn. And I don't know if we have ever had a study to really look at what would be considered housing churn between PHB residents and homeless people and how many people fall through the gaps and get involved in the high maintenance expensive situation. Even if it's not financially expensive, we don't want our neighbors in the city to go through the emotional stress and suffering of being displaced from public or subsidized housing, being on the streets for a while, and then through the wait list process. I know his predecessor, Commissioner Fish, and now Dan Saltzman have been very attendant to the Housing Bureau, but I think there is still room for improved dialogue and work on using the continuum of care fund and perhaps getting more and partnering with money and agencies involved in health care reform to make sure the housing safety net gets stronger and tighter. Thank you.

Hales: Thanks very much. Anyone else? Let's take a roll call on this item.

Item 1252 Roll.

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

Hales: Well, it's our collective responsibility and Commissioner Saltzman's in particular to make sure that every grant dollar we get does as much good as it possibly can. And we appreciate the reminder of why that matters. So, thank you. Aye. We have a couple of items pulled off of consent that we need to return to. One is 1235.

Item 1235.

Hales: Some people would say this is a routine item. But I couldn't help but pull it off and celebrate it. Because I want to say once again thank you to Commissioner Fritz and everybody in the community that got together and allowed us to proclaim this victory. So, you should never hold back on opportunities to say thank you to the voters when they step up and help us, and leaders who stepped up and led. So, thank you.

December 3, 2014

Fritz: Thank you, Mayor. Coincidentally, I also pulled this item to not only thank the voters, to celebrate the passing of the bond measure with a historic 73.8% of the vote, which is the most a Parks bond measure has ever received, as far as we can gather. So, that was pretty exciting. I want to thank all of my colleagues for your support. Particularly, Mayor Hales and Commissioner Fish who stepped in to do the last several weeks of the campaign for me. There's also more practical purpose to have this out in the public, which is to highlight the opportunities that the bond creates. Starting next year, we will be issuing the bonds, and so we will have many projects to be completed quickly. Portland Parks and Recreation is looking to hire a good staff to manage projects in the bond program as a whole. Please go to portlandoregon.gov to the employment page, to see and keep an eye on that to find out when those jobs are posted. You can also look on my webpage, in the coming down the pike tab we have a particular link that will get you to the current week's job opportunities. And so, I wanted to make sure that everybody in the community knows that those jobs will be available. There will also be many opportunities for contractors to bid on the projects. So, I hope we have a good pool of proposals to work on all of the bond-funded projects. And finally, multiple opportunities for public engagement in the bond projects and on the oversight committee. So, certainly a lot of folks -- over 100 friends groups and Portland Parks Foundation came together to get the bond passed. The work is only just beginning. We're not done. We encourage everybody to participate as we work together to implement it. Thank you.

Hales: Thank you very much. Using the awesome power of the Mayor's Office, I can declare that 71% of the voters that voted for something constitutes a majority and is passed. Good work. OK, we have another item pulled off of consent.

Item 1240.

Hales: Mr. Walsh, come on up.

Joe Walsh: My name is Joe Walsh for the record. I represent individuals for justice. We pulled this item because once again, this is a jury trial. We think that a person that has suffered and a jury awards damages -- we ought to honor that. As a people, we should not appeal these cases, even if the city attorney says, hey, we may win in the appeal. What is it that we win? We hurt the person again. So, we pulled this item to talk about a jury trial and a verdict that gave some money to somebody who was damaged and we're going to appeal it, and that's not the best of us. That's the worst of us. Thank you.

Hales: Thank you. Anyone else? OK. Roll call, please.

Item 1240 Roll.

Novick: Aye.

Fritz: So, as stated in the ordinance, the appeal is in large part to clarify what was meant. We thought we were doing the right thing on veteran's preference, so we need to know what the court expects of us. And the suggestion was made that we could ask the attorney general, and I've learned in looking into this issue yesterday that once a court has adjudicated something, the attorney general doesn't have jurisdiction to give us advice, that it's in the court system and has to be clarified through the court system. And that's my understanding of why we're appealing. Aye.

Fish: Aye.

Saltzman: Aye.

Hales: Aye. We are recessed until 2:00 p.m.

At 12:10 p.m., Council recessed.

December 3, 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.

DECEMBER 3, 2014 2:00 PM

Hales: Alright, let's get to work, folks. Let's come back to order. Welcome to the afternoon session of the Portland City Council for December 3rd. Would you call the roll please, Karla?

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

Hales: And would you read item 1253?

Moore-Love: Are we going to take care of 1247 from this morning?

Hales: Oh, sorry. Let's set that over to the end.

Moore-Love: OK.

Item 1253.

Hales: Auditor Griffin-Valade, good afternoon. Welcome.

LaVonne Griffin-Valade, City Auditor: Good afternoon. LaVonne Griffin-Valade, Portland City Auditor. This probably truly is my last time before this body in this capacity, but you never know. OIR group's report presented to Council today is the eighth outside review of officer-involved shootings and in-custody deaths. City Code requires a review of all closed officer-involved shootings and in-custody death investigations. The reviews are a snapshot of the bureau's policy and procedures during the incidents and investigations examined. These reports have provided the city the benefit of the expertise of subject matter experts who have many years of experience in civilian oversight of these types of critical events. Since the first report completed by the Police Assessment Resource Center in 2003, there have been significant advancements in how the Police Bureau conducts officer-involved shootings in-custody death investigations. Some of the key findings of that first report were -- there was not a consistent commitment to meaningful review, which resulted in lessons not being learned from incidents. In 31 of the 32 cases examined in that first report, there was no internal administrative review at all. There was not a sufficient emphasis at the policy and tactical level of issues involved in officer-involved shootings and in-custody death cases. Some of the key PARC recommendations that have been implemented by the bureau -- the Portland Police Bureau changed officer-involved shooting in-custody death investigations from a homicide-only model to one that includes a broader review, which includes a robust administrative investigation as well. They made the change to review process so that all the officer-involved shootings and in-custody deaths are reviewed and include an outside civilian and bureau expert on what was first known as the use of force review board, and eventually became the Police Review Board. Also, Portland Police Bureau revised policies regarding officer shootings at moving vehicles. The unresolved recommendation from that first 2003 report from PARC all involved witness officers are subject to an internal affairs compelled interview no later than a few hours after an incident. Outside reviews are ultimately a mechanism for community members and City Council to have more timely and transparent access to information about such important critical events. To that end, cases are now eligible for review at the close of the administrative investigation instead of at the end of civil litigation. In the past, that contributed to long delays of many years before reviews by an outside expert were conducted, which also then created a backlog of cases to be reviewed. OIR has now completed four reviews, including the review of the Portland Police Bureau's investigations of the deaths of James Chasse, which was the subject of a standalone

December 3, 2014

review issued in 2010. Some recurring themes have been delays in interviewing involved officers after an incident -- this implicates the 48-hour rule -- delays in the administrative investigation and case review process with most cases taking over 15 months to be reviewed; and also, post-incident medical care of subjects. These outside reviews played an important role in the 2010 and 2013 IPR code changes, particularly the creation of the current Police Review Board and having the IPR director or his designee as a voting member of that board. So by way of introduction to the team from the OIR group, I'd like to begin with Mike Gennaco. Mike has a law degree from Stanford University, he's a founding member and chief attorney of the OIR group. Prior to the creation of OIR, Mike served for six years as a U.S. Attorney, central California chief of the civil rights division. Prior to that, Mike was a federal prosecutor for eight years for the U.S. Department of Justice, the civil rights division. Julie Ruhlin has a law degree from USC law. Prior to joining the OIR group, Julie worked for the police resource assessment center. Prior to that, Julia was a criminal defense and civil rights attorney. Finally the third member of the team, Rob Miller, has a law degree from UCLA law. Prior to becoming the deputy chief attorney of the OIR group, Rob served for 15 years as a criminal prosecutor in the LA County District Attorney's Office. Since 2001, the OIR group has contracted with the Los Angeles County sheriff's department to review high-profile officer-involved shootings, inmate murders in county jails, and scores of less than lethal force incidents on patrol, in jails, and in courts. Other jurisdictions they have provided such services to include San Diego, Oakland, Pasadena, Torrance, Palo Alto, and the Denver Sheriff's Office. I'm going to turn it over to Mike at this point.

Hales: Thank you. Good afternoon, Mr. Gennaco.

Mike Gennaco: Good afternoon, Mr. Mayor. How are you today?

Hales: Thanks for being here. Appreciate your team and the good work they've done to do this review.

Gennaco: Thank you. I appreciate the opportunity to supplement our report with a few comments. I have to say that, as the auditor indicated, this is our fourth report, our third report that focuses on shootings and in-custody deaths. In this report, we review eight additional officer-involved shootings and one in-custody death. As a result of our review, we also offer 21 recommendations to the bureau for its consideration. There is nothing more potentially controversial in police work than a time in which an officer feels the need to use deadly force. And when that occurs, there's always going to be a potential for controversy with regard to those incidents. The public has a right to know what transpired with regard to the officer's decision to use deadly force and how the department investigated that incident, as well as a right to know, in my view, the level of review that was conducted internally by the agency, by the police agency. Obviously, presenting the case to the district attorney and presenting before a grand jury -- which is done in this city -- is another important element, but as the PARC folks said in the initial report, it shouldn't stop there. There needs to be an examination of the officer's conduct, both with regard to the decision to use deadly force, and other decisions that may have led to the ultimate decision to use deadly force. In addition, any effective outside independent review or internal review should also focus on other events with regard to post-care, with regard to post-incident response, and with regard to the integrity of the investigation itself. Unless that is done, police departments will be in a position where the incident itself will not become a learning experience and the fate will be that there will be more likely additional officer-involved shooting if in fact there is no learning back to the department, if there is no accountability back to the department with regard to performance that did not meet the expectations of the Police Bureau in this case. And unfortunately in this country, just put this in context, the majority of jurisdictions, the majority of police departments in the state of Oregon, the state of California, and throughout this country do not have the level of review that the bureau has. And most of those jurisdictions also do not have any outside forces, any outside

December 3, 2014

inspection of the processes that go on both with regard to the investigation and with the review. We are one small part of that. This Council is aware of course of IPR and the work that is done there with regard to the citizens review commission, and some additional jurisdiction that's coming as a result of the settlement agreement with the U.S. Department of Justice. So, this city is differently positioned than the majority of other cities in dealing with this issue. Fortunately for this city, because there has been a tradition of review as a result in large part of the PARC report, there now is a process by which the department takes a look at decision making that goes beyond the decision to use deadly force, that examines the lead-up decisions that are made by officers, and is critical of them both with regard to the potential for accountability but also with regard to the potential training, both at a micro and a macro level. At a micro level, I'm talking about bringing information back to the individual officers, any sergeants on scene as part of a learning experience. At the macro level, I'm talking about bringing any lessons learned back to the bureau as a whole, through training, through exposure to the incident in a constructive way. When we review -- when we do our work, our review is necessarily impacted by the work that the bureau has done. And what we attempt to do is to examine the internal investigation that is conducted by the bureau and the review process to make sure that the bureau takes advantage of these incidents in a constructive way in order to better prepare its officers for future challenges, and hopefully reduce the likelihood of the need to use deadly force in the future. As I indicated in my opening remarks, we have 21 recommendations. We're not going to go over all of them today, but are prepared to answer any questions that the commissioners and the mayor may have. But we do want to highlight a few of them. The first recommendation that I think is worth emphasis has to do with the length of time it takes in order for the investigative and review process to unwind. And I'm turning that over to my colleague Julie Ruhlin for further reflection on that.

Hales: Could you refer by number as well?

Julie Ruhlin: This is recommendation number 19. It goes to one specific piece of this. The delays in the bureau's review process has become a sort of theme over our last reports. We have a table on page 98 that shows the length of time from the incident to the review board hearing. We also have - - when we discuss each individual case throughout this report -- a timeline of the investigation and review process. With few exceptions, all of these have taken longer than a year, and I don't think anyone is in disagreement that this is just too long. It's too long for the bureau, that needs to be able to learn from these events to hold its officers accountable, but also to identify issues that go to how to improve their training, how to improve if there are equipment issues that are raised by the incident, or any other corrective action that may come out of it. It's too long for the public, who wants and I think deserves some resolution to these incidents, and it's too long for the involved officers who I think deserve to not have these incidents and the bureau's deliberations hanging over their heads for such a long time. The bureau has a number of steps in its review process. And we have often in our reports praised the rigor with which the bureau goes about reviewing these incidents. There's a training analysis that's done, there is a commander's review, and there's time it takes to schedule it for the review board. In general, we have not found that the investigations themselves take -- they're done relatively quickly, with exceptions. I'm not going to go through it, but often when there is a lengthy investigation, there's often a reason behind that. But the review process itself needs some streamlining. And one of the things that we have recommended in order to try to prevent I think this sort of cases getting bogged down in this process is to take another look at the commander's memorandum and to see whether that could be eliminated, modified in some way to try to shorten this. There's sometimes just a little too much process, and you can't get through the review when you have so many different layers. We have discussed this with the chief, we've discussed it with the commander over at the professional standards division, we know the bureau is thinking about new ways to sort of trim these time lines, and we look forward to

December 3, 2014

continuing to look at this issue as we go forward in our reviews, and also working with the bureau as they try to work on it and develop some new ideas.

Hales: Thank you.

Gennaco: Another recommendation that we think is deserving of attention with regard to our comments this afternoon has to do with an investigative matter, and it has to do with recommendation number three. Traditionally, the bureau has worked together with the east county major crimes team, which is a team of other agency detectives in investigating officer-involved shootings that occur in the east side of the county. What we have seen, unfortunately, is that because these detectives do not seem to have the level of training with regard to the way in which they question witnesses, particularly Police Bureau witnesses, that it calls into question the way in which the interviews are conducted. In particular, the use of leading questions in which the answer is suggested to the officer during the interview is something that does not pass muster on investigations 101, but we unfortunately continue to see that come forward when the detective from the other agency begins to ask questions of the officer.

Saltzman: Could you elaborate? I'm a little -- you're saying when our own officers are conducting the investigation there's -- the questions are leading?

Hales: No, it's when we're using folks from the east county team, which is Gresham and Troutdale and Multnomah County sheriffs. Right?

Gennaco: That's right. It's not the bureau officers, but the bureau officers are often teamed with another agency. And so the bureau officer often takes the lead -- sometimes, not, but often takes the lead in the interview. But in the end, questions will be asked like, "well, weren't you in fear for your life, officer, when X occurred?" Which really isn't the officer giving a statement, it's the questioner giving a statement and the officer affirming the question. And that technique is just not consistent with best investigative practices. We think one of two things needs to happen, and that is either to increase the level of training for these outside agencies so they understand and have some sort of monitoring of their performance so that we don't continue to see this consequence happening over and over again, or for the bureau to do it on its own. There is some advantage in having an outside group be involved in the process. I think it really could help serve the integrity of investigations outside the city, for example, if it happens in Gresham and a Gresham detective has figured out how to ask questions appropriately. And I don't mean to single out Gresham, that's a hypothetical. But one of those two things in our view needs to happen. Otherwise, we're going to continue to find cases in which we're not sure whether it's the police officer that's making the statement, or whether the statement has been provided or fed to him by a leading question. So that I think is an important investigative reform that we would like to see the bureau consider. The third issue, and maybe one of the most important ones, has to do with outcomes. And this is recommendation number 18. With regard to outcomes, what we have seen is that at the very end of the process, there is a review board that meets, the review board is diverse, it contains people who are not with the bureau, and it contains IPR. We find that over the years, that review board process has been fairly robust. But coming out at the very end of the tail pipe, what we have seen with regard at least to the shootings in this report is while the decision and recommendation is made as to whether or not the board felt and recommends to the chief as to whether or not the shooting is policy or not in policy that a lot of other questions and remedial measures do not come out of the process that we think could come out of the process, and in our view should come out of the process. Two things in particular. One is, as I said in my opening remarks, often times there are tactical issues that are engaged in by the officer that are either consistent with the expectations of the bureau and consistent with the training they've received, or unfortunately in some cases, not consistent with the training and not up to the level of expectations of the bureau with regard to performance. When it's the latter, our experience has been that those performance issues can often

December 3, 2014

put an officer in a position where he or she feels the need to use deadly force. So, we feel that that examination needs to be more robust, that every review board should be asking themselves that very question. That should be part of the scripted responsibility, if you will, of the review board to look at those decisions. Not to say that the board wouldn't find that those tactical decisions in some cases were consistent with the expectations and up to performance levels, or not. But we think that question should be asked as part of the routine of every review board, and that is another one of our recommendations. The second part of that is if in fact the finding by the review board is that the expectations were not up to par, not up to expectations, then in our view, the review board then should work with the bureau to develop a remedial plan, a corrective action, a way in which the performance of these officers can be brought up to standard. It doesn't necessarily going to require discipline, sometimes it might depending on how far below performance expectations we have found, but something ought to be done. And there needs to be a better feedback loop with regard to that. I'm now going to turn over another recommendation discussion to Robert Miller to my right.

Robert Miller: Thank you, Mike. Thank you, Mr. Mayor and Commissioners. We appreciate this opportunity. I'm going to be addressing recommendations eight and nine, which appear on page 46. In a way, these recommendations also concern corrective action and get at a very special characteristic of the Portland Police Bureau and the city process which involves a great deal of self-examination and valuable feedback loops, but we have found some crucial gaps at least in this particular area. Our recommendation is that when a Portland Police Bureau officer is involved in a shooting, that that -- if there are previous shootings in which that officer was involved, that the review board in the normal course of its evaluation and analysis process consider the facts, circumstances, and any lessons learned from that previous incident or previous incidents, and any patterns or suggestions of potential corrective action that might emerge from that sort of cross-incident analysis. The opportunity -- because of the procedures that are used in the review board and the way information flows -- is extremely rare if ever that the review board would have that opportunity and I think this is a missed opportunity for the bureau itself. In the shootings that we have considered in this report and the previous two reports, at least two of those incidents involved officers who were involved in the shooting and who also had previous incidents. I want to be clear that our recommendation is not to stigmatize or make any assumptions about an officer involved in more than one shooting. In fact, in some of the jurisdictions we're familiar with, that's not even an unusual circumstance. Fortunately, it is an unusual circumstance in Portland. The point is feedback loops, really. That's one of the primary objectives of your very involved and concerted procedure for analyzing a critical incident in the Portland Police Bureau. And the purpose of these feedback loops is to provide constructive information and suggest possible remedial aspects. As my colleague explained, remedial action, corrective action is viewed at least by us very broadly to include changes in policy, changes in procedure, training as well as discipline. But it really goes beyond discipline and should be defined as such, because it's not necessarily just about the individual officer. It's about the bureau as a self-improving, learning organization. In the normal course of -- currently as we are -- as has been explained to us by the bureau, and as we have observed, when the review board considers a critical incident, they consider it isolated from any other incidents, and only if they decide there has been an error in tactics or judgment that reaches the level of requiring corrective action, does the bureau then reveal to the review board that in fact there was a previous incident or shooting. We think that puts the cart before the horse, in effect, and that it deprives the bureau of this feedback loop or the full constructive nature of it from what is really a rather unique entity, and that is your review board, which includes not only members of the bureau, but members of the community, representatives of the police rank and file, IPR representatives, etc. The precise procedure that would allow for a careful, objective, and fair consideration of an officer's behavior in an individual incident yet allow the review board to

December 3, 2014

consider the length and breadth of the tactical issues at hand and how they might relate to future improvement of the bureau itself. Those specifics we certainly must and do leave to the bureau and to the review board itself. But we have seen many models, and we believe there are certainly adequate available ways to incorporate those considerations into the current structure. Now turning consideration back to my colleague to the right, Julie.

Ruhlin: Another recommendation that we make is in recommendation number 16, and it has to do with officers' response to individuals or arrestees who are in some sort of medical distress. And this recommendation comes from our review of the in-custody death of Mr. Darris Johnson in July 2011. In that case, there was a foot pursuit involving Mr. Johnson, and when he was eventually apprehended and taken into custody, he made the claim repeatedly that he was having trouble breathing, that he couldn't breathe. Officers disregarded these claims, their reasons for doing so varied a little bit between their belief that he seemed fine, that he was talking and acting normally and was able to walk, or that he was still just out of breath as a result of the chase, and so they didn't -- they essentially believed that he may have been making these claims about shortness of breath and difficulty breathing as a way to avoid or delay going to jail. So rather than call for an emergency medical response team, they made the decision to transport him to jail in their patrol car. On the way to jail, Mr. Johnson became unresponsive, they called paramedics at that point, and he died a couple hours later at the hospital. They found -- when they did the autopsy, they found methamphetamine in his system, and they found he had an enlarged heart. He essentially suffered a heart attack, and it's not -- we can't know if earlier medical intervention might have prevented this in any way. Regardless of that, the recommendation that we make is to require officers to, before transporting a subject who claims to have difficulty breathing, to seek -- to call EMS and to get him some medical treatment, at least get an assessment by EMS before making that transport. The current directives are pretty good, it's pretty good dealing with this issue, and those directive were rewritten following the death of James Chasse in 2006. And the directive currently says that officers will not transport without EMS clearance if the subject displays any difficulty breathing or any kind of other medical distress. But we just think this policy needs to be tweaked a little bit so that it's not based on the officer's discretion about what symptoms appear, but it's based more on the subject's claim about being in medical distress or unable to breathe. And we think the bureau has agreed with this, they've agreed with this recommendation and we're hopeful that they will quickly move to make that change to this directive.

Fritz: I have a question about that case. I'm looking at page 85, and it says -- when this was asked they realize Mr. Johnson had become unresponsive, and it says, they got out to check on Mr. Johnson who they found unresponsive and without a pulse. They called for paramedics and a sergeant, pulled Mr. Johnson out of the car, and put Mr. Johnson on his side in an attempt to position him to ease his breathing. And it wasn't until the sergeant arrived and instructed them to begin CPR that they did. Is there no policy that says if somebody has no pulse that we start CPR immediately?

Ruhlin: I think in that case there was a question about whether CPR was appropriate, whether he was breathing some, and whether there --

Fritz: It says there was no pulse.

Ruhlin: I will say, Commissioner, that the record on that was not entirely clear as to how events transpired. I know the sergeant arrived quickly and was there and things were moving very quickly.

Fritz: Mayor, I'd like more information on that part of the policy. I assume all of our officers have some measure of emergency medical training, CPR at the minimum. I'm just finding that part of the report astonishing, and then there's no particular recommendation you made in response to that piece, which is of great concern to me.

Hales: OK. Your recommendation is about consulting EMS response.

December 3, 2014

Fritz: Yes, and I totally agree with that. If the person says they're having difficulty, then you call EMS, you don't make that assessment, especially since they're obviously not -- the officers who responded didn't know to do CPR when there wasn't a pulse. So, I agree with your recommendation, I'm just questioning the rest of the policy and whether medical attention to people in custody policies are adequate.

Hales: OK. We'll have the bureau up here to respond in general, but we'll ask them about that particular question while they're here.

Gennaco: The final substantive point that we'd like to make has to do with not a defined recommendation, but a recommendation we've made in the past that again appears in these reports. And it has to do with what is called the 48-hour rule, and the discussion about that in this report appears on pages 65 and 66. In the city of Portland, as a result of a labor agreement between the city and the Police Bureau's association, officers are not required to provide any statements about an officer-involved shooting or an in-custody death until at least 48 hours after the incident. And as a result of that rule, it is two days before the bureau learns anything from the major actor in an officer-involved shooting, a use of deadly force, until two days later. That approach and that restriction on communicating with officers and finding out what happened is inconsistent with normal investigative practices. When you have a major incident, one of the first things that detectives on scene do is ask witnesses, is ask actors, is ask officers, is ask anybody who might have information about the incident about what occurred. But that can't happen in this city because of this restriction. So what happens is if we have an officer-involved shooting on Monday, it's going to be Wednesday before the bureau learns from the officer about what transpired. In our view, that is not consistent with investigative practices, and I think has the likelihood of impacting not only the integrity of the investigation, but the public's confidence in the investigation. When I'm talking about the integrity, what I mean is that for two days, the officer is out there and either consciously or subconsciously, his recollection of events could be impacted by outside and external influences. If the incident receives a lot of media attention -- and many of them do -- he or she may just hear on the television or radio inadvertently or advertently about what has transpired. And that may impact the officer's recollection when it finally comes time on that Wednesday to ask the officer what happened. So in our view, the 48-hour rule ought to be done away with, and as with many other jurisdictions, the officer the night of the incident ought to be asked, tell us what happened, where were you standing, why did you use deadly force? Talk to us about the lead-up to the use of deadly force so that that information can be provided. The other disadvantage in waiting for two days is with any investigation, any investigative leads often are built off the major actors to any incident. If you wait two days, you can't use the officer's statement to develop investigative leads the night of the incident. And as any detective would know, investigations are like uranium: they have half-lives. The most important time to collect information about an incident, to search for witnesses, to get information, to develop forensic evidence is the night of the incident. Not two days later. So for all those reasons, we advocate, again, that the city and the bureau reconsider this agreement that they've had with the Association about the 48-hour rule. In closing, that sort of sums up our substantive remarks. I do -- would be neglectful if in our closing remarks, obviously here to answer any questions that Mr. Mayor or Commissioners might have about other aspects of our report, but we do have to -- I feel an obligation to indicate that again, as with our three previous reports, we have received nothing but cooperation, nothing but access, nothing but interaction with the bureau, command staff with regard to information. We can't do these kinds of reports unless we have the information. I'm not just talking about documents, I'm talking about discussions, I'm talking about insight that the bureau, tactical experts, and other experts do provide us on a regular basis. And finally, our work is only as good as the support that we have received over the years from your other external oversight entities, in particular, the IPR and the auditor. We've received

December 3, 2014

nothing but unwavering support for our cause, and insight into our findings would not be as deep, would not be anywhere near as insightful but for the participation and the working relationship we've developed with your City Auditor and the IPR that works for her. So for that, we're very grateful. Thank you for taking the time to hear us out today. Thank you.

Hales: Thank you. I'm sure there are questions, but I just want to say at the outset we really appreciate this work, Auditor, and to the whole OIR team. It's really important that we get objective, outside views of what we do, what we do right, what we do wrong, and how do we get better. And that's the spirit of this work. I'm glad to hear that the bureau has been cooperative in giving you all the information you need, that's what we would expect and I'm happy to hear that expectation has been met. But I think this is really important that we have this kind of open, public, professional objective review of what our practices are in the bureau and what went right, what went wrong in past incidents. As a police commissioner, I gotta tell you, I find this extraordinarily helpful. I've read your report, I'm going to reread your report. The bureau is going to be given a chance today to respond to each of the 21 recommendations, and obviously, I'll be hearing from them on that subject as well. But I think it's really healthy and useful part of our process here in the city and I want to thank you.

Gennaco: Thank you.

Fritz: So Mayor, my understanding is you said the police are going to respond to the recommendations. They've already done so. Are you -- do you have any response to their response? Or what's the order of that going to be?

Hales: I was assuming we would give Assistant Chief Henderson and professional standards division Captain Famous a chance to come up and talk, but we can do that before or after they respond --

Fritz: And we could have this team back?

Hales: I think it would be useful to hear from both sides of that conversation here in the council chambers. So, Donna and Dave, does that sound all right to you?

*****: [inaudible]

Hales: Sorry to surprise you with that. I was going to ask you to come up and spend a few minutes on the recommendations where you had disagreement. Because obviously, there's 21 recommendations here, there are some where the bureau has responded, and the response is public, of course. Agree, we've changed practice, here's what we're doing now. There are others where there are works in progress and there are others where they agree or disagree in part or in whole with what you've recommended. I think those are important debates for us to have, and don't want to have that go on endlessly in the council chambers because there are other people want to speak as well. But I think it would be useful to hear from both you and them about the -- I think there were five or six of the 21 items where the bureau either disagreed or disagreed in part with your recommendation. So I thought it would be useful, Assistant Chief Henderson and Captain Famous, to have that discussion here in the chamber one way or another. We'll start with you because you're here. There's no point in being coy about this, it's written down which ones they disagree with. If you might want to spend a couple extra minutes on those. They took an opposite position, for example, on item number three, which is the one we've already discussed about the east county major crimes team. And I think their position was it's good to have outside eyes on the work. To me, it seems there might be a middle ground, which would be highly qualified outside eyes. But I'm jumping, cutting to the chase a bit. But what's your reaction to that? Is there a middle ground, or do we just need to take it or leave it?

Gennaco: Mayor, I think the middle ground as you articulated -- which is one way to thread this needle in my view -- is to find a way to ensure that the capacity or the ability or the training -- I think it may be a training issue -- of these outside detectives is consistent or up to par with the

December 3, 2014

bureau's detectives. And so if there is going to be more training in a group setting, where skills of the bureau's detectives can be transferred over to other agencies, not only would it help with regard to the integrity of the bureau's investigations, it would help with the outside agency's investigation as well. So it would be a regional advantage to do that, yes.

Hales: Yeah, and we're certainly finding that particularly in east precinct where we are working together with the other agencies all the time anyway.

Gennaco: Right.

Hales: Another one that again I was going to ask for them to elaborate a little bit on is number eight. You've already discussed that. They've agreed to review, but disagree on at least some of the proposed changes.

Miller: I think we understand the bureau's decision, and that is -- they don't use this metaphor, but it's similar to typical criminal procedure where the guilty or not guilty decision is made, and then only after that is the sentencing decision made. And in sentencing, lots of kinds of things are admissible that would not be admissible in the main trial. I think administrative investigations and administrative corrective action is really a very different system, and therefore the siloing off of information from the jury -- as it were -- the stakes are much different. And the public policy, the other benefits of having the review board be privy to previous incidents and determined for themselves whether there are any patterns or similarities, or whether there are dots to connect that might point to a change in procedure, a change in department policy that they might recommend. That that is a potential benefit that is lost by siloing things off this way.

Hales: Mm-hmm, good. One you didn't highlight earlier but is an area where there's a disagreement was number 11, where you said that the bureau should inquire of the medical examiner about the survivability potential of a downed subject who's not provided immediate medical attention. Obviously, this is a terrible situation when it's occurring. You've said consult with a medical examiner right away, is this person in danger of dying, what can we -- what are your options medically, I think that's what you were depositing. And they're saying, let them say what they say. Elaborate on that one if you could, please.

Gennaco: Yes, Mayor Hales. One of the issues that continues to come up in these historical cases - - and I have to indicate that we're still talking about cases in 2011, so we're still a little behind what's currently going on -- and I think as a result, there have been some reforms with regard to this issue. But the real issue has to do with something I indicated in my opening remarks which is post-medical treatment downed individuals, people who have been shot by bureau officers. In two of the cases that we reviewed in this very report, it took 84 minutes -- 84 minutes -- before any kind of medical attention was provided to the individuals who had been shot. Now, there are reasons for that, you know, every case is different. But we have commented in the past about the need to reexamine the bureau's response and see whether or not, without sacrificing officer safety, there's a way to get to these individuals and get them medical attention sooner rather than later. As a corollary to that, we thought it was also important that when the investigation itself is being reviewed, that the medical examiner as part of the detectives' investigation be asked the question, the simple question, look, you've examined the bullet wounds of this individual who died, the fatal case, during the autopsy. Can you give us any insight as to whether if the bureau had been able to get there earlier, this individual might have been able to survive his injuries? That question isn't volunteered by the medical examiner, it also hasn't been traditionally asked by the detectives. We think that question should be asked so that the bureau has that knowledge. I don't want to speak for the bureau, but the bureau indicates that that may be a speculative question, and the ME may not be able to answer that question. Which is fine. But it doesn't hurt to ask the question in our view.

Hales: Absent any change in procedure, you could ask the question.

Gennaco: That's right, sir.

December 3, 2014

Hales: OK. And the only other one I wanted to highlight again in terms of asking them to elaborate, but you as well, number 15 about canine standard operation procedures. There's a disagreement there between you and the bureau. Talk a little bit more about that one, please.

Ruhlin: Sure. The bureau's response has to do with their guard and bark standard. And so the assertion is that if the canine is being deployed just to guard and bark and locate a subject, that's a very useful tool for locating, even misdemeanor suspects. Our view is that -- this was not a dog bite case. Mr. Johnson had -- the dog never caught up to him, he jumped a fence and the dog was never called back. The use of a canine in this case is a little bit of a side issue, but we thought it was important to raise it because this was a subject who was wanted for a very minor misdemeanor. They were going to arrest him on supplying a false identification to a police officer. He was originally going to be cited for a seat belt violation. When he fled, the canine officer on scene released the dog with a command to catch the suspect and bite him. And in our view, a dog bite is a very significant use of force. Dogs can inflict very serious injuries. We have not had the opportunity because it just has not come up in these cases. We have not looked at dog bite cases. I don't know at what the bite ratios are for Portland Police canine units. I don't have a good sense of how big an issue this is, but it raised a red flag for us here to see a dog released with a command to bite a subject who was wanted for such a minor offense. And so, the recommendation is made for the bureau to consider this and consider whether that's an appropriate use of its canines.

Hales: Thank you, that helps. Appreciate that. Other questions for the panel? Great, we may have more later on. And again, I might want to go ahead, if the council is interested, have Assistant Chief Henderson and Captain Famous come up now and answer some questions and then we'll go through the rest of the public hearing.

Gennaco: Thank you.

Hales: Thank you very much.

Fish: Charlie, what number is the -- [inaudible]

Hales: I think it's 13. I'll ask them. Thanks for coming up. So I don't necessarily need to you go through all 21 that you already have, and you've provided a written response to the report, but I did want to focus on a couple of these. Maybe not so much number three, it sounds like we've already got a potential solution there, unless you want to elaborate on that in terms of this question about divergent levels of training and qualification between our officers and the ones that we're cooperating with.

Donna Henderson, Portland Police Bureau: We're in constant training. And we discuss --

Hales: Just identify yourself, Donna.

Henderson: Oh, I'm sorry. This is Donna Henderson, Assistant Chief of the Portland Police Bureau and investigations. We do ongoing training as we're participating in these investigations. And I think the level of investigations by the east county major team is getting better, and we're constantly observing it. So, we agree in part and we're doing what we can to bring that up. But I feel strongly we still need to have them involved in our investigations just for the transparency.

Hales: OK. Another one that I wanted to get you to respond -- do this in order -- the medical examiner issue about whether the medical examiner should be consulted about the survivability potential of a downed suspect. Again, obviously, it's a terrible situation when it's occurring. We have ballistic shields now in every sergeant's car, so I think we're probably getting to people much more quickly. Is that the case?

Henderson: That is very true.

George Burke, Portland Police Bureau: Would you like me to -- ?

Henderson: Yeah, I'm going to let you answer that.

Burke: OK. George Burke, commander of the detective division. I agree with our ability to ask the question. What is difficult for us is to be able to get the answer. So, whether it's supposition on the

December 3, 2014

part of the medical examiner, we certainly can ask. I do know that one of the things we are provided at every postmortem examination is the -- is what wounds or what injuries look to be lethal versus nonlethal at the time of the postmortem. So, we do get that information in kind of a different direction. But we don't ask the specific question of, if medical attention could have been provided sooner, would this wound have been survivable? We simply get, is this a survivable wound or not? And I will say that -- as we said previously -- the Police Bureau has done a lot with bringing in new technologies, new techniques, new training, and the shields has been a significant implementation. And often times, tactically trying to make decisions that really would potentially make the encounter more survivable for the downed suspect. We really need to keep in mind we don't want to precipitate an additional shooting after we've already been involved in the use of deadly force. So there are different situations that come into play as to how and why and when we can make an approach to a downed suspect to include any proximity of weapons. So, there are a whole lot of different factors that come into play when we're trying to analyze getting medical attention and how long that takes and will we make the problem worse by getting somebody, you know, trying to make that approach.

Fritz: Let me clarify though, we're talking about the medical examiner after death. Right?

Burke: We're being --

Fritz: We're not talking about the physician who's called out on the scene, we're talking about afterwards.

Burke: No, but we're asking -- the question is being asked in regard to, would medical attention, if it had been provided sooner, would that have changed the outcome.

Fritz: And what is your objection to that question being asked?

Burke: I don't have an objection to it. What I'm saying is, we can ask the question, we certainly are going to get whatever response we get. What we do have is -- we get an answer from the medical examiner on every postmortem that deals with each and every injury to the person, and that determines -- and that statement is given as to whether that was a lethal injury or nonlethal injury.

Fritz: In the report, it says you disagree about asking that question.

Burke: Well, what we're saying is that it is up to the medical examiner to make that determination as to what they're going to respond. We can ask the question. So, I think it's something that we need to take a look at. We need to be able to open to ask the question. The concern that we have with this is, we're asking somebody to make a decision or make a subjective decision or opinion based on the outcome rather than all the other circumstances that led up to it. But asking the question, I don't see why we couldn't ask that question.

Hales: In that context, I think I'm following -- it's a medical question --

Fritz: This gets to a bigger question, which is -- I would like this question to be asked. So, in terms of our discussion today, how does that direction get given?

Hales: Well, that's my job. And I think that question should be asked. And I think we have to make sure that we understand it's a medical question being asked of the medical examiner. It's independent of whatever tactical considerations there were --

Fritz: They're not asking what should the officer have done, they're saying, was this survivable would we have gotten there quicker? And I can tell you from personal experience that it can be helpful in two ways. One, for the person -- for the family of the person who's died to know that no, in fact even if we would have gotten there within two seconds, it wouldn't have made a difference. And second of all, in terms of the city's liability, it's helpful for us to know and the family to know that in fact there was no negligence or there wasn't an opportunity to save the life. So, for both of those reasons, I think it's very important for us to always ask that question of the medical examiner.

December 3, 2014

Hales: I think it's information we should get. Even though it doesn't answer all the other questions, it does answer that one.

Fritz: Yeah.

Burke: That's understood. Thank you.

Hales: Thank you. The other one I wanted to ask you about was the canine one, which we just discussed last. And that was our standing procedures about deployment of canines. How have they changed since these cases occurred, what else, what other light would you throw on this. And I guess, again, what's your disagreement with the reviewers here?

Henderson: I'd have to go back and read it better. I'm not as familiar with this case because I don't think we ever send a dog to bite. I think we send -- I don't think we do that, and if we did, I'd have to go back and see why we did. Because that's not how our canine operates. We tell them to go get them, I'm not even sure what the exact order is, but it's not to bite.

Hales: Well, there are situations where we tell a canine to bite, right?

Fritz: According to this report it says not. The police response says, while many agencies train a find and bite standard, the Portland Police Bureau canine unit has trained and deployed a guard and bark standard.

Henderson: That doesn't mean the dog -- given the violent nature of the suspect -- won't bite, we don't train them to go and bite automatically.

*****: [inaudible]

Hales: Please, let her talk.

Henderson: I don't think the sergeant opened up the door and told the canine to go seek and bite.

Hales: But the bite command is given by the officer in a situation where they're with the dog, right? I mean, I've seen that done. It happened with Officer Dorn and Mick the dog got killed, and Officer Dorn got wounded.

Fritz: I think the concern was the dog was released at all --

Henderson: Right.

Fritz: -- given that the dog could get excited and bite and that wasn't appropriate --

Henderson: And I think that is something that -- I don't think when we're talking to canine that we were willing to say we would never send a dog out after somebody for misdemeanors, but in this case we're talking about, it was such a low level -- fail for seatbelt. I think that is something we could look at, is that appropriate to send a dog after something so low level?

Fritz: That's where I'm not understanding. All they're asking is to not use canines except for subjects suspected of committing serious or violent felonies and our response is disagree.

Henderson: Right. Because we would send a dog after misdemeanors. We don't want to give up that option.

Fritz: Why?

Henderson: Because -- [inaudible] -- sorry. Because we would end up having to search for these people no matter what. We're not going to say you ran and let them go. So it's safer for the person we're going after and it's safer for the officers to actually have the dog do the search and try to locate this person. It doesn't mean the dog is actually going to bite. And so to take that away, that means anybody that we remotely think it was just a misdemeanor, we'd have to send officers into the field to look for them. And I think it's safer for everybody to have that option of sending a dog after somebody, even if it's a misdemeanor. Again, back to the seat belt, I'm not so sure that was appropriate. But to take away the option of sending a dog after all misdemeanors, I don't think we would -- we don't think that would be a good idea.

Fritz: Could you give me an example of a misdemeanor? Because I'm not familiar with all the things classified as misdemeanor. Some would think it would be crucial that the suspect be --

Henderson: Domestic violence four assault.

December 3, 2014

Fritz: That's a misdemeanor?

Henderson: It could be a misdemeanor. And if the perpetrator took off into the blocks, that might be something we would want to have a canine to go.

Fritz: Thank you, that's helpful. When we think of misdemeanors, I tend to think of seatbelts and littering.

Henderson: I know.

Hales: Shoplifting and --

Henderson: Yeah, there's some assaults. A lot of assaults would be considered a misdemeanor -- assault force.

Fritz: Potentially, we could craft a policy though that says for littering, for the really minor misdemeanors --

Henderson: I think we would be totally willing to look at that. For the lower level violations, we wouldn't want to send a dog.

Fritz: So, you would agree that --

Henderson: I would agree in that particular incident -- it would be something we should look at, yes.

Fritz: Thank you.

Hales: OK. Other questions? For the chief or commanders?

Saltzman: The question about -- the suggestion about eliminating the commander's memo in the police reviews, to make things more expeditious?

Henderson: I'll let Dave address that.

Dave Famous, Portland Police Bureau: Dave Famous, Captain, professional standards division. In most cases, the commander's memorandum kind of brings the incident and the story, if you will, together in one document. It explains what happened, what the witnesses said, what the complainant said, what the officer said. And provides a recommendation. In officer-involved shooting investigations, in internal affairs, we actually provide a template that provides the areas of review. And included in that is tactical recommendations, operational planning post-shooting. And that document that is presented by a commander is an important document for the bureau to consider, because it brings all the whole situation into one document.

Burke: If I could add to that -- having actually written a review, the commander's finding, I can tell you from the commander's position it's extremely helpful. As Captain Famous said, it brings all the pieces together, but it also allows for the actual analysis of each one of those separate pieces. So, the training analysis, the internal affairs analysis, or at least the internal affairs fact-finding now falls into the hands of the commander to put all that together. And the commander does not always just follow the recommendations of those that are provided to him. I can tell you from personal experience in reviewing some of these things that there are times where you find that maybe there is a disagreement between, does this fall within policy or not in policy? And that's the perfect document to bring it before the Police Review Board.

Saltzman: I guess part of it's probably -- I'm assuming part of it is the amount of time it may take for the commander's memo to be prepared.

Famous: If I might answer that. The bureau -- we agree that in the past it's taken an inordinate amount of time for commanders to present some findings. And we believe in the last four to five years, we've made a tremendous amount of progress. Part of that has to do with being under the purview and scrutiny of the United States Department of Justice. Right now, commanders in an officer-involved shooting review have three weeks to create that finding. And of course in the past, some of those have taken three months or even longer. Chief of Police is holding commanders accountable for meeting those time lines. If there are reasons to toll the time period -- officers in the hospital, witnesses unavailable -- we document those for the file. So, that timeliness is certainly

December 3, 2014

very important and certainly significant in years past. We believe we made a tremendous amount of progress in that regard.

Saltzman: My last question is the 48-hour rule. I guess, I didn't see it identified right here as an outright recommendation.

Henderson: I didn't either.

Saltzman: Does the bureau have a position on the 48-hour rule?

Famous: The 48-hour rule I believe was part of the 2012 or prior OIR review. Currently right now, that's a collective bargaining, that's a situation where City of Portland has been in conversation with the Portland Police Association over the 48-hour rule. And I believe that's where that lies.

Saltzman: Yeah, I realize it's in the collective bargaining arena, I guess my question is, should it? Is it really a best practice? I mean, I heard the OIR panel say that we're an outlier, this does not really happen in other bureaus in other cities.

Henderson: As it stands right now, Oregon has transactional immunities. So, if we ordered an officer that was actually involved in the shooting, we ordered them to give us that information, we would never be able to do anything else with that officer. So, if we found there was criminal culpability, all evidence gathered after that would be thrown out. So, we don't order officers that are actually involved in the incident to talk to us. So, they have their Fifth Amendment rights just like everybody else, so if they don't want to talk to us right then we can't force them to. Now, we do order all witness officers, all folks that might be involved, we do order them to talk. And we usually get to them that day. So, we have a pretty broad understanding of what happens, especially if there are witnesses officers. Where it does hurt us -- if there's only one person involved and there are no witnesses. But again, that officer still has the same rights as every other citizen and they don't have to talk to us that night. So that's also one of the mix comes. Yes, we would love to talk to the officer involved as soon as we possibly can, and we have taken some good steps in actually being able to talk to the officer quickly. But again, they still have to get their attorneys and that has to be scheduled. So, we're talking to them within three or four days with their attorney, but the 48-hour rule is an arbitrary rule, and I'm just not sure what we're going to get with that.

Hales: I guess the other points that ought to be noted -- I'm not sure if I've got this right statistically, but in the last couple years while I've been dealing with the issues of officer-involved shootings with the bureau, we have obtained a larger number of voluntary statements immediately after incidents from officers than was the case in the past.

*****: Correct.

Hales: It doesn't mean the 48-hour rule is still not a problem or a potential one, but we have been getting voluntary statements much more regularly than in the past.

Fish: But I think -- with all due respect, I think we're conflating two issues here. The Fifth Amendment privilege that can be asserted can happen within the 24 hours, 48 hours, or beyond.

Henderson: Right.

Fish: So, that's different. What I heard the prior panel talk about was best practices in terms of investigation, integrity of the investigation, public confidence, investigative leads. Investigations are like uranium, they have a half-life. So, I'm hearing an entirely different set of concerns. And I don't think the officer has constitutional rights he or she can invoke within 48 hours or after 48 hours. I think what they're pointing out is we're more likely to get useful information about who, what, why, basic details for purposes of investigation. So --

Henderson: For purposes of the administrative investigation, not for the criminal investigation. We can't use that information if we order somebody to talk.

Fritz: Yeah, Chief, could you say that piece again? Because it's new information to me and I think explaining that --

December 3, 2014

Henderson: There's really two different -- a criminal investigation, which I feel we strongly need to do in these things, we need to look at this as it is a criminal investigation. We cannot order the officer that is involved in that incident to talk. If we order him to talk, then everything he says is nothing that the criminal aspect of this investigation can use. Only the administrative side can, but then we're no longer conducting a criminal investigation. We might as well just say we just have an administrative investigation and we're never going to look at an officer criminally --

Fritz: Why is that? Explain to me the legal piece about why that is so?

Henderson: It's back to transactional immunity. We can't just say, talk a little bit here and let us get a little bit of information, but use it later on down the line criminally. Oregon doesn't have that. If you give them immunity on one little thing, they have immunity across the board.

Fish: But are you saying to us that in interviewing an officer who may have the most relevant information at the scene, prior to determining there may be probable cause to conduct a criminal inquiry, you can't even ask basic questions that would facilitate the investigation, because the officer can invoke a Fifth Amendment privilege to answering questions --

Henderson: We do ask.

Burke: That's what I was going to add.

Fish: Then the question is back to Commissioner Saltzman's question. Why the 48-hour delay?

Burke: There isn't. At every officer-involved shooting, before the officer is released from the scene, the detectives ask the question if they are willing to give a voluntary statement. It's because of the Fifth Amendment and they are allowed to not provide that statement. If we then give an administrative order to give a statement, that immunity that is given is carried over for every statement thereafter. So, if there are issues of criminality involved, we will not be able to use that.

Fish: What changes after 48 hours?

Henderson: Nothing for us administratively. Administratively is what we're talking about here with the 48-hour rule.

Fish: I think this is getting probably more complicated than it need be. Can you just tell us -- what is therefore the purpose of the 48-hour rule?

Henderson: I think it was something contractually that says that internal affairs cannot ask questions of the officer until 48 hours has passed.

Fish: What is the city's view of the necessity of that provision?

Burke: Well, that provision is in the PPA contract.

Fish: Well, everything in the contract has been negotiated between the parties. So, what is the city's view of the value of that clause?

Hales: What is the bureau's view I guess is what you're asking.

Fish: There's nothing in the contract -- you can't have anything in the contract unless two parties have agreed to it. So, what is the city's view of the value of a 48-hour rule?

Henderson: I don't know what happened in those negotiations, so I don't know why the city agreed to a 48-hour rule.

Burke: The negotiations are held by BHR, and the BHR represents the bureau's interests. The Chief is not part of the negotiation, and the Police Bureau -- we are personally here not involved in that negotiation, and not subject to the terms of the negotiations other than the outcomes.

Fish: So, we have a 48-hour rule because someone in BHR thought it was important and did not consult with the Police Bureau?

Burke: It's in the current contract. And based on the information provided to us, it was not something that BHR was going to take to arbitration. So, that's a question to be answered by BHR or by the City Attorney, but I don't really think we can provide that answer.

Fish: Let me ask you a slightly different question. What is the potential value of a 48-hour window prior to investigation? What is -- from your point of view -- the potential benefit of that? We've

December 3, 2014

heard the case made for why it's out of step with other jurisdictions, and the potential damage it does to an investigation. What is the other side of that that you can share with us?

Famous: Well, if I might add, two things. Number one, we'd like to know the identity of those jurisdictions so we can review that policy and see if there's things -- you know, administratively -- that we can learn from those agencies. I don't know what those agencies are, so if we could receive that that would be great. What we do -- the value of the 48 hours is we are able to collect information -- in other words, from the internal affairs side, prior to our interview, we like to collect as much information as we can and try to corroborate as much information as we can. So, we'll have a review of evidence, we'll review witness statements, officer witness statements, citizen witness statements, and present a line of questioning that we think is going to provide a thorough interview. It also allows the officer time, if they've been hurt -- we've had officers shot recently. Although that's an outlier, it does provide accommodation for that. Primarily, it's to help with the presenting the best investigative interviews we can.

Burke: And from the other side of it, the humanistic side, we have had -- there are some officers who have been involved in shootings who are fully capable of giving a statement fairly early in the incident, we have had other officers who have been absolutely traumatized to the point where being able to provide useful information at that point would not have netted us any value.

Fish: And that I completely understand. So, let me ask the question a different context. In the case of conducting an investigation, what is the impact on the quality of any investigation of delay? Because one of the points that was made is that with the passage of time, memories fade, or recollection is influenced by media reports, or reconstructing, or whatever. So, what's the practical consequence of a delay in getting useful information? What kinds of things can happen?

Henderson: I want to keep this separate, though, as far as criminal and administrative. I'm going to let you answer this, because you're asking an administrative question. Because we do ask the questions, and they don't say anything to us that night. So, I'll let Dave answer that question.

Hales: I'm bringing up the other Dave, but sorry. Keep going.

Famous: So, the question, what is the value of the 48 hours?

Henderson: No, what's the downside --

Fish: What's the downside of delay generally in conducting an effective investigation?

Famous: The downside. In my experience, usually information changes rapidly as we develop, as we continue to find more evidence, conduct more interviews, some stories change. To ask if there's a downside to ask an officer, hey, what happened, can you explain to me what happened, I don't know that there's a downside to that. It's, how do we get there? On my side of the house, the administrative side of the house, typically there will be a follow-up interview. Because typically, in that short period of time they may not exactly remember everything that occurred because adrenaline and all these other things that are happening.

Burke: And on the criminal side, there's a lot of information that's coming in within that first four to six, seven, eight hours we're out at the scene and we're trying to process and gather evidence. And in most typical cases, if there is such a thing, we have other witnesses who are able to provide enough information to guide us in the direction to gather the most information possible so that when we do perform an interview, when we get a voluntary interview with the involved member, we're able to do one that is more thought out, that has more information provided to us so we know what questions to ask. We know what we're looking for, we know what the evidence from the scene has told us, and now we're looking for information from the officer that will corroborate or not corroborate. I mean, it is a fact-finding time for us. That first 24 hours necessarily in processing a scene and gathering information is extremely valuable. And to jump way ahead of that and start asking questions when the basic picture is not even provided to the investigators yet is putting the cart in front of the horse.

December 3, 2014

Famous: And the process we have now -- if I might -- is that in that 24-hour window, right now we do -- in the last couple of cases where we've had a voluntary detective statement -- interview, voluntary interview, and in that interview, the IA investigator is present in the room. They don't ask questions, they take notes. Once the voluntary interview given to detectives is completed, the detectives leave the room, and then the IA investigator will order the compelled statement for further policy questions, administrative questions, and follow-up -- any kind of training issues, those kinds of things. So what happens is, historically, four or five years ago you'd have a detective investigation, criminal investigation which may take four -- three or four months, and you would have -- internal affairs wouldn't interview them until maybe six months after the fact. Now, we have the detective voluntary interview, the IA interview conducted usually in a very, very short time period. So, it has really accelerated our review process and the quality of our interviews has really gone up.

Hales: I invited Dave Woboril to come up in case you needed to throw any more light on the Garrity standard and what is afoot with this investigative window here.

Dave Woboril, City Attorney's Office: If you want a short lecture on what Garrity is and how it affects us, I'm happy to do that. Garrity is the name after case that announced a rule for the admissibility of evidence in criminal cases. Before Garrity, there was the general proposition that compelled statements, statements compelled from a criminal defendant could not be admitted in evidence against them. It's the Fifth Amendment protection against self-incrimination. Voluntary statements, of course, are admissible, but compelled are not. The case involved -- Garrity itself involved an administrative investigation which was paralleled by a criminal investigation. So, you had an employer talking to their employee about events that were also of interest to a criminal prosecutor. The employer, by right, compelled a statement from the employee, and that information leaked over into the criminal investigation, allowing the criminal investigators to develop other evidence which was then offered in as evidence in the criminal case by the prosecutor. So, the fruits of the compelled statement were offered. And the court said, as a matter of the Fifth Amendment and criminal procedure, that can't happen. So, Garrity requires then if an employer is going to take a compelled statement from an employee, it needs to be firewalled off -- and this is how most jurisdictions deal with it -- firewalled off from the criminal investigation. A criminal defendant is entitled to challenge any evidence admitted against them for taint from the administrative investigation. And if they can establish that in fact there has been leakage from one to the other, the information that resulted, the evidence that resulted is not available in the prosecution. So, it's a rule of criminal law --

Fish: In Oregon?

Woboril: In Oregon, it's a principle that applies all across the country; it flows from the United States constitution.

Fish: David, that was a wonderful short tutorial on that piece. So, could you tell us how it relates to the 48-hour rule?

Woboril: It's not directly related. If you take -- it's related in this sense. If you take a compelled statement early, you have to take -- you have to beat -- in anticipation of that rare case where there is a viable criminal prosecution out of the same event, you have to be very good, have you to be perfect in sealing the information from the compelled statement off from the criminal investigation. It requires the firewall. And that's an administrative -- it's very difficult to do. Agencies that take statements earlier end up, for instance, in Phoenix, we went and looked at them, they house their administrative investigation people in completely separate facilities, they have to isolate them completely.

Fish: Is it in your view more likely that you can set up that firewall if you have 48 hours to set it up? Is that part of the thinking? Is that the logic?

December 3, 2014

Woboril: Currently, we're taking these compelled statements. And --

Fish: Right. Is there any relationship between the firewall that you have to have for reasons that you've explained clearly, and the 48-hour delay?

Woboril: No, except that in the hubbub immediately after the event, it's harder to -- say you're at a scene and you've got administrative investigators walking around with criminal investigators and rumors flying and all the rest of that. It's a tough setting in which to establish and maintain the firewall. In our setting, so later on, we're having these interviews in a calmer setting. As an institution, you maintain the firewall more easily, I think. There's less chance of error.

Fish: That's helpful. Thank you.

Hales: Other questions for either our City Attorney or our Police Bureau staff? Thank you all. We may have other questions later on.

Fritz: I just have a question of Commissioner Novick. Because the only other slight disagreements in the recommendation is number 10, which is that the city should consider requiring the Bureau of Emergency Communication dispatchers to attend critical incident management training and the Police Bureau's response is the decision to require critical incident management training for BOEC employees ultimately lies with the Commissioner who oversees BOEC and its director.

Novick: And yes, Lisa Turley says that BOEC does do what they call low frequency, high impact event training for BOEC people. And she doesn't recall a recent conversation with the police about whether that is insufficient, but she's happy to work with the Auditor and with the Police Bureau to see if they think additional training that BOEC does is appropriate.

Fritz: And you as the Commissioner-in-Charge would also be --

Novick: Yes.

Fritz: Just checking.

Hales: I understand that we may not have our OIR resource people here indefinitely this afternoon. So, if there are other Council questions for our consultants, this would be a good time to ask them. They'll stick around as long as they can.

Fritz: I don't have any.

Hales: Any further questions for the OIR folks?

Saltzman: There was reference to what other cities are doing with respect to the 48 hours. Could you make that information available to us and to the bureau? What other cities? Because you did reference that. You don't have to do that now --

Hales: It was not in this report, but the previous one.

Saltzman: If you could just provide that to us again, or maybe the Mayor's Office could provide that.

Gennaco: Yes. We've seen other agencies successfully thread this needle where in LA County, for example, the sheriff's department gets voluntary statements the night of. They don't wait 48 hours to get the statements. In LAPD, their officers have a tradition of not providing voluntary statements, so they get internal affairs statements that night. So there are large agencies that are successfully able to balance the criminal concerns, the administrative concerns, and the most important concerns which is getting the information from the officer that night.

Fish: Well but, you heard the discussion before, and so -- and Garrity is a federal rule, so -- and there was some reference to, you know, the chaotic nature of a crime scene and trying to maintain these firewalls. Could you address that?

Gennaco: Crime scenes can be chaotic. But generally what happens -- again, LAPD is a good model -- the officer is escorted, chaperoned, kept by himself, and then if he declines to provide a voluntary statement, at the station, internal affairs is there, they're walled off from the criminal investigators, and they ask the officer what happened. And it's pretty routine. And it doesn't impact

December 3, 2014

the DA's ability to assess the criminality of the shooting at all in LA County, and it allows LAPD to learn that night what their officer had to say about the incident.

Fish: How do they protect against that information unduly influencing the criminal side and compromising someone's Fifth Amendment rights?

Gennaco: Commissioner Fish, they have two teams. They have the detective team that's looking at the criminality and processing the crime scene, and then they have an internal affairs team that's on the ready in case the officer declines to provide a voluntary statement. That internal affairs team does not have dialogue with the criminal team from that point forward. It can be done.

Hales: Thank you. Other questions? Thank you all very much. Appreciate it.

Gennaco: Thank you.

Hales: OK, then let's take public testimony. I assume you've got a sign-up sheet?

Moore-Love: Yes, we have 20 people signed up. The first three, please come on up.

Hales: Welcome, folks. As you heard, we typically allow three minutes for testimony. If you hear someone make your point with this many people signed up, then say so and don't use your whole three minutes, but you're welcome to if you need to. We practice decorum in this room, so if you agree with someone feel free to give them a thumbs up or a wave. But we want everybody to have their chance at a say whether we agree with them or not, so we ask that you not have vocal demonstrations in the council in favor or against our fellow citizens. With that, who's on first?

Teressa Raiford: Hello, Charlie. Sorry, Amanda, for your loss, and good to see the rest of you guys. I want to say that at first, when I went to the meeting last night, I just found out about the meeting in the Rose Room regarding this report. We got to meet with the person who's a civil rights attorney -- I think Michael Gennaco, who put it together -- and as a community we were able to engage and ask questions as we looked through it. But we were probably there for about two hours. So, from the time that we received the information, which was yesterday, to the time that we had with him, that was the extent of the public communication that he mentioned that he had in regards to the information in this report. From your questions, and some of the faces that I've seen here, I don't know how much time you've had extensively with this reporting team or with the police to basically disagree or agree on some of the determinations and the recommended factors. With that being said, I think one of the things that they said when they first started was that community involvement needed to be a part of this for this to be a complete report. And that's how I felt. It was apparent to me that the public policy and the benefit to the public would be determined as a factor that would help bridge an opportunity for some of these recommendations to be implemented in our current policy. Without our knowledge, I don't think that we have the value to push you guys to push the Portland Police to adopt these recommendations. He said that just because they have the recommendations does not mean that there has to be implementation of them, and that's because you guys have a memorandum of understanding that basically gives them that type of opportunity. Also, I wanted to say that I know we have the Independent Police Review that basically hired this team to create this report. Now, without the power of -- with the police have as far as accountability and measuring the accountability and having oversight and some type of governing force that basically says what was done was right or wrong, then that doesn't give us any value through the Independent Police Review, except for a liaison between the city and the police department in regards to bringing in this type of information. So, I don't know if they're just a statistics office that brings in investigative information, takes complaints, and then gives them to another governing body that basically has to identify the outcomes of those, but I think that doesn't make any sense and it doesn't support our community. I think that as a commission, you guys need to look into creating a civilian oversight that could work independently of the Portland bureau and of the IPR and in partnership with the city to find out how we can work together to create a safer community through public safety channels for the citizens of Portland.

December 3, 2014

Hales: Thank you, thanks very much.

Raiford: Thank you.

Hales: Good afternoon, welcome.

Malcolm Chaddick: Hi, Malcolm Chaddick. Thanks for having me up. I don't have prepared remarks for this, it came up rather quickly, so I'm speaking pretty much off the top of my head. The issues covered in this report are on the national stage right now all over the country, and my organization is on the forefront of it in Ferguson. Our executive director is there supporting the people's struggle for justice, and here in Portland, Veterans for Peace support this struggle as well. The report an interesting document as far as it goes. But my feeling based upon my limited exposure at this time is that some of the questions that weren't asked were some of the most important ones. The fact that they were evaluating a situation from the point of view of -- I don't want to say this wrong and it may come out wrong. What I'm trying to get towards is that I didn't feel the root causes of why we're talking about "should we be calling an ambulance?" were being addressed. The fact that in, for example, the Chasse case, we were talking at one point in that conference room about the relative number of, for example, baton blows. And another case would be subduing and pastwhat point would that be punishment instead of actually trying to subdue somebody. And my question for them was, well, how many boot heels, how many broken ribs is procedural? Why aren't we talking about that instead of whether or not this man was given proper access to health care on the spot? These are questions I think a lot of people have. And as a member of the community, I hope to help identify and amplify those questions for you so that we can try to make more of a dent in this problem. That's all I have to say. Thank you.

Hales: Thank you. Thanks very much. Welcome.

Mimi German: Hi, thank you. My name is Mimi German and I want to say that because there is such a lack of citizen input with this report and reports in the past, I feel that that is why our police state in Portland is the way that it is. I'm here today to ask for accountability, and real accountability. I quote you, Mayor Hales, from an article this week -- the first thing we cannot tolerate is anyone being injured. This is regarding the protest. Public safety for all Portlanders, demonstrators, and bystanders alike is paramount. But you did tolerate injury by our police. You tolerated a concussion bombing thrown into a very -- even in that moment, passive moment. Nobody was even doing anything, and that got lobbed in there. People got injured, and you tolerated that. Public safety was denied at that protest. Civil rights were denied at that protest. Mayor Hales, I believe that you are in charge of a regime at this point that is so militarized, and it is called the Portland Police department. It is oppressive to the citizens in Portland. In the words sent to me by Ramona Africa of the Move organization in Philadelphia -- where I'm from -- whose house was blown up by the Mayor of Philadelphia in 1986. She says, we have to take strong stands against injustice, no matter who it is directed at or who is guilty of the injustice. I came today to demand accountability. I came here today to ask Mayor Hales, either for your arrest or resignation for crimes of terrorism against the citizens of Portland from the police. You and your police have terrorized an entire community and you've done nothing to curtail the policies that only protect the police and injure the people. Three Wilson sympathizers from Ferguson here for the Ferguson police remain on the force and at our protests. Racial profiling is still condoned by you and by the people who sat here from the Portland Police department. This cannot be condoned any longer. I ask now for immediate accountability for the police killings which could and should start with either your arrest or resignation so we can reboot this system in the correct way. The OIR recs are not good enough. We demand accountability, not words like "should." This stuff needs to occur. These changes have to happen so nobody gets killed on the streets anymore. There is no middle ground, Mayor, which you said today. There is only right and wrong when it comes to the police killing people. There is a right way, a wrong way to conduct themselves, and they have shown us

December 3, 2014

the wrong way. We are reclaiming the streets because Black men and boys should be able to leave their homes and not be killed for being Black. Black is not a crime. Black has become a death warrant in our city, and we will not recede until Black is free to walk the streets without fear of arrest or death. We accept civil rights, equal rights, and human rights only in the city. Thank you.

Hales: Thank you. Next three. If you don't mind, Mr. Walsh, we will take somebody else first. Sylvia, go ahead.

Sylvia Zingesser: I'm Sylvia, and I'm a NAMI family member but I'm here as a citizen. A lot of you know that I've been on the CIT, and I've been watching this happen. I had this written out but I've changed what I'm going to say. Listening to the OIR report, it solidifies to me that we need to have a quality assurance program -- and I know we're headed in that direction. And had we had a quality assurance program in the past, we could have picked up what I call near misses or when these are outliers, shootings are outliers. And I just want to encourage that we continue in that fashion. At some point, Mayor Hales I would like to sit down and talk with you personally. Can we do that?

Hales: Good thinking. I think we can do that, thank you. Welcome, appreciate you coming. Mr. Meo, go ahead.

Michael Meo: Thank you. I have every intention of speaking directly to you, Mr. Hales, but I'll start off with a little history. Twenty years ago -- I agree you were not in elected office at that time --

Hales: Actually, I was -- [laughter]

Meo: Fine. Twenty years ago or so, Mr. Hales, a hostage was taken in our city. And he died from police bullets. Portland Police Bureau had a hostage situation and they went in there shooting and they killed the hostage taker alright, but they killed a 12-year-old boy. And we asked ourselves, oh, my goodness, how could the police go into a hostage situation shooting? Well, it's because we still have the same mentality from the police, Mr. Hales. Your employees, the people you supervise still tell us that their bodily injury is more important than serving the community. You have done nothing positive to forward police accountability since you took office. And the latest objection that I have to your behavior is the universal, a whole, all five of you -- not universal, what is it -- unanimous, yes, unanimous decision to object to our federal judge asking to look once a year at what Portland has done for police accountability. In the face of 20 years of procrastination in the face of granite-like objections from the mayor, I am in my third day of a hunger strike which takes place in the Mayor's Office. I will be striking and not eating until we get a positive action from the chief of the person responsible for the police in this city, Mayor Charlie Hales. I will now leave and go back to sitting in his office.

Hales: Mr. Walsh?

Joe Walsh: My name is Joe Walsh, I represent individuals for justice. One of the things I said to Commissioner Fritz some time ago is that if you think we are a pain in the neck, the next wave is really going to be bad. And you're seeing it. You're seeing it in Ferguson, you're seeing it here. And what's the reaction of our police force? The reaction of our police force is to throw bombs at people that are protesting in the streets. There was a city in Tennessee that gave the protesters chocolate milk, hot chocolate, and water. There was no violence. None. They got along really well together. Did we get along really well together? You can take these reports over and over and over again, all 21 recommendations, and they're going to end up on the shelf. We've been doing -- this is the third report. And we went to a meeting last night and found out there was no community input. None. This report was finished. So, here we are again. We got the report, you're going to accept it, and we are here saying to you we have a problem, folks. And I'm telling you, if you think I'm a pain in the neck, you watch the young people coming in back of me because I'm getting

December 3, 2014

ready to retire. Good news, folks. [laughter] However, bad news for you, because they're more radical than I am.

Hales: Thanks. Next three? Hey, Dan.

Dan Handelman: Good afternoon, Mayor Hales and Council. I was wondering -- since this report is 120 pages long, it gives me one and a half seconds per page. May I have five minutes, Mr. Mayor?

Hales: We'll give you a little extra time. Your organization spends a lot of time paying attention to this.

Handelman: Thank you, I appreciate that. I'm Dan Handelman with Portland Copwatch, and I'm not going to read the prepared remarks that I've handed in. I'd just going to give broad-brush stuff and hope maybe you have follow-up questions. Our two major concerns about this report -- as much as we support the recommendations and the work that the OIR has done and the transparency this provides -- our two major concerns are, number one, that their solution to the problem of poor investigations that aren't as complete as the Chief claims they are, or when they're working with east county crimes team is not to ask for more civilian investigations. We have the Independent Police Review division. They have just gained slightly more power to supposedly do independent investigations, though they still have to go through the bureau to do it. Many people in the community have been asking for years for the shootings and deaths to be investigated by civilians and not by other police. And that should be a recommendation from OIR, and it's not. The other thing is that in their last report, they covered the Keaton Otis case. This time, they talk about the issue of Mr. Johnson, the man who had his seatbelt off. What wasn't mentioned was he was in the back seat of the car. And I don't -- can anybody in this room raise their hand if you have ever been ticketed for having a seatbelt off in the back seat of a car? Anybody? OK. My question is, once the car was pulled over, the driver didn't have insurance. It was a Cadillac with no taillights. Was it racial profiling that they tried to ticket the man in the back seat who happened to be a Black man who then ran away from them when they realized they knew he wasn't who they claimed to be, and he ended up dying because they thought he was faking being out of breath? Was it racial profiling? OIR group did not ask that question, even though we asked them to pursue that question after the Keaton Otis case. Another issue that they raised but they didn't really talk about a way to fix it was the lack of follow-through afterwards, the lack of discipline, the lack of remedial action, the called it, for anything -- redoing training, redoing policy stuff. That can be solved by the person who has been injured or their survivors having the ability to file an appeal with the Citizen Review Committee to the findings of the Police Review Board and the Chief, which they can do in any other kind of police misconduct case except for shootings. Which makes no sense at all. Because that way, the CRC can help to identify those issues and the bureau can deal with them. I do want to point out that in one of the disagreements, in one of the places where the bureau said they agreed, actually, was that after a Police Review Board -- what the OIR group said is that the professional standard division should go to the officer and say, you are found in policy or you were found out of policy, and then explain all of the things that the board talked about -- the training, the tactical decisions that were made that were good or bad, so there's a debriefing about the shooting. And the bureau's response was, we have already given them the finding the day of the hearing. But they didn't say anything about the debriefing. So, they didn't answer the question. And there's quite a number of examples of that where the bureau doesn't seem to have understood the recommendations. And I'm going to enumerate them in a longer analysis later. We're also faced with the problem of how the OIR reports are generated in the first place. Historically, you may remember when IPR was first created, there was not going to be any look at shootings or deaths at all. Jose Mejia was shot in a psychiatric hospital by Portland Police, and the community demanded that there be a review of shootings, and what we ended up with was this outside agency coming in

December 3, 2014

every year and looking at the shootings. And as the Auditor described to you, it used to take a lot longer. And luckily, we're almost caught up, we're at 2011. But it's 2014. These reviews should be happening as the investigation is happening. We shouldn't be waiting until everything has closed down. We would get more thorough investigations if someone was looking over their shoulders appropriately. So, on that note, IPR has been going out to the scenes of these shootings and sitting in on investigations since 2010, yet their name is only mentioned once in this entire report and nothing to do with the investigation, it has to do with a task force that was set up that they weren't invited to be part of. I asked the OIR if they could include -- and they said they would next time -- how many times IPR has pushed the bureau to ask more questions. How effective is it for us to have that independent agency involved in the investigations if the bureau is not doing thorough investigations still? I also really want to point out that when Mr. Johnson died, one of the things that happened was that he was already in a police car. He had run away from the original site. Other police officers followed the cops to that site, put him in their car, and in the process of transferring from one car to the other, there was a huge struggle which may have led to his death. And I don't understand, once he was in the police car, why didn't the police car take him to the hospital or to jail, which is what they were planning to do -- [beeping] -- can I have another minute, Mr. Mayor?

Hales: Sure.

Handelman: Thank you very much. One of the other issues that you've talked about today was the commander's memo. While I understand why it's an important exercise for the supervisor of the officer involved in the shooting to go through and pull this all to one place, if you eliminate that step, then the community concern that the commander -- who has already recommended a finding -- gets then to vote on the Police Review Board and thus has a second bite at the apple -- we could not be concerned about that anymore, because then the commander will not be having a second bite. I think you should strongly consider that recommendation to eliminate that step and find another way to do it. And then a very long protracted discussion you had about the 48 hour rule. We really want to see this go away. The community has been talking about this for many years. And we have discussed before, Commissioner Fritz, the issue about Garrity and transactional immunity. And what transactional immunity means is that if you compel the officer to say something, even if you get that information from some other place, you can't use it to prosecute them because you've compelled that from them. So you could, in theory, separate the two investigations, have the administrative investigation only ask questions about their tactics, which has nothing to do with their criminal liability. Or, since we have seen 120 deadly force incidents in our 23 years as Portland Copwatch and only one indictment in the entire history of the Portland Police for a person who mistakenly loaded live rounds in a bean bag shotgun, maybe we could just not worry so much about the indictment, because it's never happening anyway. So, let's just go ahead and compel the testimony on the day of the thing, on the day of the shooting, and we'll find out if the officer is out of policy right away.

Hales: Thanks. One thing I just want to affirm. I've been at the scene since I've been mayor for all but one of the officer-involved shootings that have occurred, and the IPR staff was on scene right away. I mean, they -- so, in future reports, whoever does them -- you're correct, we ought to be finding out what their role was. Was it effective, you know, etc. So, I think that -- I'm not sure exactly when that change happened. It occurred before I became Mayor.

Handelman: 2010.

Hales: So, it happened at about the end of this particular series of incidents. But now it's the norm. And so we have to see how the norm is working, and that needs to come from IPR, as well as from anybody that is looking over our collective shoulder. So, I appreciate that suggestion. Thank you. Welcome.

December 3, 2014

King Bishop Stylze: Thank you. I'm King Bishop Stylze, and I'm the new kid on the block, and the thorn in the side that gentleman was talking about earlier. I represent the Three Kings of Portland, and we'll be addressing matters of importance to the Black collective of the metropolitan area, as well as community of Portland as a whole and being human beings before we are anything else. I do commend the work being done thus far by the OIR agency, and I do firmly request that the community be heard in writing as a part of the recommendation process. While on the outside it seems that maximum effort is being put forth to deal with the issues of officer-involved shootings and in-custody deaths, I have experiences as of this afternoon that there is still a lack of transparency and room to run and hide due to irresponsible actions with law enforcement. Let it be known with great consequence that this issue is not only a local but a national and even worldwide. We are not only here for those in the community who are mentally ill, but all genders, ages, and colors. In the wake of the tragedy in Ferguson with Mike Brown, and more recently with the non-indictment of the officer who choked Eric Garner to death over a cigarette in New York, we call for you to set the national standard of police being held accountable for use of deadly force, ending over-policing and criminalization of poverty, have a representative police force, an intentional officer training, provide a true right to protest, move to pass national end-racial-profiling legislation, push for a congressional hearing investigating the criminalization of communities of color, and include community recommendations in the report. Allow sufficient time for community review of the report. Abolish the 48 hour time span that an officer has before being interviewed after lethal force is used. Thank you very much.

Hales: Thank you. Ms. Eng, welcome.

Mary Eng: Good afternoon, City Council. I wanted to give you a chance --

Hales: Put your name in the record.

Eng: Oh, yeah, my name is Mary Eng. I would like to give you a chance to collaborate with those members of the United States Congress who put their hands up in solidarity with the Don't Shoot. Feel free, any one of you, unanimous or not, to express Hands Up, Don't Shoot and what it stands for. One thing I heard in the race talks that Copwatch spoke at was the activist who talked about always keeping your hands on the steering wheel. You don't want to be grabbing for a candy bar, a cell phone, that sort of thing. I want to also thank our officers with their work with the Sunshine Division. I know my next door neighbor's cat is hungrier and unusual due to my inability to get over there and get cat food. And I think in some ways, if we encouraged our officers to engage in more humanitarian activities, we could break down some of the racial prejudice and cultural prejudice that is afflicting our community. Bring up the Kafoury settled Cox case in which the Portland Police dragged Cox away from Portland fire paramedics. I tweeted this out to the mayor after you had condemned the monetary damages. I think the Portland fire whistle blower paramedic who was confident enough in his nursing certification to write up a report of this unusual conduct on behalf -- on the part of the Portland Police was lauded in the courtroom and is an unsung hero. I probably have his name written down in my notes, but we should reach out to him and thank him for seeing someone in need of medical attention when the Portland Police wanted to throw him back in the cop car. My mom was a nurse at MCDC. When officers brought in people with gashed heads. You know what she said? Send them to a hospital. But she's concerned that there are nurses who are in breach of their Hippocratic duty in terms of colluding and collaborating with officer misconduct, brutality incidences. And then, I also wanted to point out that with the Kendra James killing, when the officers go out to dinner after a shooting as they're enjoying this luxurious 48 hours to talk it over, I suggest that they go to Veggie Grill which offers plant-based cuisine and focus on non-violence, focus on respect for all forms of life, including animals. In Hong Kong, they arrested officers for beating protesters. What a shame it would be to say that the Republic of China has more respect for human life than we do here in Portland. We know the DA is too weak to

December 3, 2014

prosecute officers and prefers to punitize National Lawyers Guild observers as well as disabled people. Thank you, Mr. Fish, for your inquiry on the 48 hours. I was impressed by your interrogation tactics. Think you were doing a great job. [beeping] You know I could talk for hours if any of you guys ever want to talk to me. Bye.

Hales: Thanks very much all of you. Come on up. Mr. Withey, go ahead.

Michael Withey: Mike Withey. Well, this really comes down to you, Mr. Mayor. You're the one in charge of the police department. You're the police commissioner. We hired you to do the job. Things have not gotten any better for the two years you've been in office. We could talk about the shootings, we could talk about stranglings that the police do, but they provoke all sorts of crimes. They provoke crimes in the city of Portland. If they choose to not like you -- I have personally witnessed it many times over -- they will provoke people they don't like and cause crime to happen in their opinion. So, one thing that I have really noticed today is this 48 hour rule. There's obviously a big problem with the 48 rule. I hope you take serious consideration into changing that, abolishing that. But I do have a question. The question I have is, who really runs it? Who runs the Portland Police department? Is it you or is it them? Is it the union that runs the City of Portland Police department or is it the mayor? I believe that it is the police department that runs the police department. Their union seems to be able to dictate to this Council what the rule is going to be, and they get away with it. Why the public has to come here and ask you why there's a 48-hour rule is beyond me. It's something that you guys, especially attorneys that represent the city that are on the council, should have asked this years ago. Anybody knows. Anybody knows that the first 24 hours after a crime is when you get all of your information. I just heard the chief of detectives say that the best thing that they could do -- the reason that he likes the 48-hour rule is that it gives them time to get information and then come to him with the information they have. Typically, they would ask a criminal, what happened, what's your defense? So, things seem to be a little backwards. So, I can honestly say -- I moved here in Philadelphia. I moved to the west coast because it's less dangerous, it's more forgiving, it's a kinder place. But it's really not. The police in Portland are just as dirty and just as cruel as the police in Philadelphia. And it is your job as Commissioner of police, regardless of what the union wants, to do something about what's wrong. I expect you to do it. I'm not hoping you do it, I expect you to do it.

Hales: Thanks. Ms. Elinski, welcome.

Crystal Elinski: My name is Crystal Elinski, I represent 10,000. Commissioners Novick, Fritz, former Commissioner Hales, Commissioner Saltzman, Commissioner Fish. I am interested in the fact that we are speaking about shootings, deadly force, only shootings, and we -- I don't understand why we live in a culture where we have so many guns. I've never understood it. And even when you come to City Hall to speak peacefully and to help out, there are people present in the room with guns that I do not trust any more than the average person, really, but especially because they happen to be Portland Police officers. So, I think that we continue to talk about culture, and deadly force is just the next step with heavy-handed tactics. And that's what I see all of the time. I mean, I'm a sweet-looking white woman, even though I've had some bad experiences, it hasn't gotten to deadly force. So, I can see how it would escalate there. My own personal experience is this is sort of ridiculous that this is how we approach it with little recommendations, constant hypothetical pontifications about what we could do, and what I see on the ground is very real. Everybody serves the police. The police don't serve the people, the city serves the police. They run with pure impunity and that's the way it has been and we need to first talk about that before we can get anywhere else. So, changing the culture is one thing. But we were talking about hiring practices. I think it would be swell to start all over again. Why do we continue to hire the people we do? They're all pretty much the same. I understand they are nice police officers, but when you are in the culture where you can't be a whistleblower, it makes it really hard. Hiring

December 3, 2014

versus training. You really can't train that out of people. When I spoke to every single -- there were multiple law enforcement officers on Saturday night, and every single one I told them, I wish you would go through the same treatment that we're going through now. I wish you knew what it felt like. One of them said, you know, if we did, we couldn't be police officers because it would be on our record. Oh, the irony, I said. Many of us would be better police officers than you. I am a good shot -- I'm pretty good, but I don't believe in guns. So, as far as the individual recommendations, we talked about the emergency vehicles and my experience with EMS and others, fire -- they do what the cops tell them to do. That's how it is. So, it doesn't matter what you write down. That has to be changed. Even in hospitals. When I have been in hospital, instead of being treated for my injuries, my police injuries or addressing my disability as I always say from the beginning, I'm protected by the ADA -- [beeping] -- can I have a little more time?

Hales: I want you to wrap up.

Elinski: I'm almost done. Instead of addressing my disability, they tested me for drugs. They gave me a psych eval and they tortured me by did not allowing me to use the phone, etc. That was EMS. And then with the dogs, remind me of Albuquerque, but here in Portland we're known for our horses and how they crush people. I just don't think that is a discussion to use a dog as a threat to bite someone. And then, technology. Quoting the police panel -- we need to ask if we're going to make the situation worse by our actions, and that's why we have technology. Well, technology, it's a techno fix, it just makes it more complicated and worse and it's -- our technology is becoming more of a police state, basically. So, finally -- sorry, let's see. Sunshine Division, by the way, it's all genetically modified food, I wouldn't eat it. One last thing. Right. I wanted to point out that Mayor Potter was a police chief, and even though he had a little leg up on you, I think it would behoove you to apologize like he used to the community. I think that would be really, really helpful and that's a good start instead of the navel gazing.

Hales: Thanks, Crystal. Welcome.

Melissa Sayson: Hi, my name is Melissa Sayson. I'm coming to speak before you all and for the public on concerns on a human issue. I believe that there are good police officers. I believe there are good councilmen, good mayors, good government officials, but doing the right thing is in question in this -- all of these instances. I believe that we are becoming pawns to a bigger game. The game is to put man against man, like the art of war. Divide and conquer, where everybody is divided and they don't see the good in the police that are protecting the citizens. Where there are corruptness and people hiding the facts and doing the things that they are taught to do, the right thing to do. I believe that they were to be peace officers, not to be called on a routine call to come in and check on an investigation on a person that was threatening to commit suicide on a concerned relative or girlfriend. And to come in and just, let me do you a favor and kill you for yourself. Let me do it for you. That is not -- that is not right. And that is violating the rights of the people. I believe that the people are actually being attacked. The people, the humans are being attacked because their rights are being violated. The police officer's rights are being violated. Like the Ferguson case. They were not given the proper information to the public to avoid the conflict that was caused and the contention that was caused and the negative attention that was brought upon by the people to destroy their own city that they live in. They live in that city. And they are not even seeing the issues at hand. And that is not their fault because they know not what they do. And it's a bigger concern on a national level that -- about the GMO and all of the poisons and toxins in the food and the immunizations that are causing these chemical deficiencies in people to raise these problems and bring forth these problems and these issues because they're not being taken care of properly. So, my concern is that we need to hold the police accountable that are responsible for this issue, train the police that are responsible, and that will be responsible to be -- to withhold the peace for the citizens and to train them properly and for everybody to know what the policies are

December 3, 2014

and not have some middleman, like, oh it's this person's fault or this person's fault. There should be one way to do it. If I killed someone, I would be questioned and charged. [beeping] But a police officer is not being held that way. I believe that's wrong. It is a human issue. I thank you for your time.

Hales: Thanks very much.

Withey: Mr. Mayor, I have one question for you, I have to ask. I was with a group of people Saturday night and we were on the sidewalk, I was right next to KATU. I was right next to Dennis Thoreau. The police order everybody arrest. They order everybody on the sidewalk to move to the middle of the street that we were under arrest. Did you give that order?

Hales: No.

Withey: It was your police department.

Elinski: Chief Reese was present.

Withey: It was your police department that made a choice that you are going to have to pay for.

Hales: [speaking simultaneously] -- later. Thank you.

Moore-Love: The next three are --

Elinski: [indistinguishable] said he was going to do an investigation, but detective --

Moore-Love: The next three are Michelle Mundt, Ame Elia, and Barry Joe Stull.

Hales: Come on up. Good afternoon. Go ahead.

Michelle Mundt: My name is Michelle Mundt. I think the Portland Police that I witness is very injurious to people. In the last year, I've seen several instances of the tissue is the issue for Amanda, the nursing point of view. The tissue is the issue. They're hurting people's bodies. And I see with my own eyes every month or so. And I don't want to go into it now, everyone's saying, but it's social control what the whole militarization is doing in our whole country. And it is the police against the people. And I'm just going to say it that way. It's pretty obvious, the police are against the people. We are being put against each other and I'm glad we are noticing. I'm going to tone myself down against the police because I don't want to play into the game of me fighting against the police. I don't want to be asked to be made enemies, all of the citizens against each other. The social control is working well. The horses came after us Tuesday night, charging us on Water Avenue right less than a mile from here. And then again on Saturday, and I saw the police shoving and giving women whiplash just on Tuesday night. I think we have social control by the police and I'm not in favor of it. But neither am I in favor of me taking them as an enemy. I think we're being played to fight amongst each other.

Hales: Thank you. Welcome.

Ame Elia: Good afternoon. My name is Ame Elia, and I'm speaking on behalf of the homeless in this case. First, I do believe that the 48-hour rule should be abolished simply because the police are dealing with our civil rights. Police rights should not trump civil rights in any case. Beyond this, the homeless of Portland, Oregon do not feel that they have any representation and review of police process against them. As you're well aware, the homeless community is multiracial, multicolor, sometimes physically, financially, or psychologically disadvantaged, and police activity viewed by the homeless is not considered benign. We are asking for some input through a Police Review Board to be able to address the issues between the homeless and the police insofar as the city is concerned. I would also like to remind you, Mr. Mayor, that the police do not have a right to evict the homeless from the streets of Portland. This city belongs to us as much as it belongs to you. And police violence against the homeless for any reason is just as bad as police violence against any other citizen. Thank you.

Hales: Thank you. Thanks very much. Mr. Stull.

Barry Joe Stull: Barry Joe Stull. I'm going to jump in the middle here with the cover letter for the 2012 OIR report here. At my request -- this is the City Auditor -- at my request 2004 Perez case

December 3, 2014

was also included in the current review because it was the oldest of the incidents eligible for expert review and because that incident generated intense community concern and contributed to the Police Bureau establishing the use of force review board. Mr. Perez was an unarmed black motorist that was shot dead in St. Johns here in the city in March of 2004. The officer who shot him, Jason Sery, had an encounter with me started that started with now Sergeant Cliff Bacigalupi -- who I know you're all familiar with -- knocking on my door, and Officer Sery putting in his police report that said I'd beat him in court. I was protected under the Oregon Medical Marijuana Act. And the damning language in the police report was the issue of Steven Dons came up and it sounded like I had inside information. Steven Dons died in custody of the Multnomah County detention center jail after a shootout with Portland Police in 1998. And the police memorial wall establishes the date that that happened. I had a trial scheduled for April 20th, 2004, and I got a call from Deputy DA Sewell at the courthouse, and said he that he did me a favor and didn't have a warrant issued for my arrest for missing court. And I said, what are you talking about, we're scheduled for April 19th and trial on April 20th? He said, oh, there must be a court mix-up. I just happened to be in the courtroom when the judge called our case. We're going to have to reschedule. Well, on April 20th, instead of my trial, we had the coroner's inquest into the fatal shooting of James Jahar Perez. I did have a trial in June. I got a felony conviction, I appealed, and the court of appeals found in 2005 that the rationale had been made obsolete by the very same Oregon Medical Marijuana Act that I was protected by. My appeal was interfered with, however, by my non-profit affordable housing landlord filing a 30-day no-cause eviction, and as I appealed the eviction, destroying over \$20,000 worth of my property on two distinct episodes, one on March of 2006 and then again in October of 2006. Mayor, you're partnering as the Portland Development Commission, Portland Housing Bureau, with that non-housing affordable housing landlord. And they've been keeping the five-plex that I was evicting from vacant for three years, which means there's over \$100,000 worth of affordable housing that hasn't been offered. And I believe that the reason that housing Commissioner Dan Saltzman is partnering with this corrupt criminal, PCRI, is that's the kickback for them trying to destroy me to cover up one, that Officer Sery wasn't always right -- [beeping] -- and two, that Colleen Waibel was actually shot by police officers on the marijuana task force --

Hales: You need to wrap up.

Stull: So, I was arrested starting in July 14th, 2012. Twice on the 17th and twice on the 19th. And the second time on the 19th, the ambulance was dispatched and Sergeant Holbrook came and said, we have your ride here, Mr. Stull, and I was taken to the jail. One thing I have in common with James Chase, Jr. is both of us had refused medical attention, refused medical treatment, entered into the record on our behalf by the City of Portland employees. I actually had summoned that ambulance.

Hales: Thank you very much.

Stull: You have to stop this corruption.

Hales: Thank you.

Stull: I would love to have a meeting with you about my check for \$4775. I did send you a letter, you have that, it's from October 15th.

Hales: Thanks very much.

Stull: I would like to meet with you and I could like Commissioner Saltzman to address the fact that we have affordable housing --

Hales: Sir, you have used your time. I will look at your letter. Thank you.

Stull: I certainly have used my time.

Hales: Thank you.

December 3, 2014

Stull: And I've got a case in federal court right now and I would love to have a settlement, and that would be that you're going to stop the criminality that's been meted out on me, and all of those arrests from July are going to be reversed on appeal because the Portland Police Bureau refused to accept my defense witness subpoenas.

Hales: Thank you.

Stull: This is serious.

Hales: Good luck. Thank you.

Stull: Thank you so much for your time.

Hales: Alright. I think you're first. Go ahead, please.

Gregory Benton: OK. My name is Gregory Benton.

Hales: Push that button on the microphone so we can hear you. There you go.

Benton: My name is Gregory Benton. I was asked by Teressa Raiford, who I would like to refer the rest of my time. I'll be extremely brief. Regarding the 48 hours when they do an investigation, -- you can easily resolve that in the negotiation with the police union, but you may want to include testing the blood of police officers after each incident. Something that you should do on a regular basis. I don't know if you even test the police's blood. In the past, you hadn't. One of the things we are talking about, people with the hands up, Ferguson situation that happened in the past with an African American youth being killed. I want to refresh your memory. And the young man who was choked in New York to death by police officers. You think Ferguson is far away and New York is far away. In the '70s, we had a decorated marine, Vietnam veteran who was choked to death by police officers. And the next day, the police officers had a "choke 'em, don't smoke 'em" shirt that they appealed to. They provide a culture. You know that Mr. Brown had his hands up in the don't shoot incident. Mr. Aaron Campbell also had his hands up in the don't shoot incident. In each of these incidents, the police officers, the city had an opportunity to remove the police officers responsible for these acts from duty. They didn't do it. I sued the city of Portland twice. I'm in a situation of suing them again. The first time I sued them had to do with a violation of the Fourth and Fifth Amendment rights. We did settle it. One of the officers who was attending that, in that incident was Officer Frashour. One of the things he said during his depositions was, you people don't know your rights, we know your rights, we do what we want to do. As long as they think that you allow them to do what they want to do, as long as you protect them like you did Frashour. I don't know how much money you spent defending him and then you turned around and try to fire him. I have one minute left. I will allow that to Teressa Raiford.

Hales: Mr. Davis, go ahead.

Raiford: He said that I could have his last couple of minutes.

Hales: Why don't we wait until the end and let others testify first who haven't got a chance to speak yet, Teressa.

*****: Hands up.

*****: Don't shoot.

*****: My hands are up.

*****: Don't shoot.

December 3, 2014

*****: My hands are up.

*****: Don't shoot.

*****: My hands are up.

*****: Don't shoot.

*****: My hands are up.

*****: Don't shoot.

Hales: OK, Mr. Davis, go ahead.

*****: [inaudible]

Hales: Alright. Mr. Johnson, go ahead.

Charles Johnson: Ready for me? Yeah, OK. For the record, my name is Charles Johnson. And there's many areas we can go with this 100 and some odd pages. But I think I'll just ad lib it and talk about one issue that came up which is definitely related to officer-involved shootings, regardless of whether it's covered in the scope of the report. That question is, where do the bullets go and why do we keep letting them get fired? That I think -- the problem with this report structure and the previous year's report structure is it's a little choppy, isolated and we don't get a -- what we really need is not a report where a consultant tells us how he can better build police justification for killing our fellow citizens. What we need to do is a harm reduction study so that the police kill less of our citizens and, in some legitimate cases, less of our citizens put themselves in situations where they're at risk from our police. Those situations should never be peaceful protests about the flaws of the grand jury system. But in 48 hours, people will be back over on I believe it's 6th Avenue, off of MLK, by the McDonald's, and we'll standing by scarred walls with Portland Police bullets took a chunk out in the death of Keaton Otis. And the way this report was presented in the Rose Room and today, I don't know if my fellow citizens should be satisfied that they're getting their money's worth toward the real goals of harm reduction. As Ms. Fritz pointed out, we somehow believe that we can have people sworn to uphold the law, serve and protect us, and yet they're too clueless to administer CPR to dying people. That does not build confidence in the police. We should, as citizens, demand both action and that action should be based on a comprehensive report that puts all of the questionable police conduct together, not just for the benefits of the Kafourys for them to make us as citizens. Because when the Kafourys win a lawsuit against you, all of the citizens are paying to the victim because we did not work with you to have save and accountable policing. And so I hope that you won't accept this report. That it doesn't do what the city should have done with its money. It doesn't really get us past the issue of legal technicalities and hemming and hawing, and just get to the point that we want a police department that regardless of whether or not they can have 48 hours of silence does less harm, is less likely to throw flash bangs around Pioneer Square and Macy's and is less likely to corner citizens a block away from the police department and go through some dramatic shenanigans about, get on the sidewalk, get off the sidewalk, and then take people into custody for no point. There is a general lack of confidence in the policing, and this report does not address it. So, I look forward to you working to do better. Thank you.

Hales: Thank you. Mr. Davis, you're on.

Davis Kif Davis: My name is David Kif Davis. One thing I wanted to say the TV show, the first 48 hours, and it talks about how murders are not solved and that the decrease of solving them goes down within the first 48 hours. So basically, by having a 48-hour rule with the police, you're making it less likely that the real evidence will come out, and that there's less likelihood of their being a clear train of thought when the police officers are involved in a shooting. And you guys brought up the issue about them possibly being traumatized. Well, you know, 48 hours to ponder something over is just going to make the testimony less reliable and the facts less reliable. I think the 48 hours is more for officers to get their stories straight than for actually public safety issues. And also, I spoke here last week about the I Am Darren Wilson police, and also Hart Noecker, who

December 3, 2014

is a journalist for rebel metropolis, he wrote an article about those cops. I was one of the 10 people arrested at the protest, as was Hart Noecker. His officer who signed the paperwork for him being arrested was one of the officers, and that officer was actually at the east precinct where all of us were at. And I'm a member of the press. I clearly identified myself as a member of the media. I told them I'm a producer for the Opperman Report, and I'm also a member of Multnomah County Copwatch, and also a member of Film the Police Portland. One of the other people that was arrested was Robert West. He is also someone that works with Film the Police Portland. I think basically we were targeted, because we did not do anything unlawful. All we did was document the event. Including Hart Noecker, including Robert West, and including me. So, you have three members of the alternative media that were arrested. And that's a war on journalism and that's a violation of our First Amendment rights, and also, you know, it is against the law to federally conspire -- it's against federal law to conspire against people and their First Amendment. And it is punishable by up to 10 years in prison. [beeping]

Hales: Thank you very much.

Davis: The fact that alternative media was targeted, and said that Dennis, the news editor of the Mercury, was detained. Well, the reality of the situation was he was under arrest, too. He might have been arrested at one point, and then it moved down to detained. But everyone was technically put under arrest.

Hales: Thank you.

Davis: We had all four blocks --

Hales: We need to let other people speak, Mr. Davis --

Davis: All four blocks taken over by the police and kettled in to the middle of the street, and the police clearly announcing they're under arrest, that means that we were all under arrest.

Hales: Thanks so much. [speaking simultaneously] We need to let other people speak now. We need to let other speak.

Davis: [indistinguishable]

Hales: Got that point. Thank you.

Davis: [indistinguishable]

Hales: No, no, no. Please, let people speak.

Davis: Arrested recently in Washington county, in Beaverton for filming the police --
[indistinguishable]

Hales: Sorry to hear that.

Davis: Went to jail for two weeks over that.

Hales: Sorry to hear it. Now we need to let other people speak. Thanks.

Davis: [indistinguishable] targeting of people trying to hold police accountable in the community.

Moore-Love: The last two people we have signed up is Trudy Cooper and Chris Lowe.

Hales: Come on up. Mr. Lowe, you're on first.

Chris Lowe: OK. My name is Chris Lowe. I spoke to you recently representing Portland Jobs with Justice, but today I'm just speaking on my own personal behalf. I want to address the OIR report in only sort of indirectly. I think that we are in a crisis in this country. It's a national crisis in which Portland participates, and it's reflected in the protest that emerged in Ferguson, Missouri but generated responses all around the country because of what is defined as normal policing in this country. And basically, what we are hearing from every community in the country is that normal policing should not be normal. That there is something profoundly wrong with the way policing is done in our culture and in our society. And the OIR report is a normal policing report. And within those frameworks, it has some interesting things to say, and I'm sure you will follow-up on them. But I think that the city of Portland's response to the more generalized crisis of our culture around policing has been totally inadequate. And so what I want to address is what would be an adequate

December 3, 2014

response. In some of what I'm saying, there are calls to action and I think that if you were to follow-up on what I'm suggesting, I would ask you to pay attention to the Albina Ministerial Alliance Coalition for Justice and Police Reform and to Portland Copwatch, because they have been working on these things for a long time in the kind of detail that we need. So, what do we need? I think we need the city to acknowledge that it has a history of denial, evasion, and deflection about racially discriminatory policing and issues of police accountability. We need the city to acknowledge the need for deep changes in policy and culture regarding racially discriminatory policing and to begin a process of making change in collaboration with community advocates. We need the city to acknowledge the need for deep changes in policies and structures of police accountability to uproot a culture of impunity that affects the community from the street level cops to the City Council level. And that means a process to create new independent powers and institutions involving the community for accountability. It means drop the appeal of Judge Simon's role in the DOJ settlement. You went ahead with that under a deadline pressure. You are not under that deadline pressure anymore. Reconsider, drop the appeal. It means publicly commit to renegotiate the arbitration causes of the city contract with the police union. I'm much less concerned about the 48 hour rule. It seems to be nugatory from what I've heard from this testimony. But I think that the arbitration clauses are a serious problem, because there is a repeated pattern, even within the normal policing of Portland of the chief and other officials doing discipline that then the arbitration procedure overturns. And I think you need to take a different negotiating posture and make that a primary negotiating goal in the next contract. And then, publicly commit to abandoning the current practice of reducing disciplinary recommendations to make them align with previous discipline, which Chief Reese has repeatedly done. What that does is institutionalizes historically weak discipline when what we need is to institutionalize higher standards of discipline. Finally, I think we have to -- the city has to acknowledge that the nominal commitment to community policing has been eviscerating by more than 15 years of militarized policing instituted under Chief Kroeker in new ways but have become normalized, and we have to demilitarize -- we have to acknowledge that problem and demilitarize. Thank you.

Hales: Thank you very much. Ms. Cooper.

Trudy Cooper: Hi, Mayor Hales and Commissioners. I'm Trudy Cooper, and I'm a citizen of the Elliot neighborhood, and I'm sorry about my throat. I'll do the best I can here. I think there's a lot of good substance in this report particularly, their recommendation regarding the 48 hours and also the improvements that they think are needed in order to ensure that recommendations end up being implemented. I was in the meeting yesterday that people have mentioned in the Rose Room, and I am still nonetheless recommending a delay in your approval of this because I think that we need some additional time to give the authors a chance to incorporate some of the input that they got yesterday at the very least, but I would recommend that you also include in this process somehow more community involvement. For one thing, one of the things that came up was the issue of -- as people have mentioned -- of profiling and not figuring in much in either this report or in previous reports. And the authors did emphasize that what happens before the trigger is pulled is very important. Well, profiling is one of those things that happens before the trigger is pulled. We know that profiling exists. We know that it can be deadly. Keaton Otis, for example, was stopped because he didn't look right, he looked wrong to the officers. They thought he looked wrong, they thought he was dressed wrong, they thought his car didn't look like it fit him. And in the report, they described the statements that they made regarding that -- that the officers made regarding that as race neutral. They sound very race heavy to me. And I think that, you know, that day when I pulled in to the Walgreen's parking lot two and half years ago, and it was right after he had been shot, and I saw all of the cars there, and they were putting up the tape and we were locked down in Walgreen's because the investigators hadn't arrived yet. And it really sinks in at a gut level when a

December 3, 2014

young life is lost and you find out later that it was avoidable. Because profiling is avoidable. I don't see this internality of profiling in the efforts that I see around this report or in general with the reforms that we're trying to do. The consultants yesterday said that it's very important for -- that the report was for us. That it's very important for us to be able to guide and pressure and emphasize what priorities we have. Profiling is one of those. The 48 hours is obviously another one. You do have an ongoing contract with these consultants. I'm wondering if you could help us understand at some point if some additional community outreach could be included in that. There's models in the city that work very well. Recently, the Housing Bureau -- [beeping] -- I'll wrap up quickly -- recently, the Housing Bureau has done outreach that has been participatory and involved. If they can do it, it seems to me the Police Bureau can do it. I hope you will include more of that in the future. Thank you.

Hales: Thank you very much. Thanks both of you. I think I gave Ms. Raiford an opportunity to come back up if you would like. Come on back up.

Raiford: Charlie, as a fourth generation Oregonian, I'm embarrassed to be a Portlander because of the laws that we have in our state and because the report that I read and to acknowledge with those attorneys that are civil rights attorneys that said that this report was for us, the people, they said, we're making this for you, we're glad that you have it, we're glad that you are asking these questions. Because there would be a safer community if you guys accepted those recommendations. We would have a safer community if the accountability wasn't only up to the Portland Police department to make those assumptions and those outcomes. We would have a safer community if we had civilian oversight and so I'm hoping that your commissioners, who were basically asking the questions that we were asking, will work together with you and you will create that entity so that we can have a better and a more safe community. That's what builds trust. That's all I have to say.

Hales: Thank you very much. So, our Auditor is here. Are there questions for her or for her team, some of whom are still with us? If not, do I have a motion on this report?

Fritz: I move to accept the report. That doesn't mean -- with the amendments that we discussed under the recommendations, and my assessment of the recommendations is that we are now agreeing to all of the recommendations.

Hales: Is there a second?

Saltzman: I'll second.

Hales: Further discussion? Let's take a roll call on accepting the report as amended.

Item 1253 Roll.

Novick: Appreciate the report, the response, and all of the testimony. Aye.

Fritz: So in fact, we are accepting the report as written, we're amending the Police Bureau's response to it, and I have confidence that Mayor Hales will be overseeing not only that but also the other suggestions that we've heard from the community today. This is one piece of the evidence and the fact-finding and the advice that we're receiving. We will shortly be setting up the Community Oversight Advisory Board for the Department of Justice settlement. The application for that will be available online within the next week or so. We encourage community members of all races, all communities, to come and work with us in resolving these challenges and inequities that have plagued us for too long. And I do thank also the Police Bureau and those who testified today for their willingness to make those changes that they believe are necessary, because we do want our community to trust us and the police. Aye.

Fish: I want to thank the Auditor for bringing this report to Council, I want to thank the OIR group for a thoughtful set of recommendations, and I want to thank everyone that stayed with us this afternoon for a very provocative conversation. We obviously have a lot of work to do, and I appreciate everyone's testimony and time. Aye.

December 3, 2014

Saltzman: I want to thank our Auditor Lavonne Griffin-Valade for bringing the OIR group on board a few years back. I appreciate the good quality work of the OIR group, and I think that they have some good recommendations that have been brought forward today. I think the Police Bureau has more or less agreed with most of the recommendations, although there are some notable exceptions, and I think this 48-hour rule needs to be flushed out, if no other form in our -- certainly in our next contract negotiations with the Portland Police Association. It does sound like it's an outlier, notwithstanding Garrity. I would like to see that addressed by us head-on in our next round of negotiations, and I appreciate the recommendations and we'll keep moving forward. Aye.

Hales: I want to appreciate the good work and heart-felt concern that I hear in this room. And let me tell you where my heart is as Commissioner-in-Charge of the Police Bureau. This report was an examination of the past of officer-involved shootings and deaths in custody that occurred in the past. And I'm not being flippant here, but my authority as police commissioner does not extend to the past. But I can learn from it, and that's the point of this report. And that's why we do this in the light of the day and with people able to comment on it, as citizens have today. We can also change things so that the past doesn't happen again. And I'm about that. And I'm endeavoring to do that, and I want more advice from counsel from citizens that care about these issues about how we do that, including the people that are here today. As I mentioned, with one exception, I've gone to every officer-involved shooting that's occurred in the two years that I've been mayor. I'll continue to do that, because it's the worst thing that we do. No matter whether it is justified or not, it's the most terrible exercise of the power that our Police Bureau has, and I take that very, very seriously. And we are making changes in the Police Bureau that I think are going to have a lasting, positive impact. We've started changing things that need to be changed about who we hire and how we train them and what the rules are for when they use force and what the consequences are when they behave improperly. We have fired a lot of police officers in the last couple of years. Not something that we're proud of, but those firings have stuck in many cases. There have been firings in the past which we know have not. So, I believe that we are doing some of what needs to be done to make this Police Bureau as humane as it can possibly be in its relationship with the citizens of Portland. There is more to do and there are ideas that we haven't thought of yet. So, I want to encourage this conversation to continue, and I also want to commend the good work that I see when I see it -- and it's very often -- in the Portland Police Bureau. I get on this phone a daily situation report from the police bureau. And there are cases after cases, days after days, nights after nights where something happens that isn't in the media. And it's because a couple of officers have disarmed a kid with what looked like a real rifle in a way that no one got hurt, or because officers have intervened with someone who is suicidal and gotten them to treatment in the humane way, albeit in the back of a police car, which isn't the best way for somebody that needs mental health treatment to get to a hospital. But I see those kinds of de-escalations day after day after day. And they will not make the newspaper, because they're not spectacular. But they're spectacularly good work, and I appreciate it and I want to encourage more for it. I think we have the opportunity to change. I wouldn't have run for this office if I thought change wasn't possible and that culture can never evolve and be shaped in a different way. I do believe it can and believe it is. I am looking forward to more of these discussions and more of these kinds of careful, incisive, clear-eyed review of what went wrong or what went right in the past. I'll put it to good use, and I hope all of you as citizens continue giving us good advice and push us to make this Police Bureau an exception. We've been an exception as a city in a lot of ways, and I think this is one more way we can do that. So, thank you for the good work. Aye. OK, we have one more item I believe in the afternoon Council calendar. If you would read that, we'll take it up.

Item 1254.

Hales: Let's see who is here to present it. Jillian Detweiler, of all people.

December 3, 2014

Jillian Detweiler, Office of Mayor Charlie Hales: Good afternoon, Mayor and Commissioners. I had the pleasure of being a non-voting facilitator of the advisory committee on the Urban Renewal Area amendments. And given the hour, what I'd like to do is keep my comments very brief and allow committee members and the interested public who wish to speak to this item. Our purpose of bringing it today was to do just that, to start fleshing out the issues so that when we bring amendments to you December 17th, you're kind of warmed up for that and we're addressing issues that hadn't been heard yet. The committee met throughout the summer. Their recommendations to you are in the draft report. There was a lot of agreement. There were a few important minority positions that you'll hear from other committee members. In the coming weeks, we will get opinions from the Planning and Sustainability Commission and from the PDC board, and all of that then will be delivered to you December 17th. With that, I think we have committee members lined up to speak. If they would just come up, and I'll get out of the way.

Hales: OK, committee members.

Detweiler: And then we have citizens.

Hales: Citizens as well. Thank you, Jillian. We will dispense with a lot of opening statements on my part, in fact all of them, and get committee members up here right away. Welcome. If we don't have enough chairs for all of you, we'll take you in waves. Go ahead. Push the button on that portable mic there. There you go.

John Tydlaska: Great. Good afternoon Mayor Hales and Commissioners. My name is John Tydlaska, Multnomah County economic development, and I'm here because I was the representative from Multnomah County on the Urban Renewal Area Amendment Advisory Committee. One of the longest committee names ever. Thank you for the opportunity to serve on the committee and to be here before you today to give your comments regarding the report. First and foremost, as you well know, when it comes to urban renewal, process matters. And I say this because under Oregon's property tax system, as we all know, urban renewal ends up diverting resources from local taxing jurisdictions and school districts, and that's precisely why process is so important so that the jurisdictions like the county and school districts that will end up losing resources have the opportunity to actually be heard and a chance to speak up and inform the decisions. Last May, when City Council passed the resolution, you all provided clear guidance for the committee. It was very focused that we should focus on recommending -- the committee should come up with recommendations for URA boundaries for the six URAs under consideration. And with, by and large, the committee did that with one exception that I want to focus on. I'm referring, as you may imagine, to the recommendation to add Block 33 out of Old Town/Chinatown into the River District. As the report reflects, I opposed that addition. River District has the largest concentration of resources out of any URA within the city. And as such, it's of course understandable why any property owner would want their property included within River District, and quite frankly, there are lots of good reasons to add any given property into River District or into any URA for that matter. But again, this is where I come back to process matters. All of the discussions regarding the changes, and particularly having to do with River District, the guidance from Council, the direction from staff to the committee were focused on identifying which blocks should be removed from River District to achieve the goals set out by Council. It wasn't until during the meeting, I believe it was the third meeting, that some committee members brought up and the committee began discussing the possibility of expanding River District. Given the unique nature of River District -- that it's got more resources than anywhere else -- I think that if last spring, Mr. Mayor, if you had come to Multnomah County and said one of the things you were considering was expanding River District, or if last May when you all were considering and deliberating over the changes, if you'll had mentioned expanding River District, I would wager a fair amount that the public discussion would have been very different than over the idea of

December 3, 2014

contracting it. That would be something that would draw a lot of interested people. And so while I'm not saying that any of the proposed expansion, expanding into that block has no value, my concern is around process. And to be really clear, of course, expanding one block in to River District is not going to have a material financial impact on the county. The concern is that doing that would simply not be consistent with the idea of valuing process and transparency, which is something that I know is important to the city council. I think that is also something that is critical in urban renewal decisions when it comes to taxing jurisdictions and stakeholders. And so that's why I'm going to -- my concern with the report and what I urge you to do is not expand River District to include Block 33. And lastly, I want to say I realize I focused on this one relatively small issue, and I don't want that to color my overall experience or feelings about the process. Quite frankly, I think the committee worked great. We communicated well together. We largely stayed focused on the task that you gave us, and I certainly support the balance of the recommendations. Thank you very much.

Hales: Thank you.

Fritz: Well, I didn't gather from the report that it was more than the League of Women Voters who didn't support that. Can you tell me what the vote was?

Tydlaska: I don't know what the vote was. Perhaps I'm wrong -- I thought in the report there is a reference to the League and Multnomah County.

Fritz: It says the majority of the committee supported the map of properties, and then that just the League of Women Voters representative would support removing more acreage -- it actually doesn't even --

Tydlaska: You have to look under downtown waterfront. It is under the downtown waterfront section that it talks about.

Fritz: You're right, I'm sorry. Thank you. It's late in the day.

Tydlaska: You've had a busy one.

Hales: Thanks very much.

Fish: By the way, I want to point something out. We have a chart that has the fiscal impact to taxing jurisdictions of what we're doing. You mentioned the importance of dialogue and collaboration with regional -- with partners that are impacted by urban renewal. Let's also celebrate the fact that the city fully funded its commitment to the Health Department and did not take a pro rata reduction after doing this. In fact, one could argue that you're getting a double benefit. We pre-funded a commitment that we made through that spirit of collaboration and there's also return to the county. So, I think it underscores the benefits of that collaborative approach.

Tydlaska: Thank you. Yes, I think city and county work well together around this.

Hales: Thank you very much, that was our goal. Appreciate it, John.

Michael Harrison: Good afternoon. I'm Michael Harrison, and I represented OHSU at several of the committee meetings. Thank you for letting us participate in the process. I feel we were able to work together as a group to achieve the city's priorities of continuing good job growth in the city of quality jobs, returning significant funding back to taxing jurisdictions, and generating tax increment for affordable housing. Closer to home, the committee recommends to generate funds the city could use to facilitate job growth in the South Waterfront specifically by extending Bond Avenue through our Schnitzer research and academic campus. As a Council, you were early supporters of the Knight challenge. And I'm happy to report that as of yesterday, we've raised more than \$440 million to complement the Knight's \$500 million matching gift. We're optimistic with more than a year to go that we can raise the last \$60 million. Our mission as an institution is to improve the health and well-being of Oregonians. Although that's not precisely an economic development strategy or mission, by doing our job well, we create jobs throughout the community. From time to time, I've come to Council and talked about jobs. I would like today to talk about specific numbers

December 3, 2014

so you know what you're getting through an investment of TIF. When fully staffed, the Knight cancer challenge will allow us to hire more than 380 new direct employees at OHSU, and will result in almost 500 additional non-OHSU jobs for the local economy. In addition to these jobs, city support for South Waterfront also facilitates the growth of our clinical services, which will mean approximately 850 additional OHSU employees in the South Waterfront by 2020. While we're still determining the exact staff mixes, OHSU has a proven track records of producing quality jobs, jobs that will be even more accessible once the Tilikum Crossing opens and rapid transit extends east out the Division-Powell corridor. According to ECONorthwest, the average wage for OHSU employees was over \$76,000 in 2012, compared to a statewide average of roughly \$44,000. The jobs OHSU indirectly creates in the economy also pay greater than average wages. A quarter of our existing 14,000 jobs have a fairly low barrier to entry, in many cases requiring an Associate's degree or less, perhaps a certificate. With such positions as pharmacy tech or medical assistant, OHSU job growth is positioned to help Portlanders from all backgrounds achieve stable careers. Jobs aside, I also sit on the South Portland Neighborhood Association. And while I'm not representing them here today, through that role, I have heard significant support for further extending the greenway, something that extending the life of the North Macadam Urban Renewal Area could help facilitate. Thank you for considering the recommendations.

Hales: Thanks for your help. Ms. Aiona?

Debbie Aiona: I'm Debbie Aiona, representing the League of Women Voters of Portland. We appreciate the council's rethinking Portland's Urban Renewal Areas and giving us the opportunity to elaborate on our objections and concerns set forth in the advisory committee report. This proposal has presented as a package deal. We disagree with this approach. Each URA should be reassessed on its own terms. It is misleading to suggest that districts are interlinked and that there is an overall benefit to be achieved by doing this as a package deal. The savings primarily result from ending certain districts, including the education URA, but other amendments will increase the cost to taxing jurisdictions. The River District proposal would remove about 30% in assessed value. While this sounds like a lot, the actual impact on the affected taxing jurisdictions is very small. The proposed amendment will return only about \$5.4 million collectively to the taxing jurisdictions in 2015-16. The city would have only \$1.5 million more to spend on citywide services; the county, \$1.4 million. These are insignificant sums in comparison to the 32.6 million River District captured in 2013-14 alone. Although PDC may be contractually committed to a number of projects, we recommend that additional acres be released from the district. We believe it is inappropriate for the county and schools to continue to pay for all of the planned projects through tax increment financing. We ask Council to consider whether it would make more sense to reduce the district even more and use the city's portion of the savings to continue the work. The North Macadam proposal is a sensible solution for addressing the inappropriate creation of the education URA and the desire to support the University District's vitality. Once the amendment is approved, the League urges PDC and the City to stay true to the objectives within the existing North Macadam boundaries. It is a complex district with many challenges and needs ongoing PDC involvement. Our primary concern in this district relates to the affordable housing goals and achievements. The Council-adopted South Waterfront plan calls for a district that is diverse and inclusive with a mix of incomes that generally reflects the diversity found in the city as a whole. According to the draft North Macadam Urban Renewal plan report, to date, over 4000 residential units have been built. Of those, 209 are affordable to households earning less than 60% of median family income. Had the City carried out its policy of meeting the income profile of the city as a whole, there would be over 1500 units affordable to households in that income range. If housing set-aside dollars are not sufficient, we challenge City Council to find whatever additional resources are needed to meet the district housing goals. These concerns extend to the River District Urban Renewal Area as well.

December 3, 2014

The Central Eastside amendment would add 16 acres to fund streets and sidewalks around the new light rail station and provide development assistance. Diverting funds from the county and schools for this purpose is an inappropriate use of urban renewal. Since the City owns a significant portion of the area, making it suitable for private development should be a manageable undertaking. The proposal further envisions using resources to subsidize additional private development on sites within the current boundaries. This district has been existent since 1986, and in 2006, was extended 12 years. According to the proposed plan amendment, taxing jurisdictions will not see full recovery of their forgone revenue until halfway through the century. If the district were allowed to end in 2018 as per the last amendment, the break-even point would occur in 2032-33. In light of the significant unmet needs in our community, it is difficult to justify extending the life of a district created in the 1980s for the purpose of installing transportation infrastructure and subsidizing private development. In short, we advocate the following. Assess each URA on its own terms, release significantly more of the River District back to the taxing jurisdictions, achieve the affordable housing goals promised by Council on the South Waterfront Plan and end the Central Eastside URA after 32 years instead of extending it another five. Thank you for the opportunity to comment.

Hales: Thank you. Thanks very much.

Fritz: To clarify, you don't -- the League does not support adding the block from the downtown waterfront to riverfront, and you don't support adding the triangle in Central Eastside.

Aiona: Right.

Fritz: And I know we had one member -- maybe we have others from Central Eastside today, but one member of the committee from the Central Eastside. Do you remember whether that member was supportive of the proposed changes in Central Eastside?

Aiona: That was Peter Finley Fry -- I can't --

Fritz: If you don't remember offhand, I'm sure we'll get testimony.

Aiona: Sorry -- yeah.

Fritz: Appreciate your diligence over many, many years. Thank you.

Aiona: Oh, thank you. And one thing I wanted to ask. Did you get -- there was a draft committee report that was on the Auditor's website, you know, the link to the information was still a draft, and you were supposed to get a revised version. I just wanted to make sure you checked to see if you got that one.

Fritz: Thank you.

Fish: We'll double-check. Debbie, at the risk of -- it's late. Can I ask you a couple of questions?

Aiona: Sure.

Fish: You've been kind enough to spend the afternoon with us. I want to give an opportunity to address your thoughtful testimony. You and I had a respectful disagreement on the education URA. But as I said when I voted for it, I was persuaded in part because it would establish -- it would set aside \$47 million for housing in an area where we had some significant resource challenges and tremendous opportunities to do new construction and preservation. And that's because of the geography of the URA. In this approach, there's been an effort in the recasting of North Macadam to find a way in part to substitute for some of those lost dollars. And what's happened in the last six months is that the forecasts have changed a bit. As of today, it looks like there's as much as \$40 million over the life of North Mac -- if I read this correctly -- that's available for housing. So far, so good?

Aiona: I'm not sure I know the exact housing dollars, but yes. About a month or two ago, they re-did the projections and it's going to reach maximum debt, and it's something they didn't think before.

December 3, 2014

Fish: It would be ungrateful on my part not to acknowledge that it keeps growing, and we're now up to \$40 million. And hope springs eternal, I hope it gets to 50. We've also -- there are two parcels that have been identified as potential opportunity sites for development. The question I wanted to ask you is, you have put into your testimony a challenge that we find additional resources if necessary. And I think what you're alluding to is the goals that were set, the revised goals, which were a reduced horizon for zero to 30, which is where the bulk of the need is currently, which means very poor individuals and households who are not going to be successful unless we have subsidies, because the housing requires typically the cost of the unit plus some kind of service or subsidy. And so, the challenge I think is going to be how we subsidize the units. Historically, we've partnered with Home Forward to get Section 8 vouchers and we've project based them. We've considered VASH vouchers and project based them. But ultimately, we've had to scrounge to find resources, because that's the only way we get to those units at zero to 30. So, what is the challenge that you're issuing with respect to the amendments before you? I appreciate the challenge and I accept the challenge, and I think it's a great challenge. But how can we make that challenge stick with the amendments before us?

Aiona: I don't know if it happened through the amendment itself if there's a way to -- I mean, it's not watering down the goals, for sure. I would think also recommitting to --

Fish: On that point -- let's be clear -- there's nothing before us about watering down the goals.

Aiona: Well, the actual copy that you received, the North Macadam Urban Renewal Plan Report, does have the watered down housing goals, but I have been promised by Traci Manning from the Housing Bureau that she is fixing that and that will be replaced before you finally vote on it.

Fish: And that's what we have been advised as well.

Aiona: Yes, I'm confident that that's going to happen.

Fish: On December 17th or whenever, there will be no dilution of those goals. There will perhaps be commentary about the challenges of getting to the goals. But what effectively are you suggesting that we do since we'll be voting on amendments?

Aiona: I think I would still like to see in this plan there were the compromise goal for the first 3000 units. I think that made sense. And then after we reached 3000 we were supposed -- the city was supposed to be meeting the income profile of the city as a whole. It would be great in this plan to recommit to that vision. And I mean, I recognize every dollar is not identified by a long shot, but there are efforts out there right now, the welcome home thing, the state is coming up -- so maybe in the next 10 years, more resources will become available. But we've got to have in the plan that this is what we want to do.

Fish: Who knows, Debbie, we may even have one-time money available in the future budget.

Aiona: Yes. Right.

Fish: Thank you.

Aiona: Thank you.

Hales: Thank you very much.

Moore-Love: Start public testimony?

Fish: Why are you looking at me, am I now the president? Oh, I've heard enough, I'm ready to vote on this. [laughter] And I take Debbie's suggestion as an amendment. Do I have a second? We'll welcome the distinguished member from the Portland Business Alliance to testify. Marion?

Marion Haynes: Hello, Commissioners. My name is Marion Haynes, I'm with the Portland Business Alliance. Thank you for the opportunity. I'll be brief. Our understanding going into this process is that we had three goals. Our charge was threefold for this committee. One, to reduce impact of Urban Renewal on taxing jurisdictions. Two, to preserve affordable housing investment and help the city better meet its redevelopment and economic development objectives. And three, to support PSU. With that in mind, and as background, PBA has long supported urban renewal as a

December 3, 2014

tool. We think it's an important tool for the city. We have long held that it is critical that the promise of urban renewal be fulfilled. And that does mean that eventually districts close down, properties return to overlapping taxing jurisdictions. In fact, in my last stint at the PBA in 2008, we were advocating at that time to close down some districts early, such as Downtown Waterfront and South Park Blocks in recognition of the need to fulfill that promise of urban renewal with higher-valued properties returned to the tax rolls. With the three goals in mind, we had originally proposed moving some properties. It was initially more than the one block that is in the recommendations before you from Downtown Waterfront to the River District. Not adding new properties to Urban Renewal, simply shifting a few blocks from one district to the other, and realized the importance of the process and getting to a consensus to the best that we could within the committee. We fully support the recommendation of just moving the one block, Block 33, from Downtown Waterfront to the River District. In identifying that block, we looked at aligning the resources of existing districts with other proposed plans that the city has approved, such as the recently-adopted five-year action plan for Old Town/Chinatown. And Block 33 has long been viewed as a very catalytic development opportunity that could spur other private development.

Fish: Marion, for people not conversant with our lingo, let's just describe it. Block 33 is currently a parking lot in the middle of Old Town/Chinatown -- in the middle of the Chinatown of Old Town/Chinatown, and it's owned by a developer named David Gold.

Haynes: Yes.

Fish: And once upon a time, it was the preferred location for an Uwajimaya development that never materialized. I want to make sure people know what we're talking about.

Haynes: Correct. So, we had had a task force that looked at opportunities in Old Town/Chinatown, Skidmore, some of which aligned with the Urban Renewal process, some which more aligns with west quadrant planning and comprehensive planning, which you all have received a copy of that task force. We looked at additional properties, but really focused in because of the consensus that we were largely able to find around the table in this process on this one block that everybody has been focused on for a long time. That's a little bit about the background of about where that came from. And with that, we do support the recommendations of the totality of the package that has come forward from the majority of this group. Thank you.

Hales: Thank you very much, Marion. Other questions? Thanks. Are there any other committee members that are here? If not, let's turn to the sign-up sheet. Do we have folks that want to speak on this?

Moore-Love: I show nine people signed up.

Hales: About this item, please. It's late.

Crystal Elinski: Yes. Hi, I'm Crystal Elinski, I represent 10,000. It's very funny, KBOO is already playing audio on the dog attacks.

Hales: Let's talk about this, please.

Elinski: And you're in there. Unfortunately, not your outfit, because you look great today. Yeah, so, here we are discussing Urban Renewal again. I'm really fascinated with the fact that for the PSU, the planning was done behind closed doors and it was an alteration from earlier planning which the president of PSU was not as thrilled with when he came out of the second decision. He said he liked it more, which made me really suspicious. Why are these Urban Renewal funds used for -- well, basically to line certain people's pockets. We need to change the focus -- if we're going to continue to have these entities -- I'm not really sure I understand why we have them -- but it should be to protect the public, to protect the public land, our environment, and housing. As we heard earlier from the League of Women Voters, housing needs to be a focus. We continue to be one of the worst states -- well, of two states -- that doesn't have a requirement for every new building that has to have low income. So, we also tend to give off public land for private interests.

December 3, 2014

For example, I used to be a part of the Central Eastside committees. I lived and worked in that area until I got gentrified out. It was shocking to me that Washington High School was never opened to the public. It just sat there, a beautiful historic building that has now been given to private interests, while Catholic Charities is forced to tear down one of the best parks around so that they can offer low-income housing. Washington High School is being converted to yuppie condos. It's now a private thing. Just as we turned down the Ross Island present from Bob Pamplin, we need to make sure that our green paces stay within the city public land and not change zoning laws just so private industries can say, hey, we wanted industrial and we don't want to pay for EPA cleanup. We need to make sure these areas are clean, accessible, and public. On the waterfront, I know from my own experience looking for housing, it is incredibly difficult. Section 8 is almost the -- and I will be discussing that later, but it's the aim to concentrate people in certain areas. I would like to see that more and more historical and public places stay within the city and not be given out for Urban Renewal or Mayor Adams', you know, Kenton properties. Thank you.

Hales: Thank you very much.

Melissa ***:** Hi, my name is Melissa. I'm concerned. I'm a concerned citizen. There is -- I read over about 200 million dollars budget that you all want to use to develop this urban development. I believe it should go towards something feasible more for the people. There are businesses that could be highly effected by the vast homelessness issues. Also with PSU, they get their own funding. They get tuition. They get people have to pay them back for their loans, student loans and what not. So, they have their own money that they can pull out of. They do not need the city to be using our money that taxpayers are paying. I believe there's an emergency at hand for the people standing out in the cold, freezing, disabled and what not, and starving, and the food they are getting is poison. I believe there's a higher issue at hand than schools and what not. If we can start with those issues first and work on to possibly making a plan and promoting a good, solid foundation to end homelessness and to sustain that with jobs -- which I read that there's no jobs going to be available on these issues at all -- so that people could sustain themselves and feel safe and also possibly even use some of the funds if you do get them to buy muzzles for those police dogs that are biting people. Thank you very much.

Hales: Thank you. Ms. Schwab, welcome.

Mary Ann Schwab: Thank you. Good afternoon, Mayor Hales and Commissioners. For the record, my name is Mary Ann Schwab, a retiree living in the inner southeast Sunnyside neighborhood for as long as my fixed income keeps in step with increasing city levels. PDC and TIF coming through on my Multnomah County property taxes is getting tougher and tougher. Gentrification is real. My fear is that City Council may not be fully aware of the list of community meetings facing your ONI volunteers and citizens of Portland in the month of December. Therefore, I ask Council Clerk Karla Moore-Love to route my calendar to your offices this morning. Why? I recently compared notes with the president Susan Pierce [spelling?] who was unable to address a serious concern on [indistinguishable] property, the 1.66 acres downzoning to open space. She simply couldn't. She couldn't get it on her agenda because of what all was facing, including listening to the PDC representative Justin Douglas. The same held true for Kerns, Sunnyside, and Smile. I attended three November meetings again trying to address the downzoning of the 1.66 acres facing southeast Morrison Street, a transit street, to open space. Hold that thought. Today, PDC is seeking to make major revisions to the Urban Renewal plans in Portland, the total package estimated at \$300 million over a 30-year period timeframe. It's not clear why PDC did not include the Brooklyn action corps request to include in the CES Clinton triangle amendment. Apparently, the PAC board had no way of appealing. At one point, they were going to go from Powell Boulevard down to Holgate -- quite a big area. Then it was half an area and all of a sudden it was off the sheet. We still could not get information. The biggest -- and what I find troublesome

December 3, 2014

is when reading where the PDC proposed changes could impact some of the city's biggest names in real estate including the Goodman family, Jordan Schnitzer, and even our own City Commissioner Dan Saltzman. I've sent you the link to that article and I want to give a Mr. Goodbar to Brad for writing that article. I can't help but wonder why City Council is in such a rush, especially knowing PDC, PSC, Metro, and Multnomah County meetings are held during the workday and neighborhood associations do not meet in December. We don't have the timeline with your public involvement to even address some of the issues on short notice. To be honest, I would rather be home piecing a doll and teddy bear quilts for the Portland Fire department's Toy & Joy than pushing back on these fast tracked items affecting those of us living on fixed incomes -- why am I nervous? I've been here a million times. Anyway, I'm hoping that everyone in TV land will come to your December 10th meeting at Warner Pacific College. We do not want to disconnect the Mt. Tabor reservoirs. And I'm hoping people will show up at Warner Pacific between 6:30 and 8:30. It will be an engaging conversation and I know we can come to a very good solution in keeping those tanks full. Thank you.

Hales: Thank you very much.

Fritz: Thank you very much, Mary Ann. Thank you for the bribe. Commissioner Fish and I are officially corrupted by having eaten this delicious chocolate right now.

Hales: She knew you had low blood sugar.

Schwab: That's my fault. Chocolate solves everything.

Fritz: Much appreciated. We have been here quite some time. I did want to address your concern about the Brooklyn action corps and how they can appeal. This is only the committee's recommendation, so there's hearing before the Planning and Sustainability Commission, there's a hearing before the Portland Development Commission, and then there's the hearing before City Council. So, there's three more bites at the apple for anybody who feels any of this recommendation is not accurate and that they would like some changes.

Crystal Elinski: I was going to ask about that. Could you tell us for the record when and where those meetings are? The 11th and the 17th?

Hales: They'll be posted on my website.

Elinski: I don't have internet.

Fritz: I know for the Planning and Sustainability Commission it's been at the 1900 building at 1:30 on the second Tuesdays. It's when they usually meet.

Hales: Jillian can probably give you the dates and times. She's right there.

Fritz: Jillian, could you rise, please?

Fish: Mary Ann, I'm not going to disagree with you publicly, but I am just going to gently say that while Commissioner Fritz and I appreciated you attending the last Mount Tabor meeting --

Schwab: I left.

Fish: Well, it was disrupted. The second one is once again hosted by the Parks Bureau and focused on options for what happens the reservoirs post disconnect. So, I don't want to mislead people into thinking it's a public forum around the disconnect. Our hands are tied on that. Commissioner Fritz has set up a robust public process to hear from people about what they would like to see post disconnect with the reservoirs, and so far, we've gotten I think a pretty good set of recommendations.

Schwab: I'm anxious to hear the results of your survey. That was a quickie and I'm just curious how many people did respond. Because believe me, I let everyone in my contact world know that we had less than 24 hours to get that to you.

Fish: I got your email on that, too. So, thank you.

Fritz: I think it was about 800.

December 3, 2014

Schwab: Good, well that's wonderful. Well, thank you for your time. I know it's tough. You guys have been on the hot seat today.

Hales: Thank you. Well, let the record show this is not a bribe. It's a public service. You don't want a City Council with low blood sugar. [laughter]

Schwab: It was my little Christmas greeting with warm wishes, everyone. Thank you.

Fish: For the record, this is medicinal chocolate.

Melissa: Are you sure of that? Read your label on your chocolate. [laughter] No, I'm not joking. Find out where it came from, if it's organic and if people were harmed in the making of said chocolate, because there are third world countries where people are beaten with sweat, tears, and blood to make that chocolate and not paid. There are slaves. I just want to let you know, to get that chocolate how much people have suffered to get most of the chocolate that we have -- and I love chocolate.

Schwab: And this one is from San Francisco.

Fish: Thank you, Mary Ann.

Melissa: No offense to you.

Schwab: None taken. Thank you.

Hales: Next three, please. Come on up. I see one of the Mr. Johnsons is here. Thank you.

Michelle Mundt: I'm going to pass. I was just coming up here for the fun of it.

Hales: OK.

Charles Johnson: I believe with the last three people we had an amendment we were going to devote the Urban Renewal areas to luring Ghirardelli chocolate and maybe Godiva into the area. And make sure it's fair trade, worker protected chocolate. Obviously, the scope of this is long-term work. It's very difficult for citizens to come up and be fully engaged with it, but you remember some of our experiences with urban renewal that have made the media -- Trader Joe's northeast -- I'm kind of glad you're politicians. It supposedly means you're sensitive to public sentiment. In addition to this bureaucratic process, I think there needs to be better engagement with an overview of, OK, Urban Renewal is one tool we have that helps a limited predefined area. But how much of your time is that eating up? And there are more important areas of Portland that have more serious economic considerations. The fact that we have these federal interactions with things like Urban Renewal, and -- god help us -- PDC.us, sometimes distract us from serving the most needy communities and making the best impact on quality of life for all our citizens. Once we get through this hullabaloo and stuff that's required to keep the federal money flowing right, I hope you'll revisit the issue of helping the most needy neighborhoods.

Hales: Thank you. She's going to pass, so go ahead, Ms. Harmon.

Tasha Harmon: Good afternoon, Mayor Hales and Commissioners. My name is Tasha Harmon. As some of you will remember, as a founding member of the Coalition for a Livable Future and the executive director of the Community Development Network oh so many years ago, I was deeply involved in the negotiations that created the Urban Renewal Area plans for both River District and North Macadam. And I'm here because I'm deeply concerned by what appears to me to be a move to roll back commitments that the city has made to the Urban Renewal Areas being a central part of the city's affordable housing strategy -- and many other strategies, frankly. In the River District Urban Renewal Agreement, the city council recognized the need and the opportunity to break new ground. They mandated that the new mixed use neighborhoods they'd create by investing massive amounts of public money in the infrastructure required to make that land developable at all to be a place where people of all income levels could live. That was a courageous decision. It was a stand against business-as-usual gentrification where new development means glorious opportunities for people with money and rapid displacement for people who don't have money. It was a stand for livable, walkable communities, for a vibrant mix of jobs and housing where not just high-paid

December 3, 2014

professionals but also the people who serve you groceries, who pack the boxes in the businesses, who teach in your children's preschool classrooms can also live within a block or two or three of where they work. It was also a stand for place where your next door neighbor elderly parents who lived on fixed income to make a better life for their kids and who didn't have much retirement income could live, and your brother-in-law who just got back from the war and hasn't got his head together enough to get a job yet. These were important commitments, and the city's fallen short of meeting those goals. The Oregonian estimates that 1300 units would need to be built to meet the city's stated goals in River District, Pearl District, and Old Town. Although, we don't know the income mix is because apparently you stopped getting the reports in 2007 about the income mix there. The story we're told is that the city has made good on its commitments to use 30% of TIF funds for affordable housing in the River District, and it's not enough to do the job. That's not a surprise. We told you that without inclusionary requirements being put in place imposed in exchange for the enormous public subsidies being offered to private landowners in the River District that land prices would rise fast and it would make it very difficult to meet the public commitments that you'd made. We also told you 15, 20 years ago that you would need to dedicate city-owned property in the district to affordable housing as part of meeting those goals. We knew there would always be plenty of uses for the money. It's always true. And many of them are good uses. But some of them are not so good. Indeed, we're now hearing that city's planning to sell the city-owned land near Union Station to Hoyt Street Properties for \$1.5 million less than the appraised value so they can build office buildings. [beeping] What does it tell us when one of the richest and most successful landowners in the city says he can't afford to pay market price for land to build high-end office space? What does this tell you about the irrationality of assessed value and land prices and the need to create regulatory structures and tools that are going to make that less irrational? I also understand the city's considering buying land from Hoyt Street Properties to remedy Hoyt Street Properties' failure to meet their contractual obligations to create affordable housing in the River District. And I'm really curious whether Hoyt Street Properties is going to offer you a \$1.5 million price reduction on that piece of land. In the North Macadam area, the city set very modest housing goals for the first and second phases over the objections of the affordable housing advocates, and I hear that the revised memo is gonna go back to the original goals, which is good. But I'm also not hearing -- and we haven't of course had a chance to see the revised memo yet, so we don't know -- I'm really unclear about whether that commitment to going back to the original goals is going to extend to moving now to meeting your obligation when we move past 3000 units -- which you have -- to have the income profile of North Macadam match the city's income mix as a whole. It's time to get serious. You know as well as I do that affordable housing is going to be a critical issue in the city's future. We do not want to be San Francisco. I know all of you well enough to know that's not what you want. Right? In addition to the affordable housing goals, the city has really strong and important goals about lowering its carbon footprint, creating 20-minute walking neighborhoods and transit corridors that concentrate development and increase ridership, eliminating food deserts, reducing the gap in the education achievements between poor and not poor people. If you're serious about those goals, affordable housing can't be something you do when you have the resources to do it. You can't achieve any of those goals without making affordable housing -- a huge diversity of affordable housing -- part of every neighborhood in the city. The URAs are the easiest place to do that. This is not the time to pull back on those commitments. It's the time to start looking hard for new tools and new funding sources and new strategies, and there are a lot of us out here who want to help. But we need you to step up and be leaders around it. I'll be submitting more detailed suggestions about those tools as we move forward. You're also going to hear from many other players in this process around the comprehensive plan and around other strategies, but I would strongly urge you not to accept any

December 3, 2014

amendments to the Urban Renewal Areas that reduce those targets, those commitments that you made about making the URAs a central part of achieving this vision of Portland as a city that's livable for all of its citizens, and that is vital because it has a strong infrastructure of affordable housing, not just affordable housing that happens when we can find the resources. Thank you.

Hales: Thank you. Nice to have you back in this chamber.

Fritz: Thanks, Tasha. It's good to see you.

Johnson: In light of Tasha's information, I do want to let you know that citizens will be extremely interested to see if the 39 or 40 lawyers of the City's Attorney's Office will go head-to-head with Hoyt Property lawyers instead of focusing on appealing Judge Simon's decision. If Hoyt Properties is involved in shenanigans or failures to meet contractual obligations, we expect the city to litigate for the right of low income and average income people. Thank you.

Hales: Thanks very much. Next three. Good evening.

Margaret Bax: Margaret Bax. I'll be really short. I appreciate you guys staying, I know it's been a tough day. I was the housing policy manager for the Portland Development Commission when the housing investment strategies were developed in neighborhoods throughout this city. I oversaw that process. We had hundreds of volunteers in every Urban Renewal Area -- Lents, Interstate, as well as North Macadam and River District, etc. As a city representative, I told people that all of these goals that we were working on would be maintained, and they would have an opportunity to not only participate in the development of them initially but also in the monitoring, and that we would be looking at putting housing for everyone in each of the areas, particularly the newly developed areas, North Macadam and River District, the big undeveloped areas. So I personally really struggle when I read that there's discussions about rolling back the goals because we don't have the money, etc. Just as a promise and commitment that I made to those hundreds of volunteers who were putting their own time -- I was getting paid but they weren't -- that trust us, especially in North Macadam, we said, trust us, the money will come later and we'll meet those goals. So, that's why I'm showing up again, Tasha Harmon is showing up again. We've been off doing different things. I've been in Zambia most of the time doing different things, community development there is really interesting -- but anyway, we're just here to offer to help you figure out some ways to meet the goals. Don't roll them back. We'll work with you as the community. There's really smart people at the city, at PDC, the community development network out there that together we can do it. It's going to be hard. It's tough, it always is. Moving the freeway from Mount Hood, freeway and all these things -- they are tough. City can do it, but you guys are smart, creative, effective leaders. And I think if you work with all of us, we can meet the goals and really make this a city that is inclusive to everyone. Sorry, I nattered too long. I apologize. Thanks so much.

Hales: Thank you. Thanks very much for your advocacy. Good evening.

Barbara Ross: Hi. I'm Barbara Ross, and I'm here testifying as an individual not behalf of any organization. I love Portland. I've been here three years, and I just think it's a wonderful place. I love public transportation, I love the open space, I love the parks. So, I think we have a lot to be proud of here. I really appreciate the thoughtful approach that the mayor and PDC have taken as they looked at the changes in the Urban Renewal plans. There's a lot of good concepts in here. I have just two things I'm concerned about. One is rolling back the goals, and Commissioner Fish has said, well, we're not going to roll back the goals, but I haven't seen anything in print that said that yet. So, I'm really hoping that as you guys work on this that you will maintain the goals that were originally made commitment to. It isn't easy. It's never easy to put together funding packages for affordable housing. It's difficult, but that doesn't mean that we should abandon it just because it's hard. Because the need for housing is urgent. And if you think that putting together complex packages for housing is hard, just think how hard it is to live with your kids in a car on the street of Portland. That's hard, too. And I know you know that. The other issue that I'm opposed to is the

December 3, 2014

extension of the Central Eastside by another five years. It's already been expanded 12 years. When you start these things, you say, well, we're going to do this for 20 years, we're going to get rid of the blight, we're going to improve property values, we're going to put those back on the rolls and give them their increased value. But then you extended it for 12 years, and then another five years, so why should they believe you the next time you want to have an Urban Renewal District if we have an open-ended way to fund cute new projects. There's always things that are important that are good to do, but I think that this extension -- the research shows that their taxing districts just don't get their money back if you keep extending it. Right now, I think there's a lot of interest in problems of homeless and housing. There's a lot of people are talking about it. The governor is trying to put \$100 million in his new budget. The human rights coalition had a great forum a couple of weeks ago. The New City Initiative where churches are working together, this Welcome Home coalition. We have a lot of people who care about this, and I know you all care about it. I think it's really important that as you work on the Urban Renewal District, affordable housing is one of top things you're looking at as you consider these changes. Then as you go on looking for better ways to fund these things, things that are going to work for Portland. Thanks for this opportunity to testify. And thank you for staying so late in the day when you'd like to be taking a nap. [laughter]

Fish: Barbara, can I respond to one thing you said?

Ross: Yes.

Fish: I was speaking for myself when I said we would not roll back. I will be asking the council when the amendments come back for Council consideration to reaffirm the goals -- the existing goals -- and to make that part of our consideration. On some level, I welcome the clarity that the Housing Bureau will bring to the challenges, because we heard a lot of people who say there are going to be challenges. But let me offer this optimistic note at the end of a long day. When I was elected, and in fact, had the good fortune of working with this Margaret and soon another Margaret and soon another Margaret on housing issues, we had a commitment to build affordable housing in South Waterfront. I can tell you in the first couple years of looking at that project, there was absolutely no way that Block 49 could come together. And two of the smartest people I know, along with others, considered every single option under the sun including something called city lights that I'd never even heard of. They kept being told that they couldn't get there, they couldn't get there, there was a roadblock. And by the way we were in the worst recession in our lifetime. The tax credit market collapsed, which meant that financing tool became less effective. I won't bore you with the details, but there's a magnificent award-winning development today at Block 49 today called Gray's Landing, named for a distinguished war veteran who also happened to be a developer and who carries the Silver Star. That project was built despite all the obstacles because the housing community would not accept no for an answer. And the smartest and most resourceful people I know said, we are going to make it happen. When we come back on this package, I will ask Council to reaffirm the existing goals in North Macadam, and I will also ask the Housing Bureau to give the council a road map as to what the specific obstacles are to getting to those goals and what additional resources over what particular period of time they're going to need to get there. Because I agree with you. None of this happens without setting a reach goal. And then the only way we get to that goal is if we're willing to throw the kitchen sink at the challenge. That's how we built light-rail. That's how we developed a livable city, that's how we met some of our affordable housing goals. It is not time for this council to retreat from that tradition.

Ross: Thank you very much. That's a great benediction to the day. Thank you.

Hales: Thank you very much. Anyone else?

Fish: Mayor, if we could have staff back for just one second.

Hales: You want staff back? Would you come back? Maybe PDC staff as well, if you need reinforcements.

December 3, 2014

Fish: Jillian, I have a couple very basic questions. You probably answered it at the front end, but my head is -- I'm just feeling a little fried, so forgive me. Could you tell us what the next events are on this matter?

Detweiler: Yes. The next events are hearing in front of the Planning and Sustainability Commission, and then a hearing in front of the Portland Development Commission board. Those recommendations will then come forward to you along with ordinances for your consideration on December 17th.

Fritz: I just need to make a correction, Commissioner Fish, because I said earlier that the Planning Commission meeting was at 1:30. It's actually at 12:30 on December 9th on the 1900 SW 4th building. The PDC board meeting is December 11th from 3:00-5:00 at 222 NW 5th, and the city council hearing is here on the 17th starting at 2 o'clock.

Fish: So, Jillian, today we're accepting a report and we're getting the testimony. December 17th is the first reading?

Detweiler: Correct.

Fish: So any amendments Council wants to bring, we would bring on that day.

Detweiler: Correct.

Fish: Any further questions we might have --

Detweiler: Ideas could come out and then we could come back with amend presidents, however the council chooses to act.

Fish: That's actually my preferred way so you have a chance to tell us whether they're workable or not. Because of the hour, I'm not going to go through some of the suggestions that we've had from the public, but what I will be asking you following this hearing what your views are on some of the ideas that have been floated. Are they feasible, is this something you and mayor would support or not or why? We don't have to spend half an hour doing that now. But the opportunity would be to bring amendments on the 17th.

Detweiler: Correct.

Fritz: And we'll be voting on it sometime in January, is that correct?

Detweiler: The 7th is the current schedule unless amendments required some additional outreach or work that couldn't be accomplished in that period.

Fish: One last comment. This is a complicated matter, there's a lot of moving pieces. And there's a couple issues I want to drill down on but to the three of you at almost 6 o'clock at the end of a long day, thanks for your good work. I think you helped set it up and frame it. I think the testimony has been very helpful, and there may be some issues that council want to pursue and we'll continue those conversations and have something ready before the 17th.

Detweiler: Thank you.

Hales: Other questions for staff? If not, then we have a motion to accept the report.

Fish: So moved.

Fritz: Second.

Hales: Further discussion? Roll call on that.

Item 1254 Roll.

Novick: Aye.

Fritz: I very much appreciate all of the work of staff and community members who worked on the report. By accepting the report, it doesn't mean we agree with everything. And obviously, there's going to be a lot more discussion over the next several weeks. There isn't a particular need to have this done by any date certain, right? So --

Hales: We did the part we need to do by a date certain already, right?

Detweiler: There's an administrative procedure that returns money to the taxing jurisdictions. That can be accomplished without your action.

December 3, 2014

Fritz: And I know we did that after Christmas last year. So, to address the concern Mary Ann Schwab raised of it being the holiday season, it's not something trying to be stuffed in in a particular time frame. We wanted to make sure the committee's good work was considered in a timely manner. Thank you very much. Aye.

Fish: We have a tradition in this room that if you've been with us since 9:30 and it extends past 5:30, you get \$5 off a pizza. [laughter] thank you for an excellent discussion to staff, I've already expressed my thanks, and to members of the public who spent the entire afternoon with us to get to this point, thank you for your thoughtful testimony. There will be some follow-up consideration of issues that are raised and I intend to propose some amendments. Thank you. Aye.

Hales: I want to thank everyone. I won't make a long speech now but you might recall I made a speech about this called the state of the city speech last year and said we need to do this. We need to reform our Urban Renewal system, and we need to right size the districts that have succeeded, get rid of the ones that haven't or shouldn't have been, and then put a lot of value back on the tax rolls. Because I heard that from citizens over and over and over when I was out knocking on people's doors for a year and a half -- that it's always a one-way street and we never put any value back on the tax rolls. Thanks to this Council and this set of actions that's no longer true. We're putting \$1 billion -- with a B -- back on the tax rolls. That's a signal accomplishment and I appreciate get work done to get us to that point. We're also I think taking places that actually have potential for positive change and making sure that we can accomplish it, which is what Urban Renewal is about. It's not an ATM, it's not a permanent condition, it's a strategy for change. And I think we are shaping this to its intended purposes in ways that are very defensible and will pay off for the citizens and for the taxing jurisdictions for a long time. Thank you all for your good work, look forward to more. Aye. We have one item to dispose of, which is item 1247. I'm setting that for 2:00 p.m. on the 18th time certain, and we'll take up the next time certain at 2:15, because that's a short item. I think that solves that problem.

Fish: Mayor, my understanding is we'll be taking up -- there'll be a second reading on both matters involving short-term rentals.

Hales: Correct. Thank you all. We are adjourned.

At 5:46 p.m., Council recessed.

December 4, 2014
Closed Caption File of Portland City Council Meeting

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Key: ***** means unidentified speaker.

DECEMBER 4, 2014 2:00 PM

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

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

Hales: Would you read the item? And then I'll talk about our process this afternoon.

Item 1255.

Item 1256.

Hales: Thank you. Welcome, everyone. This is kind of an unusual situation in that we're conducting a land use hearing, which we interrupted for some weeks and now are resuming. That's not actually all that normal, but it's what we're in in this moment. And we have a very stylized, formalized process that we follow under state law when we conduct land use hearings. And we're going to do that, but I'm going to flex it just a little bit in what I hope will be both openness and fairness in terms of what's going on. First of all, there were people who signed up last time who didn't get to speak. They get to speak. The attorney for the applicant gets a rebuttal at the end of the process, and they still get that. But I want to amend that just slightly and that is -- and we can't allow new testimony; we can't allow people who didn't sign up last time to testify this time -- otherwise, we reopen the whole enchilada. But I do want to allow the attorney for Friends of Goose Hollow, say, three minutes at the end of the key testimony period to summarize any key points that you'd like, again, just because there has been a long break in the process here for Council to have a balanced understanding of the arguments on both sides of the case. Before all of that, we are going to first call staff up to summarize what the first hearing covered, the open record period, the need to continue hearing testimony, any of those issues. I also am going to call up Portland Bureau of Transportation staff to talk about transportation and parking-related guidance. I know there were some meetings with the parties -- summarize anything that might have come out of that discussion that should be considered by the council in making this decision. And I think we also had questions for the City Attorney about how previous conditional use master plan conditions apply to the decision in front of the council today. So, that's the process we're going to follow. First staff, Council questions and discussion with staff. Then, the people who signed up before who didn't get a chance to speak, the attorney for the Friends of Goose Hollow, and then the attorney for the applicant to do rebuttal.

Fish: Then we'll break for dinner -- [laughter] -- and we'll have the annual holiday party, and we will resume the testimony and deliberation.

Hales: That's right. Coffee at 10:30. No, I don't think it will take that long. Sheila, if you would come up, please. I'm sorry, first we need to do -- also because it's been awhile -- we need to ask members of the council if any of us have had ex parte contacts or any potential conflicts of interest to report.

Fritz: Yes, I had lunch with David and Nancy Cutler, and Nancy Cutler was one of the people who was in Goose Hollow when the very first parking permit system went into effect. We did not discuss the specifics of this case, but I did get some general history.

December 4, 2014

Hales: OK. Anything else? I visited site again this week with my staff, spoke to no one on either side of the case, but was once again re-familiarizing myself with the physical setting of the decision. OK, anyone have any questions about our objectivity here? So, that's on the record. Sheila Frugoli, if you would come up and catch us up on the process and decision in front of us.

Sheila Frugoli, Bureau of Development Services: Good afternoon. Again, I'm Sheila Frugoli, the assigned planner for this review. Just to note that Bob Haley and Kurt Krueger from the Portland Bureau of Transportation are in attendance and are available for questions as you so choose. And just so that we can get back up to speed, I'll offer a brief presentation.

Hales: Good.

Frugoli: To recap, we're here to continue the land use hearing for a request of comprehensive plan map and zoning map amendment for the site known as Block 7. The request is to change the zoning from RH high density residential to CX central commercial. We are here to continue the hearing that occurred on October 1st. At that hearing, you heard from staff, the applicant, and a large group of interested persons. The hearing ended without completing the public testimony phase. It is my understanding that there are seven people on the October 1st sign-in list that are ready to offer testimony. I should note that the continued hearing was originally set for October 30th, but was rescheduled to today. The record has been held open, and as you know, approximately 25 additional letters have been received. After the testimony and the applicant's rebuttal, as well as the chief opponent's final comments, you may close the record and begin your deliberation. To quickly summarize, the owner, the Multnomah Athletic Club, and the applicant, Sam Rodriguez of Mill Creek Residential Trust are requesting a map amendment so they may develop a residential type building with approximately 260 residential units and 191 accessory parking spaces. Also proposed are 16 short stay suites for MAC club guests. This map amendment is necessary in order to propose additional accessory parking to serve the MAC club. If this request is approved, the applicant intends to submit a Central City Parking Review application for the construction of 225 below-grade parking spaces. The spaces will serve the existing MAC facility. Based upon the applicable approval criteria, Hearings Officer Helm is recommending approval of the request. His recommendation comes with a number of conditions. Condition B addresses the city no net housing loss policy, Condition E is intended to address key transportation policies, and the other recommended conditions are intended to limit the future development and use of that building to match the applicant's proposal. Both you and the hearings officer have received extensive public comments. Some of the key points stated by the opponents are the development will remove important open space and habitat area, the hotel suites are not compatible in a residential area, there will be on-street parking impacts created by the residential development. The opponents contend that the proposed 191 parking spaces are not adequate to serve the approximate 260 residential units. Opponents contend that the proposed MAC parking is not warranted, and they contend that the MAC club should manage its existing supply. They assert that the applicant's transportation analysis was insufficient, and that the MAC parking will create additional traffic as well as pedestrian and bicycle hazards. They argue that the MAC conditional use master plan that was approved in the early 1990s still has status, and that it should apply to the Block 7 proposal. And finally, one of the major arguments from opponents is that the MAC is breaking a promise it made about the development of Block 7. The supporters' major points are that the scale of the project is the same as what would be allowed in the RH zone, that the proposal will not generate additional traffic, and lastly, they note that the MAC club is not expanding. They contend that the additional MAC parking will address a current deficiency and will reduce traffic and parking impacts in the immediate area. That concludes my presentation. Questions?

Hales: Thank you. Any questions for Sheila? Thanks very much. We may have more later on. And then let me do call Bob and Kurt up, please, to talk about the transportation and parking related

December 4, 2014

issues and any summary that you would like to provide on your discussion with the parties. Good afternoon.

Kurt Krueger, Portland Bureau of Transportation: Good afternoon, Mayor and Commissioners. Kurt Krueger with the Portland Bureau of Transportation. Willing to answer any parking-related specific questions, but I did want to give Council a little background of some of the history in the last six weeks, two months now since the last hearing. As urged by this Council and past Councils, when you're wrestling with a tough land use case, so often staff are asked to go back and see if there's a compromise that can be reached. Is there middle ground that can be reached amongst parties? We proposed that. I invited all three parties. There are three parties at this table. There's the developer, Sam Rodriguez; there's the MAC club; and there's the neighborhood representatives. We put all three of us -- all four of us in a room twice to have some really gut-wrenching tough conversations about what it is that we really want if this parking goes in, how would it operate, how would it get used, what would interested parties like to have in a deal? Unfortunately, we couldn't come to that compromise. I wish I had something more positive I could bring to you. There was a lot of discussions, I think there are some continuing conversations that you are going to hear about today related to other properties in the area where parking might be proposed or recommended or supported by the neighborhood association. And I think there's a start of some conversations, but I don't think that is germane to the property that we're dealing with or the issue we're dealing with today. My point in this history is we had a good set of conversations. They were very pleasant conversations. They were tough, they were diligent, they were focused. I really applauded all parties coming to the table trying to find some compromise. We just couldn't find that deal to bring to Council.

Hales: OK. Thank you. Mr. Novick?

Novick: Kurt, I understand that one option might be to try to put this proceeding on hold and ask MAC to go through the Central City Parking Review process before making this decision. And I wanted to ask you, does that sound like a viable option? And what are the details of that process? What would the MAC club have to go through in the process?

Krueger: That's a great question. What this project would have to go through in an effort to get to a full approval and a building to be built. This is step one of four steps that could be in front of this body. This is the comprehensive plan map request, zone change request. The next would be the Central City Parking Review. The third would be design review, which on appeal, would come back to this body. The fourth -- there's a tunnel that's proposed to connect these two garages that is proposed under a public right-of-way which requires a major encroachment, which requires City Council approval. The applicant -- and they can probably talk to this better than I can -- chose not to pursue the Central City Parking Review concurrently with this land use proceeding for fear of a procedural risk that you couldn't apply for a Central City Parking Review on a property that's not allowed for what they are asking for. So, they made a conscious decision to put this project first, wait for this decision, and then go forward with the Central City Parking Review. We had many discussions with the applicant about recommending that both be done at the same time. I don't want to speak for the applicant, but I don't see a reason why that effort couldn't occur to help advise this body in this decision.

Hales: Thank you. Bob, anything you wanted to add?

Bob Haley, Portland Bureau of Transportation: I would add that I gave you each a little presentation, just big overview of central city parking. Not germane to this particular case, but some background.

Hales: Just how it works. Thank you.

Novick: Actually, can you sort describe what the Central City Parking Review process looks like, what sort of information they would have to provide?

December 4, 2014

Haley: Certainly. As you probably know, or may not know, central city has many sub-districts in the central city plan for parking reviews. And there are maximums, and depending on what your location and what your land use is -- this site is located in the Goose Hollow sub-district. So, there is -- procedurally, they would come in for another pre-application conference, there would be another public hearing in front of the hearings office. That decision could stand right there, but if appealed, it would come back to City Council. The general approval criteria for this particular review was in 33 808.100. And I will read you the first criteria. There's like three pages; I won't go into all of them. One of them is where you probably will get a lot of testimony, and that is that the proposal will not by itself or in combination with other parking facilities in the area significantly lessen the overall desired character of the area. The desired character is determined by city-adopted area, neighborhood, and development plans and by the comprehensive plan designations and the neighborhood and the base zone itself. In addition to that, there is a criteria for adequacy of transportation facilities, which would be a truly full-blown traffic study. We would be looking at a much more detailed demand analysis of just what is the actual demand of parking that the MAC club has, what is their mode splits, what are their TDM measures both for staff, and what can they possibly do for the future -- for the members themselves? There is a recommended condition in this comp plan zone map amendment that they provide a very detailed TDM plan and parking management plan as part of their application for the Central City Parking Review that has to have the support and approval of Portland's transportation option sections, which houses our TDM specialists. It would be a joint effort between the MAC club and development review and our transportation options to come up with an agreement of what we think our adequate TDM measures and parking management measures.

Fritz: And who does the review?

Haley: Well, it would be part of the Central City Parking Review that would be adopted or approved or denied by the hearings officer and eventually coming to Council. So, you would be the final judge on appeal as to whether or not those parking management strategies and TDMs were robust and adequate enough.

Fritz: But PBOT agrees with the applicant ahead of time on what that is?

Haley: No. We just say as part of your complete application for Central City Parking Review, you must have a TDM and parking management plan that has been approved by PBOT's option section.

Hales: OK. Other questions? Thank you all. We might have others as we go forward. Thank you. Then let's turn next to our City Attorney, because there was a great deal of testimony about the potential bearing of previous master plan approvals on this decision, and we asked Kathryn Beaumont to research that question for the council and report back.

Kathryn Beaumont, Deputy City Attorney: Good afternoon. Kathryn Beaumont, City Attorney's Office. As the mayor has indicated, one issue raised at the prior hearing status of the MAC's 1992 master plan. At the last hearing, the council heard very divergent opinions on this issue. The MAC asserts the master plan terminated in 1995 when the hearings officer approved a zone change by which the main club house and Salmon Street parking garage properties became outright permitted uses in the CXD zone. This zone change did not affect Block 7, which has been zoned for high density residential use since the 1980s. The principal opponent, Friends of Goose Hollow, argues the master plan remains effective and prohibits the MAC from applying for a comprehensive plan map amendment and zone change to facilitate the proposed redevelopment of Block 7 with residential uses, parking, and short stay hotel use. The MAC's argument is based on the zoning code and master plan itself. The zoning code states that when a conditional use approved after 1981 becomes an allowed use, any conditions of approval attached to the conditional use no longer apply. The MAC contends that the clubhouse and Salmon Street parking garage were originally approved as conditional uses, and preparation of a master plan was required as a condition of these

December 4, 2014

conditional use approvals. The master plan was also approved in 1992 in the same manner as a conditional use master plan. When the 1995 zone change approval changed the zoning status of the clubhouse and Salmon Street garage to permitted uses, the MAC contends that the master plan terminated as a matter of law under the zoning code. Additionally, the master plan itself states that it terminates when it no longer applies as a conditional use. Based on this language, the MAC argues the master plan ceased to be effective when the clubhouse and Salmon Street garage ceased to be conditional uses as a result of the zone change. In my opinion, both arguments are plausible and provide a basis for concluding that the master plan is no longer effective. However, even if the master plan could somehow still be viewed as effective, at least just to Block 7, it does not preclude the MAC from pursuing the current plan map amendment and zone change. The 1992 master plan identified two development scenarios for Block 7, and called them possible future uses and phrased the discussion of these scenarios as conceptual only. One of the scenarios described development of the mixed-use project consisting of a possible day care facility, a primarily residential use, club facilities such as parking, and retail uses. The plan expressly anticipated that these possible future uses would need to comply with the code applicable at the time of the development, including the then-applicable approval criteria, standards, conditions, requirements for appropriate traffic and parking studies. In its current application, MAC appears to be doing what it is allowed to do under the master plan for Block 7. And there is no language in the master plan that expressly prohibits the MAC from applying for future comprehensive plan map amendments or zone changes.

Hales: Questions?

Fish: Kathryn, a couple of questions -- and thank you for the very clear legal analysis. So, as I understand your advice to us, the master plan arguably does not apply, but even if it did, it by its terms contemplated arguably the use that's before us, is that correct?

Beaumont: Correct.

Fish: And is there any distinction that we should draw between the mixed use -- let me pull the language, excuse me one sec. Is it relevant to our consideration that in addition to residential and mixed use, there is a contemplated short-term stay hotel? Is that consistent with what was allowed under the master plan?

Beaumont: To the extent that the master plan contemplated retail uses -- although it phrased them as neighborhood retail uses -- but it did contemplate some type of retail use. And under the CXD zoning, a short-stay hotel would be considered a retail sales and service use that is consistent.

Fish: OK. And you've given us an argument in the alternative.

Beaumont: Yes.

Fish: So, arguably, the master plan doesn't apply, but if it did, this arguably falls within the four corners of the master plan.

Beaumont: Yes.

Fish: And so that may have the effect of making my next question irrelevant. But I can't -- I'm still interested in your legal opinion. Because we do have an exhibit in the record in which the MAC club in 1995 in a letter to Planning said they would not discontinue the master plan, they would continue to honor its terms. Is that a legally binding promise or does that have some other legal status?

Beaumont: I think it simply exists as a piece of evidence in the record of that proceeding. The MAC tried to -- in that zone change proceeding, the MAC asked the hearings officer to rule on the status of the master plan. And the hearings officer expressly declined to do that, citing the section of the zoning code that I've referenced and simply saying that it will apply by its own terms.

Fish: But if we were to accept the argument that has been put forth about a broken promise, we would have to first conclude that that promise contained in the letter and the proceedings back in

December 4, 2014

the '90s has some legal significance, and then we'd have to conclude that the application before us is inconsistent with the promise.

Beaumont: I think you'd have to conclude that the promise was the master plan itself, was embodied within the master plan.

Fish: Was embodied in the master plan.

Beaumont: Yes.

Fish: And then we would have to conclude that this is inconsistent with the master plan.

Beaumont: Correct.

Fish: We're going to give the attorney a chance to respond to that later. Thank you very much.

Hales: OK. Other questions for Kathryn? Thank you. Then let's return, Karla, to the sign-up sheet. I think there were seven who signed up and did not get a chance to speak from the original hearing. Let's call them, please.

Moore-Love: The first three, please come on up.

Nicholas Clark: Hello, my name is Nicholas Clark. I respect every one of you and am honored to testify today. My family owns and runs a tavern one block from Block 7. You can imagine that the increase in residents is thrilling. I'm also on the GHFL, the Goose Hollow Foothills League. On October 8th, the GHFL conducted a membership meeting, and members voted 109 to 7 in opposition to the zone change for Block 7. In terms of turnout, that is 116 members. Again, 109 to 7 to oppose the zone change. On November 20th, we had our annual meeting and election of seven new directors. On November 25th, the GHFL board met and unanimously voted against the rezoning of Block 7 from RH to CX. We want to keep our neighborhood consistent with the central city plan and retain the zone RH. We do not want it changed. This block is to remain RH according to the 2035 plan submitted to the city by the GHFL. A change in zoning on this block is against the new 2035 plan. The increased parking for the MAC allows them to satisfy larger conventions and events and have a cushion for peak member usage. However, they have absolutely no data to show that what their parking demand is. The report from Kittelson doesn't cover parking demand. However, if this project makes it through Council, they will have to go through the Central City Parking Review. Why haven't they done this? Money? This is very viable for it. The zone change is contingent on the Central City Parking Review. Also, they spend less annually on security and parking than on the salary of their general manager alone. Norm Rich has told members that one way to keep the members' fees low has been events. These events compete with others. The Convention Center hotels, whose job it is to have conventions and events. Much of the parking that the general manager is looking for is for these events. 67% of MAC members are satisfied with parking. As a neighborhood, we are not only looking at the impact of the MAC on traffic and parking, but the expansion of what we consider the MAC campus. We don't want to see the piecemeal sprawl of the campus. Perhaps under a clearer MAC vision, we could as a neighborhood negotiate. We didn't want the parking garage in the '80s, and we didn't want it in the '90s, and we don't want it now. Are we going to see a similar project on the 20th and 21st where they own property? Is it going to be more expansion? OK, on to the tunnel. The developer changed his original plans early on to include the tunnel. I would certainly have BES -- Bureau of Environmental Services -- take a second look at the report. There exists a combined main coming down from Vista. If this cannot be adequately siphoned around under or over the tunnel, I personally do not want to smell the sewage. In a memorandum dated -- this is another part of the subject matter -- on a memorandum dated December 1st, 2014, Mr. Janik and Mr. Hall responded to the following questions posed by Mayor Hales and the City Commissioners. What impact does the proposed MAC parking have on vehicle queuing at the entrance of the Salmon Street garage? This memo simply asserts anecdotally that vehicle queuing will be reduced. The applicant failed to mention that the traffic consultant Kittelson did not conduct a queuing analysis of any kind. The

December 4, 2014

burden of proof is on the applicant to quantify the impact of queuing at both garage entrances. Please note that Kal Toth has addressed the queuing problem in his submitted written testimony. One significant issue which I will -- [beeping] -- I'm good. Thank you.

Hales: Thank you very much. Good afternoon. Who's next? Go ahead.

Connie Kirk: Hello, my name is Connie Kirk. I'm reading the testimony of Mr. John Beil. These are his words, not mine. Any emphasis represents the punctuation in his testimony. I'm a former member of the Goose Hollow Foothills League and longtime area resident. I submit my reasons for opposing the Mill Creek MAC proposal to rezone Block 7. The MAC is demanding another waiver on Block 7, again ignoring its long-time promises to the city and to Goose Hollow to not build MAC parking where housing once stood. The MAC is a not-for-profit, enjoying tax-exempt status as a social and recreational entity. Although the club has capped membership for years, it is evident to the casual observer that the club is instead expanding its hospitality and parking facilities to enable a convention-like business competing unfairly with for-profit convention centers who do pay taxes or who are supported by the city. Meanwhile, this unstated mission of the MAC is being accomplished at the expense of livability for Goose Hollow residents. And I ask, why? Why should the city agree to the MAC building more parking in the central city zone? After all, over 9000 parking spaces exist in downtown Portland. And less than three-quarters of a mile away from the club, there's a Smart Park with available parking for every MAC member. It's hard to imagine why MAC members can't walk the extra three-quarters of a mile prior to their workout. Isn't the MAC an athletic club? The Timbers have proven that the peak use principle for parking works, and that fans will use other transportation modes -- for example, TriMet. So, why does the MAC not follow suit? Finally, I want to share an experience that graphically demonstrates the MAC's true colors. Some years ago, I planned to purchase the last house standing on Block 7. The woman who owned it had attached a covenant in the property that it was not to be sold to the MAC. About to make a full-price offer after her death, a curious chain of events transpired. The realtor initially confirmed my offer was in, and a few hours later he called back to say that the house was sold to someone else. I discovered that once word about my interest got out, the MAC found a straw buyer to purchase the house, reselling it to the MAC. This perfectly sound house was soon torn down, and the MAC citing unsafe conditions. I believe the MAC deceived the neighborhood and usurped our codes. The MAC needs to understand it is sharing in beauty and infrastructure of our neighborhood, not owning it. Just because the MAC wants to have something, this does not mean they should get it. The MAC has not met the burden of proof to justify the zone change request. The club has not demonstrated they need the parking and hotel suites to satisfy their mission as an athletic club. And the club has not demonstrated that the zone change proposal will do no harm to Goose Hollow residents. Finally, City Council should hold the MAC to its 30-year promise to the city and Goose Hollow not to build more MAC parking on Block 7. I strongly urge City Council to not approve this zone change request on Block 7. Respectfully yours, John Beil. Thank you.

Hales: Thank you very much. Good afternoon.

Casey Milne: Hi. My name is Casey Milne. I live across from Block 7. I serve on the Goose Hollow Foothills League board of directors, I'm a MAC member, and a Friends of Goose Hollow member as well. Previous testimony has identified parking problems for the MAC, Providence Park, Lincoln High School, and the general neighborhood. Regardless of who claims a parking problem, the Goose Hollow neighborhood should be ground zero for alternative modes of transportation and transit-oriented development. A zone change to authorize additional parking at Block 7 is contrary to the city's hard work to discourage driving. This kind of commercial expansion proposed by the MAC to cater to special event guests in a residentially-zoned area defies the comprehensive plan policies. You heard much testimony to this effect on October 1, and I will briefly highlight a few of the goals and policies that would be violated. Specifically, Policy 2.17,

December 4, 2014

goal three and goal four. These goals and policies are aimed at transit-oriented development and away from single-occupancy vehicles. They are designed to protect residential quality, which would be destroyed by the zone change. Further, construction of small amounts will not contribute to the diversity and housing called for by these goals by not providing family, workforce, or low-income housing. Approval of this application would commit the central city for parking for MAC and opens the door for the rest of the city to be covered with unlimited amounts of accessory parking. Friends of Goose Hollow does not believe that after all of the testimony from the neighborhood related to inconsistency with the comprehensive plan that the council can find the policies weigh in favor of this application. But if the city still finds a requested increase in commercial parking spaces for the MAC is justified, it doesn't need to rezone a property in the middle of a residential neighborhood to provide a private club where there are suitable if not better alternatives. And I would like to highlight the map that is here. We have a number of -- in fact, I will finish talking and then I'll point those out. I think I have an extra minute. The offer from Harsch Investments for additional parking at Portland towers is available now. 18th and Salmon, also known as the Butler Block, is owned by TriMet and is already zoned CX. This site would also serve Lincoln High School, Providence Park in addition to the MAC. Tom Walsh, former CEO of TriMet, sees this block as viable and knows how this site could be developed. The city is well-versed in the kind of negotiations that would be needed and could get this done. This property could support affordable housing -- possibly even senior housing -- with the parking that MAC is seeking. This is a very viable option and worthy of action. The city council should continue this application to January 2015, and should direct its expert staff to craft the neighborhood solution to the parking problem rather than approving a piecemeal zone change for the MAC at the wrong location. And this is a combination of Jennifer Bragar and my letters submitted today.

Hales: Thank you.

Milne: Just to point out -- here's Providence Park, the MAC club. Their parking lot. Here is the Butler Block. What you would see is -- you have crosswalks with lights. The other location for Portland towers is here. And just one -- if they were to get all of those parking places and it was filled up with one of the special events, imagine the pedestrian traffic crossing the street and the impact that would have on families [inaudible] 20th and 18th [inaudible] the Butler block, which would be a direct, much easier to give directions to and would also -- [inaudible]

Hales: Thank you very much. Thank you all. Good afternoon, welcome.

Roger Leachman: My name is Roger Leachman, I am a resident of SW Vista and Goose Hollow. This past month, I was elected to the GHFL board. I was a founding member of the neighborhood association in Virginia. We were formed to fight the hospital's plan to demolish a block of Victorian homes for -- guess what -- parking. Why we were successful? Because they decided to be a good neighbor. Fast forward. I found that while we were saving those homes in Charlottesville, the MAC's management were buying one by one the same irreplaceable housing stock on Block 7 and demolishing them for -- what else? -- parking. Let us consider the MAC management's pursuit of parking. It starts with their premise -- undemonstrated, unexamined and without data -- that the MAC needs parking. At my university, they would have failed the unit on logic. Does not phase them though. If you're weak on the facts, you can always misrepresent and obfuscate. Example. The mayor astutely asked regarding the proposed tunnel, what about the sewer? Mr. Janik, I quote directly, there is no sewer in that street. Bull feathers. There is. It's terracotta, and it was built in 1891. Mr. Janik told a fib or was inexcusably ignorant. Example. In the recent memo, they reassert vehicular queuing will be reduced. There is no data. Kittelson did no queuing analysis. So, it is wishful thinking or flim-flam. The burden of proof was on them, it was not met. The MAC management's pursuit of more parking is a want, not a need. Nor do they have a right to more parking, as Ms. Frugoli's memo of the October 24th established. The MAC management cannot

December 4, 2014

even demonstrate a want on the part of their members. Their own surveys indicate a comfortable majority satisfied with their current parking. So, the management misrepresents the desires of their own members just as they attempted in every venue up to now to misrepresent the position of the neighborhood until they could do so no longer. We had more MAC members testifying here on our behalf than they did. Fact, not fiction. What's the size of the minority of the MAC membership who might want more parking? No one knows. No data, just anecdotes. Whatever this minority's size, though, I suggest they are not fixated like the MAC management on rezoning Block 7. They would be just as content with the MAC's parcel on 20th or 21st, or the Harsch proposal which Ms. Milne already described to you. It is a tiny, tiny group within the MAC consisting of the management that pushes for the breaking of their promise. The MAC management seeks to betray the covenant it made to Council before Mr. Lindberg and the rest. Council then saw the pattern, and said their purpose was to hold the MAC to it. The only question remaining for the neighborhood is whether or not we will experience an ultimate betrayal. I hope not. Thank you.

Hales: Thank you. Good afternoon.

Jerry Powell: Mr. Mayor, Commissioners. I'm Jerry Powell. I live in one of four small Queen Anne houses across the street from Block 7 at 1926 SW Madison Street. Well, I guess that means I'm biased. But I'm also a professional planner, as most of you know, and I've been working in the public domain for 40 years in that capacity. I'm also a 40-year resident of Goose Hollow, a Goose Hollow Foothills League director, a former planning chair, and a 25 year member of the MAC. That also means I'm conflicted. What you have before you is a PAPA, it's a post acknowledgment plan amendment. Yeah, it's also a zoning change, but the really significant part is the post acknowledgment plan amendment. It's also interesting that it started out as a quasi-judicial hearing in front of the hearings officer, who applied a certain set of criteria for his decision. And it's now, as I understand it, a legislative issue which has a completely different set of criteria. Generally, when a PAPA has been proposed, it's been in a fairly simple situation. Should we have a golf course or should we have exclusive farms? Should we have exclusive industrial or should we allow employment industrial? Pretty easy things to decide, mostly within the same category of land use. This isn't that. Research has shown that only once has there been a residential commercial PAPA proposed in Portland. It was about five years ago. In 1999, someone on SE Belmont wanted to develop commercial use and he had a residential property. He successfully got the change to a commercial use. Today on that site, there is a food cart pod, a surface parking lot, and a CD store. That change from a plan that had been vetted and continually proved through 30 years of comprehensive plan experience was changed to something else in the wisdom of the council -- and not to be critical here, but it's now undevelopable. The concept that that developer had didn't work. Now, what do you do with it? Just pointing out that PAPAs are unusual, they're difficult to get, and that's for a reason. The PAPA requested here is to allow a plan amendment that most certainly will allow new uses that will conflict with particular values in the comprehensive plan. [beeping] Ken Helm admitted that, particularly with respect to goal six. When you consider the balancing act language in Title 33, that is ignored because there were two projects, really, proposed. One is the background situation. RH zoning. It would allow a building of a certain size. [beeping]

Hales: Go ahead and finish up.

Powell: OK. The other one is the proposed project, CX zoning. Again, limiting voluntarily the building to that same certain size. Yet, there's a difference. Mr. Helm's decision and the staff analysis preceding that concentrated on the similarities between these two projects. Naturally, you've got the same residential project, you're going to have very, very similar impacts. What's the difference? The difference is the parking. Steve Janik's proposal -- his cover letter for this proposal admitted that same thing. He said the difference between these things really is the parking. Now, that is not just a small issue, it's the issue.

December 4, 2014

Hales: Sir, you've used your time. I just want to get you to close your -- that your closing thought?

Powell: Actually, the closing thought that in terms of a legislative issue, you have a much steeper path to tread. It requires that all of the goals be satisfied, not a balancing.

Hales: Thank you. Welcome.

Anita Sande: Good afternoon. Dear Mr. Mayor and members of the city council, my name is Anita Sande. I live downtown and frequently visit my parents who live in Goose Hollow. I have plenty of experience accompanying them on foot through their neighborhood. My parents are in their 90s, and my dad walks with a walker. They cannot cross the street quickly. They also cannot jump out of the way of distracted or hurrying drivers. It is challenging and sometimes scary that cars fly by them so close and so fast when they are walking right around their home. This is particularly noticeable around the entrances to the MAC club's parking structure, where drivers are intent on where they are headed and not particularly focused on the pedestrians who share the streets and sidewalks. It falls on my parents to avoid them, as the drivers are often unconcerned or unaware that my parents are even there. Every car entering and leaving the MAC club's parking structure has to cross the sidewalk. Bringing more MAC club parking into their residential neighborhood would bring more congestion, more pollution, and most importantly, more risk to the pedestrians of Goose Hollow. One of the things that makes Portland famous is its urban growth boundary. To get permission to build its existing parking structure, the MAC club entered into a parking growth boundary, specifically, that no parking would be built on Block 7. The MAC club has other options for expanding their parking that would not have such a negative impact on the heart of the neighborhood. Let them put their parking near the soccer stadium, where it will be good for both fans and the MAC club. But please do not tear up the heart of my parents' neighborhood with any more parking lots. It's a residential neighborhood, let it be residential. Our city is proud of our urban planning and the livability it fosters. In that spirit, please vote against rezoning Block 7. Voting no for rezoning Block 7 equals voting in support for the livability for the heart of Goose Hollow and its residents, like my parents who call it home. Thank you for your thoughtful consideration.

Hales: Thank you. We have one more, is that right?

Moore-Love: Yes, Harvey Black.

Hales: Good afternoon.

Harvey Black: Good afternoon, may it please the members of the city council. Hi, I'm Harvey Black, I live at 1132 SW 19th Avenue, and I'm the real party of interest in this matter. I am a member of the Multnomah Club, the GHFL, and am the chair of the Friends of Goose Hollow. I submitted my written testimony to you today, and my one -- I submit the memorandum and then hit the high points. One bit that is not in my written testimony is my story of getting a parking permit from Multnomah Club. This is just the day before the initial hearing in this matter. I went over there, and I said, how many permits do you get per member? He said, four, but if you really need more, you can get them. So, there is the parking management plan of the Multnomah Club. The MAC management says that they need the parking and they'd also like the apartments. They had other viable alternatives. Five years ago they received an offer from Harsch Investments that owns the Portland towers across the street to have long-term leasing of the additional parking that they have in there, and they would also refurbish some of their apartments so that they could have rental units. The MAC never even responded to that. In accordance to the letter that is in the record here from Harsch Investments to the city council, it's still open. I want to address whether the master plan is in effect or not. Because I haven't seen her opinion, I will not argue with City Council. However, the MAC cannot now claim the master plan is no longer in effect. In law, it's called equitable estoppel. In other words, they made the representation as shown in Steve Janik's letter in '95 and the two letters from the then-president of the MAC in '95, one to the GHFL and one to the

December 4, 2014

city saying we acknowledge our obligations, including our management plan, and we will keep the master plan in effect. This was done because there were some questions at the time that the rezoning that they were going to get on their clubhouse and garage would cancel the master plan. And so they assured the parties, and when you make assurances like that in order to achieve something -- the rezoning -- you are estopped or you cannot come back later just because you want a different result. You can't say, eh, no longer in effect.

Hales: Great, thank you.

Black: And I think that I would ask that this hearing be continued to -- pending the results of the Central City Parking Review asset as forth in Ms. Frugoli's letter. That review will see whether the MAC actually needs the parking.

Hales: Thank you. Thanks very much. OK, I think those are all of the folks that signed up. But I do want to give legal counsel for the Friends of Goose Hollow an opportunity -- as I mentioned -- to come up and make any critical points that you think haven't been addressed or clarify anything that we've heard in this process, both at the previous hearing and today that you want to emphasize.

Jennifer Bragar: Thank you, Mayor Hales and Commissioners. Jennifer Bragar representing Friends of Goose Hollow and Harvey Black. As you've heard over the past two hearings on this matter, Friends of Goose Hollow has raised much question about rezoning a residential use to cater to single use parking, and shown that it's inconsistent with the comprehensive plan. We agree with Commissioner Novick's recommendation and suggestion that the CCPR should be done now, before the zone change, so that all information is on the table. We've argued that from the beginning to the hearings officer, and we think that it only makes sense. You know, like everyone has been saying today, a zone change is a special thing and when you start to do conditional use zone changes, it's just going to add more muddle to an already procedurally confused situation about the status of the property. And what happens if the CCPR comes back with some other outcome and you have this condition hanging out there? It's just -- it doesn't make logical sense to rush ahead now without having all of the facts in front much you. There have been questions about the master plan. It does have a long and sordid, complicated history. I think that you have heard and you've seen in the written testimony that has been submitted that there was support by the neighborhood for the zone change in 1995 based on the representations of the MAC during that application process. It is certainly plausible to read this record and this agreement as a contract of sorts between the City, the neighborhood, and the MAC to govern all of the MAC's property. And you can read about that in the submittal I put in today about the 1991 decision and then the staff report for the 1995 decision. It's very convenient to call the master plan a master plan, because there is a conditional use master plan framework -- and the hearings officer had said this in its review that, you know, hey, this is what they submitted. It looks like it, this provides really good criteria for me to march through, I'm a hearings officer, I like this, I'm going to analyze it through this lens. There's nothing wrong with that. But what the master plan actually represents is everything that's in that first transcript I submitted to you the last time. It's the Council hearing where people recognized that the neighborhood was on fire and that something needed to be done so that everyone could live together. And notwithstanding that information and how the current proceedings are going, the Friends did in good faith meet several times with the applicants to try to come up with a solution here. And PBOT staff has done a great job of starting those discussions. We think that Friends has presented some viable solutions that might take a little more time to develop, but actually represent a neighborhood solution that can be crafted to provide a whole lot of opportunity for a lot of institutional users out there. So, combining those further discussions with CCPR review and a delay of this decision -- it just makes sense. There is no rush for this. If there is a problem, let's solve it in a methodical way that makes planning sense. Thank you.

Hales: Thank you very much. Questions?

December 4, 2014

Fish: Please. So yeah, I appreciate your point. If we were to say the master plan is terminated, that's the easy case. But the harder case is, in my judgment, is to say that the alternative argument that Kathryn Beaumont gave us, and I want to give you a chance to answer it. And that is, assuming that the master plan had some legal effect, in what way do you believe that the MAC's current application for comprehensive plan map amendment and zone change for Block 7 is inconsistent with the terms of the master plan?

Bragar: It's inconsistent because it plans for 225 parking spaces for a commercial use that requires a commercial zone change. The text of the master plan actually describes the possible uses scenario, or the potential uses. It describes this will be developed consistent with RH zone. And that, to me, reflects what was going on with every word that everyone had said all along, which is, we're not going to rezone Block 7. We are agreeing to that. So now, here we are trying to rezone Block 7 to allow the commercial parking. And that's the inconsistency.

Fish: Fair enough. Is there specific language which says in the master plan that the MAC would not be eligible to rezone -- to seek a rezoning? I understand your point and I'm looking at --

Bragar: I think on page 17 or -- it's attachment five to one of my letters here, on May 20th, which is page 21, how it is marked. But it says, the club owns most of Block 7, two parcels -- I mean, I can read this to you, but if you read it in context, it says, we're going to develop consistent with RH zone. And to rezone it to commercial is not consistent with RH zone.

Hales: Other questions? Thank you very much. OK. Now, we'll provide the opportunity for legal counsel for the applicant to do rebuttal. Come on up.

Steve Janik: Good afternoon, members of the city council, Mr. Mayor. I'm Steve Janik, representing the applicant, Mill Creek, and with me is my associate Damien Hall, and Sam Rodriguez. What I would like to talk about the responses to the questions that you raised from the last hearing. We submitted a memo to you December the 1st, which gave you a detailed explanation of the issues you raised. But I just want to highlight a few things. It's been argued that if we add these additional parking spaces, it will cause a queuing problem at the entrance off of Salmon Street. And it was also argued by our opponents that Kittelson never studied that. That's not accurate. In fact, if you go to a prior memo we submitted that was dated December 1st, we outline for you on page three Kittelson's observations where they basically said what causes the queuing is when they have to turn people away. And with the additional parking, it would flow more efficiently, and there wouldn't be a queuing problem. I wish Commissioner Novick was here, because I know he was interested in this. The issue was, why didn't we apply for a CCPR at the same time? That was a legal analysis. We submitted -- and it is in the record -- a memo of March 21st in which we point out, here is the conundrum that we have. Nothing in the code allows you to apply for parking in a zone where parking is not allowed. In fact, the code says that -- if the code is silent on something, then it is prohibited. So, faced with that, we then look further in the code and we found another code section that says an adjustment, conditional use, or other land use review -- and that includes CCPR -- may not be requested in order to allow an exception to the regulation in question. The regulation in question being its current zoning. So, our concern with filing concurrently is if we were so fortunate to win those approvals from the city council, our opponents would have a very solid argument on appeal that there was a procedural error in granting the CCPR at the same time, and we would then have to come back and start over. There's no harm in not applying for the CCPR because anything you do today is subject to the CCPR being ultimately approved. Commissioner Fish, you asked a question as to what can actually be built under the current regulations. Currently, as we've outlined, 260 to 280 apartments and associated parking can and will be built as an outright permitted use. None of the MAC uses are outright permitted uses. A portion of the MAC uses by square footage can be approved, but with only a conditional use, which has standards that are very similar to the standards we're dealing with here today. And then another

December 4, 2014

component of the square footage of the MAC uses cannot be built at all, even with a conditional use, because there is a cap of 20% on the amount of square footage that can be covered by the conditional use. So, that's the situation. So, the choice before you today is really whether the city is better served by the permitted apartment project, or whether it is better served by that project plus the MAC parking and overnight units. The evidence in the record is very strong both anecdotally and professionally that the MAC parking that we are seeking will reduce traffic congestion and the excessive demand on on-street parking. That's demonstrated not only by Kittelson's report, but by the testimony of neighbors who testified in favor of this. Kittelson's report pointed out that five months out of the year, every day, 200 cars are turned away during the peak periods of time. That's the problem. Where do we get the 225 stalls? It's approximately equivalent to the people that are being turned away. And that is a fact. That's not a supposition. Kittelson did the studies that prove that in their report. It's also interesting to note the number of people living in Goose Hollow responded to the same effect. There was a 2013 survey done by Goose Hollow neighborhood association and asked the neighbors, what were they concerned about? Of those who park on street, 68% of those permit parkers say they experience difficulty finding a parking space twice a week or more and 40% say every day. They did a question of which parking initiatives do the majority of residents moderately or strongly support. What they supported was required dedicated parking in new high density residential/commercial structures; 81% of the several hundred respondents checked that box. One neighbor of Block 7 said they the MAC overflow residential parking on the streets every day of the week and it's getting increasingly worse. Now, the staff and hearings officer both agree there is a need for additional parking. They are the only impartial objective evaluators of the evidence in the record, and they have seen the entirety of the evidence. One thing that is really important for you to understand is that the hearings officer imposed some very important and powerful conditions on this approval. The MAC has to come up with a parking management plan and a transportation demand management plan. That is not required now. This is going to give the city far more regulatory capability to deal with traffic created by the MAC club and the parking and how it's managed by the MAC club. In addition to that, those plans have to have 20-year mode split goals spelled out. In addition to that, they have to be standards to measure and whether those targets are in fact being achieved, and there have to be enforcement mechanisms to ensure that the targets are going to be met. That is a far more powerful situation for the city to make sure that traffic and parking are managed in the best way possible by the MAC club as we go forward. In addition, I think you're well aware that we're also going to need to get the CCPR that will follow on to this, and then we have to go through design review as well. Those two plus those conditions will assure that this project can be compatible with the neighborhood. Now, very briefly, a couple of points that people who just testified raised. Number one, special events at the MAC club are declining, they're not increasing. One of the governors on special events is that we have inadequate parking. The Butler Block as an alternative site. We don't own that. We just simply don't own it and have no capability to buy it. And here's land that we do own that can be connected with a tunnel and avoid the traffic circulation that might occur with the Butler Block. Jerry Powell has somehow argued that this is a legislative proceeding and that the burden is higher. This is not a legislative proceeding. Legislation is when you propose it. You're the applicant. This has been quasi-judicial from day one. The Harsch proposal. Five years ago, there was a lunchtime meeting with the manager of the club and the discussions ended. There's nothing more to it than that. On the master plan. We very much obviously agree with the City Attorney's interpretation and analysis. The fact of the matter is, number one, the master plan does not say that Block 7 will always be used consistent with the RH zone. What it says is that a possible future use is to have mixed use residential retail neighborhood and MAC club uses including parking. So, even if the master plan still pertained, we are consistent with what that master plan says. What we said in our

December 4, 2014

letter in 1995 -- before the zone change -- was we analyzed with the staff whether the then-1992 master plan would continue. My letter says very explicitly, the master plan will continue until it is terminated. And what the City Attorney's analysis shows you is that when the uses that were subject to conditions become outright permitted uses, that terminates the master plan. In that proceeding in 1995, there was no reliance by the hearings officer or the city on the continued existence of the master plan as a pre-condition to the rezoning. That simply is an inaccurate statement. If you go read what the hearings officer's decision was, that's very clear. What the hearings officer held was the application for zone change included the statement that the master plan and its conditions will remain intact after the zone change. It is not necessary for the purpose of this review to determine the general status of the master plan. Whether or not the master plan continues in effect need not be decided in order to approve this zone change. There was no reliance -- as Mr. Black has argued -- by the city on the continuity of the master plan. In effect, the hearings officer basically said that the analysis in my previous letter he didn't agree with -- or she didn't agree with, sorry. What the city relied on coming out of the master plan was that section that talked about the utilities and the capacity of the public services. In that zone change case, we were conforming the zoning to the new comprehensive plan that was adopted earlier by the city council. And in order to do a conforming zone change to plan, what you have to show is that there are adequate public services. That was the crux of that case. It didn't go beyond that. Finally, Mr. Black argues that somehow the city is estopped -- it's an ancient legal concept -- the city is estopped from changing the zoning on this because of a prior reliance on the master plan. Unfortunately, that's wrong. The city cannot be bound by an estoppel in the exercise of its governmental and regulatory authority. You can't estop the government. You can in certain contractual situations -- private transactions, basically -- but you can't in terms of the exercise of your governmental functions. So, I guess what it comes down to is what I said a few minutes ago. It's, which of these two alternatives do you believe is going to be in the best interest of the city and the neighborhood? You have the staff supporting it. You have the hearings officer saying that out of 105 applicable comprehensive plan goals and policies, the project we are proposing will equally or better serve those policies to the tune of 104 out of 105, and the other one is slightly less. That, to me, is a very compelling analysis that shows why granting a comprehensive plan change and zone change is not only permitted, allowed, but it's better in terms of accomplishing those 104 policies in the comprehensive plan. So, your choice is you can have the apartment building without the MAC club parking. That will happen. It's outright permitted. Or alternatively, you can have the benefits of reduced on-street parking demand, reduced traffic circulation by allowing the MAC club proposed uses to be included in that building. If the apartments are built, as permitted under current zoning, there will not be a future opportunity to have parking tied into the existing MAC club garage through a tunnel. There is simply no other site when that can occur. So, all of the benefits of keeping the cars from moving around from one block to another block -- even if there was another garage to be built somewhere else -- would be lost. We respectfully request and urge you to follow the recommendations of the staff and the hearings officer and enable this project to proceed with its intended benefits of reduced traffic and improved on-street parking capabilities. If you have questions, I would be happy to respond.

Hales: I've got one or two. One is particular, I guess, the other more conceptual. So, you don't believe that it was legally possible for you to apply for a consolidated application that would consist of the comp plan and zone change amendment and CCPR and design review?

Janik: Mayor Hales, my analysis was that it's far too great a risk. Possible, but risky.

Fritz: Did staff tell you that you could not?

Janik: No, staff didn't -- couldn't answer our legal arguments to our satisfaction, and we had to take the responsibility to advise the client. Because what the client was facing was if we went

December 4, 2014

ahead and applied for the CCPR at the same time as the plan and zone change and we got both, and we had a consolidated proceeding or record, and we got to LUBA, and LUBA said the code did not allow you to apply for the CCPR at the same time, LUBA would then remand it back to the city, and we would have to go through yet another proceeding to untangle that. And given the fact that we ultimately have to get a CCPR, it didn't seem prudent to take that risk.

Hales: So that was a judgment call on your part.

Janik: Right. And if you read the code sections, I think you would take pause as well.

Hales: I understand the risk, but there's also an upside to that in terms of understanding what the whole package entails.

Janik: Right. And there was actually a potential upside to the applicant as well to do it both at the same time.

Hales: Sure.

Janik: But I couldn't honestly tell them there wasn't substantial risk. When you read the code sections, I think you can see it.

Fish: Can I ask a question off that point, Mayor?

Hales: Sure.

Fish: Because I think it is a great point. Mr. Janik, your analysis is based on your reading of the code. Is there anything which this Council or the parties could do to alter your risk assessment?

Janik: Not at this point. I mean you could have changed the code. For example --

Fish: I understand that.

Janik: No.

Fish: Why is that?

Janik: Because --

Fish: Why isn't there by stipulation or some other mechanism some way around that you limit your risk?

Janik: You can't change the code by stipulation.

Fish: I understand.

Janik: You can only change the code by a legislative action --

Fish: But someone would have to raise the issue at LUBA.

Janik: Yes, and I suspect the excellent opposition we have will certainly raise that issue.

Fish: Anybody could raise it.

Janik: Right.

Fish: And that's your concern. We couldn't nail it down to your satisfaction.

Janik: No. Any person who writes a letter to you or shows up at a hearing who disagreed with that could take it to LUBA, and then we'd have the issue of whether the council properly changed the rules, so to speak, in the course of a quasi-judicial proceeding, which is another big issue in LUBA.

Fish: Well, is there some other mechanism which would allow us to retain jurisdiction pending that process with you coming back to us?

Janik: Well, you will have jurisdiction -- so to speak -- now, because we have to come before you with a CCPR.

Fish: But that's a separate matter.

Janik: That's right.

Fish: Once we've decided this issue, we're done on that and the appellate writes the appeal and other things kick in. Is there some way for us to take limited action now so that you can pursue it concurrently and we get a second bite of the apple on this matter?

Janik: I don't know any way you could change the procedural rules that way. You are going to get full opportunity to review the CCPR, and we can't go forward with the plan change or zone change unless the CCPR is approved.

December 4, 2014

Hales: So, let me go up to a higher altitude here for a moment, because part of my struggle to make a decision about this case -- I've thought about some syllogisms with other situations. Because this is a novel land use case. You've been in front of the council lots of times on lots of cases. I've been here a time or two on these before. I think this is the first time that I can recall where the issue of a comp plan and a zone change amendment was turning on the possibility of providing parking on an adjacent parcel. Now, I understand that the comp plan is a legal document and applies to everybody, but we also in both the legislative side of our planning process and to some extent in these quasi-judicial cases should take into account the unique situation of an institutional land use, whether it's a college or a hospital or, in this case, a private athletic club. But I'm trying to think of what would the difference be -- how could we decide any differently if Providence hospital came to us and said, we want to build -- we want a zone change across Glisan Street at 47th and we want to build an apartment building there, but we want to build parking underneath it for the hospital. Or if University of Portland were to say the same thing about Willamette Boulevard. So, I know that we don't set precedent per se in these cases, but I'm trying to think of why it would be OK to permit this particular comp plan amendment on that basis and not at least raise an expectation that it would be possible elsewhere?

Janik: Well, that expectation would be a false expectation, because each case would have to be looked at separately under the comprehensive plan policies on its own merits. This is an unusual case. But unusual facts make unusual cases. This does not set a precedent for another institutional user saying, ah, there's an open pathway to get parking through comprehensive plan changes. That is only the case if they can do what we've done here, which is convince the hearings officer, at least, that we equally or better meet 104 out of 105 comprehensive plan policies. That is same set of rules that governs -- as you characterized it -- institutional kind of land-use changes or somebody who has not an institutional but has two blocks next to one another, and the only way they can achieve something is through a comp plan change. It's the same. They're all quasi-judicial decisions that have to stand separately on their own merits. There's no precedential effect.

Hales: I believe that. That's helpful, thank you. Other questions for Mr. Janik?

Fritz: I'm interested in your memo on December 1st asserting that all of the new parking is preservation parking, that none of it is visitor parking.

Janik: Correct.

Fritz: So, your assertion is there won't be any more events that would -- I guess, let me back up. That conflicts with what Mr. Haley just gave us in terms of the four kinds of central city parking guidelines that says that preservation parking is new parking designed to serve older buildings that do not have their own parking supply. Well, I guess your assertion is that it is not adequate, but it's tied to redevelopment of surface parking lots.

Janik: That's a characterization that's not in the code. It's a historic statement about what came about when the Central City Parking Plan concept was adopted in section 33.510 of the code. You can have older buildings with and older buildings without parking -- that you could have older buildings with and older buildings without parking and new buildings without that were in the core part of the city, and that there were surface parking areas. And the idea was that at some point you, could see the surface parking being aggregated up into parking garages, and buildings without sufficient parking could then take some of that parking on a long-term basis and use it. But if you go to the code, there is simply no statement in the code this is only for historic buildings or it's only for buildings totally lacking parking.

Fritz: What would we be preserving under this scenario?

Janik: You're preserving the viability of the building that exists. That was the concept behind preservation parking.

December 4, 2014

Fritz: How many -- does the Kittelson study as to when there are these 200 needed spaces? Is that correlated with when there are special events at the MAC?

Janik: No, it is not correlated with that. If you look at the record, we have in the Kittelson report a 12-month analysis of what capacity the garage is operating at each and every month. And it shows that in five or six of those months during the year -- and I can't remember which ones they are -- garage is at or exceeding capacity --

Fritz: Did it look at was there an event in the neighborhood or at the MAC at that night at that time?

Janik: Well, this is a month-long picture.

Fritz: Right.

Janik: So, there may be events within that month. But you have during the entirety of that month at peak hours cars being turned away.

Fritz: Right. And I know from my own experience that there are event months where there's a lot of things at a lot of different events, and I go to about five of them a week in the normal course of the --

Janik: Well, Commissioner, I can't recall the report that well -- quite frankly -- to tell you if there was a correlation between a month-long study and events.

Fritz: I guess my question was, was that issue looked at?

Janik: I can't recall.

Fritz: OK. Thank you.

Janik: But I can tell you that events have been declining. That's in the record. And they are now at a lower level than they were before. And the parking analysis from 2012 and '13 shows these problems.

Fritz: And it is part of the reason for asking for it so that the events can go back up again?

Janik: No. No -- [laughter] [applause]

Hales: Folks, hey, hey.

Janik: If you would like someone from the MAC club to tell you that, they can come up and tell you that.

Fritz: I appreciate your answer. I'm also looking at the -- I'm struggling with the concept of not being able to apply for all of the necessary reviews at the same time. We do that routinely on many different --

Janik: Well, Commissioner, maybe I could add one other thing there. There are two things. We couldn't apply for a design review today for a building that isn't even allowed. I mean, it's the same kind of concept.

Fritz: You couldn't apply for it before, but you could apply for it concurrently.

Janik: No. The code has a provision that -- the only clear provision is you can apply concurrently for a comp plan change and a zone change if the zone change is congruent with the comp plan change. We could not find clear language in the code that said you could couple any other land-use reviews with a comp plan change.

Fritz: OK.

Janik: And that's the problem. And on a personal note, I have to tell you, a client comes to you and says, can we do this? That was the question. And I said, you do that at your peril, because we can't get a clear answer. And the city is in no position -- the city can give us their view but the city attorney is not going to say I give you an ironclad legal opinion that you can do this. And that's the problem.

Fritz: OK. And maybe that is a structural problem that we need to look at when we do the zoning code changes as part of comprehensive plan analysis.

Janik: You could fix it.

December 4, 2014

Fritz: Because part of my concern is I can't say yes to this without looking at the parking analysis. But I guess in some ways that's good for us, because we are then going to be looking at the comprehensive plan. Do we want commercial zoning on this block? That's the issue that we are faced with.

Fish: Mr. Janik, I have a couple of questions. Commissioner Fritz asked you about the intended use for the parking, and you were going to bring someone from the MAC club to talk about whether it was intended for events and things of that nature. Is there a potential condition of approval that we could consider that would memorialize that?

Janik: Yes.

Fish: That's question number one.

Fritz: I think that would be hard for BDS to enforce such a condition of approval.

Fish: We'll come back to that. I don't want to beat a dead horse on the master plan issue, but I just find it compelling and hard to sort out, and so, I just want to ask you a couple of questions that I posed to other counsel. Just assume for a moment that the master plan did apply. And you made the argument that it doesn't. But if it were to apply -- and you actually were the author of some of the correspondence back then, it's fortuitous that you are here --

Janik: You're testing my 20-year-old memory -- actually, 22.

Fish: You know, I look at the June 30th, 1995 letter signed by Dennis Cusack addressed to Planning. It is not the club's intention to discontinue the master plan. We intend to continue to be bound by and observe the master plan and all of its conditions. Take that as the point of departure. And then your submission of November of 1995, in which you state development of residential housing with some commercial space on Block 7 is a permitted use under the RH zone as a possible future use under the master plan. Where in the documents does it state -- if anywhere -- explicitly that the MAC club reserves the right to seek a zone change?

Janik: Nowhere in the documents does it say that because there is no need to say that. You always have the right to seek a zone change because there's nothing in here that says you can't seek a zone change. And there's nothing in here that commits the block forever to RH. Well, I mean, why would you think of bringing that up in 1995 in anticipation of getting the clarity you're now asking for? I mean, it just doesn't make any sense. Because there is no prohibition. You can always ask for a zone change. You might not get it but you can ask for it.

Fish: Well, the flip side is, why would all the documents explicitly anchor the expectations around the RH zone? I understand your argument, that there was nothing that said we waive our right and it was implicit therefore that we could always seek a zone change. But I'm just struck by the fact that it was written in such a way that perhaps a layperson might think that the commitment ran to the zoning and had some impact on the question of whether the zone could change.

Janik: The commitment didn't run to the zoning. You don't find it in here a commitment that runs to the RH zone. What you find in these letters is an effort on the part of the staff and myself and analyze what would be the impact of the master plan as we went forward. And you could see that Elizabeth Norman, the hearings officer, didn't agree with this. And she's the authority. These are exchanges of information trying to figure it out.

Fish: Pretty good memory.

Hales: Further questions for Mr. Janik? Thank you very much.

Janik: Thank you.

Hales: And do we have any further questions for staff before we begin our deliberations here?

Novick: Actually, Mr. Janik will probably say this wouldn't totally reassure him, but I'm curious. Given the idea of the threat of a LUBA appeal if you were to pursue a Central City Parking Review simultaneously with this proceeding, I was wondering if we could ask counsel for the appellant if she could volunteer if they at least might agree not to do that.

December 4, 2014

Janik: Well, Commissioner, I'm a little worried about that because she can't bind every single person who's written a letter or testified here. So, if we're boxed into that, then one person can file the appeal.

Novick: I understand, but the appellant is represented by a lawyer --

Fish: Before you go, Mr. Janik, when might that process be complete?

Janik: Which process?

Fish: The parking analysis. If it was done concurrently, if you launched it today, how long would it take before someone had a right to consider an appeal?

Janik: Well, someone will have a right to consider an appeal of this case fairly soon.

Fish: I understand.

Janik: The CCPR review will probably take 120 days to do the review, depending on staff time and all that. And then 21 days after a final decision.

Fish: So, 140 days. Under an aggressive timeline, within 150 days, you'd know whether someone had appealed.

Janik: Yes, under a separation scenario -- which we're under now -- barring any scheduling difficulties. If it gets appealed to the council, it might take longer. But that's a rough time frame.

Fish: OK.

Hales: Thank you. Ms. Bragar, did you want to answer Commissioner Novick's question?

Bragar: Yeah. Thank you, Commissioner Novick. I understand where the commission might be heading, and I'll be happy to talk to my clients and decipher Mr. Janik's concern about concurrent application. I think we could certainly move towards some agreement that the procedural matter of concurrently applying for CCPR review along with this comp plan amend zone change wouldn't be an issue we would raise at LUBA. We'd certainly look to the substance of any CCPR application and review. But the technical issue of applying wouldn't necessarily be a hurdle for us.

Fish: Mr. Mayor, may I just ventilate a couple of issues?

Hales: Do you need Ms. Bragar?

Fish: Yes, why don't you stay, and Mr. Janik come up? Just so we have the benefit of both lawyers. And we'll put something in between you if necessary. [laughter] So, what's the clock under which we're operating under this proceeding?

Beaumont: We have no time limit under state law.

Hales: Right. It's a comp plan amendment.

Fritz: We could remand it back to the hearings officer and require those concurrent review before we make a decision, right?

Beaumont: There is no express authority in the code for a remand. It's simply not an option the code contemplates.

Fish: I just want to walk through a couple basic propositions here. So, we're not on a clock. Could we, for example, continue this hearing for the purpose of the parties to negotiate an agreement, as Commissioner Novick proposed. If such an agreement is reached, have that process go forward while we continue the proceeding. And at such time the parking analysis is done, and assuming there is no appeal, have it come back to us as a consolidated matter? I'm just asking. Mayor, you said this is a unique proceeding.

Hales: It is. I think I know the answer to your question, but I think I'll let the City Attorney answer it first. I think the answer is yes, but.

Beaumont: I think you -- well --

Fish: I may not have stated it very elegantly, but do you get the drift?

Beaumont: I do get the drift. What's a little bit difficult is that a comprehensive plan map amendment and zone change comes to you as a recommendation from the hearings officer. So,

December 4, 2014

only you can make the final decision on that. A Central City Parking Review is a quasi-judicial review that would only get to you by appeal.

Hales: Right. And similar with design review.

Beaumont: The same with design review. So, separate Central City Parking Review by the hearings officer normally wouldn't come to you, except on appeal.

Fritz: It's appealed to us, right?

Beaumont: It's appealed to you, but it wouldn't come to you unless appealed.

Fritz: I can't imagine a scenario in which it would not be appealed.

Fish: By the way, if it didn't get appealed, that would have some impact on our deliberation as well. That's just another trigger.

Novick: Well also, I mean, even if it were appealed to us, if we decided we didn't want to wait for an appeal, we could still read it, right?

Fritz: It could be part of our deliberation if we were to continue this matter.

Beaumont: I think one way it could get back to you is if the Central City Parking Review was applied for as an amendment in adjunct to this application, so that it would come to you as part and parcel of that application, ultimately.

Fish: Mr. Janik, you said earlier that your client has two options, and you described the difference between the two -- as of right, and what he's seeking through this proceeding. And you hear what we're struggling with, trying to think through a number of scenarios. Does some creative way of linking our determination on the comprehensive plan amendment before us and the CCPR that gives us a chance to consider them both concurrently that addresses the concerns you have about getting put in a legal peril? Does that create a time problem which in effect would have your client change his view about the relief he seeks? I mean, are you under the clock in terms of his development?

Janik: I need to talk to my client, but I can tell you time is important. But we need to evaluate what you're thinking here about what it might do for time. The other big issue is that we don't want to be wasting our time if we're not going to get a comp plan change and zone change, and we won't know that until we go through the CCPR. But you appeal to be linking the two together, so might have to deal with that uncertainty and just go through the CCPR process under some kind of revised --

Fish: You say wasting your time. You mean, whether the council has decided that regardless of the outcome, you won't get the relief?

Janik: Exactly.

Fish: I've been on the council long enough to know that I would never bet a dollar on however any of these things come out. But you may be more prescient.

Janik: I'm not a betting person.

Fish: I mean, I'm constantly surprised. Because I do think people keep an open mind and try to get the right outcome.

Hales: OK. Do we have any more questions for these two fine people, or should we try to make a decision?

Janik: I'll confer with my client to see what they're thinking about this.

Novick: By the way, colleagues, I have to say that reference earlier to the smell of sewage now seems prescient because I just saw an email that said there is a combined sewer overflow.

Fish: Commissioner Novick, I appreciate you putting that on the record of a land use proceeding.
[laughter]

Hales: Thank you, Mr. Janik. Thank you both.

Fritz: Should we call a five minute recess for them to caucus?

December 4, 2014

Hales: I think we should allow Mr. Janik to talk to his client and take a five minute break. Call it a mercy break as well.

At 3:39 Council recessed.

At 3:48 Council reconvened.

Hales: We'll resume the council session. Might I ask that the relevant folks return to the room -- including one member of Council who I think will be back in a moment -- and we'll try to move forward here. I'll let Kathryn round up some strays. Play sergeant of arms as well as City Attorney.

Fritz: The key players I notice are not here, so we should probably wait for them.

Hales: We'll wait for them for a moment, but I wanted them to know that we're ready. No one wants to go outside right now, anyway. So we're completely ruined. It's pouring out there. See anybody out there? OK, thank you. So, here's what I would suggest. Let's first ask the two legal counsels if there's anything useful that Council ought to hear from your deliberations for the last few minutes. If not, that's OK. And then, I should call on each of us to talk a little bit about where we would like to go with this case. Wanted to give you a moment to confer with your client. Not much of a moment, but at least one.

Janik: We just wanted to outline the impact of what I think you're thinking about, which is to continue this proceeding until there's an outcome for you to look at or hear under the CCPR. We've been at this a couple of years now. We think that our estimate of the amount of time for the CCPR was too short given the amount of work that has to be done up front by the traffic engineers before there is an application. So, it's more like six to eight months. This is probably going to push the project out another full year or year and a half. Part of the reason for that is we're in a vulnerable position right now -- we had planned to work on the design if we got a comp plan change and zone change. Now, we don't have that comfort, so we can't really spend the two or three million dollars on the design of the building until we get to the end of the CCPR process, and hopefully it would be successful. So, what we're being asked to do and which we're willing to do is to the risk money for the CCPR and that process. We would still very much like to get some indication today -- certainly not binding -- that we're not just going through an exercise that is going to be ultimately unsuccessful. But again, we're laying out the facts for you as we see them. We're willing to work with you, so that's where our position is.

Hales: Thank you, that's helpful. Anything you want to add?

Bragar: Our offer still remains.

Hales: I think it would be helpful to all concerned and certainly for our deliberations for each of us to talk about what our opinion is of the options in front of us and the issues that we want to comment on. Commissioner Novick?

Novick: I don't have a firm opinion based on how I would vote based on the information available today. To me, it would be valuable to go through the CCPR process and look at the information that comes forward in that process -- documentation of current and projected post-development mode shares, mode share information including targets, investment, educational strategies, work requirements, enforcement mechanisms -- all of that stuff. So, I think that my decision could well turn on the information presented in that proceeding. That doesn't mean necessarily that I would feel bound by what the hearings officer decided in that context, because they're two separate decisions, but I think I would benefit me to have additional information.

Hales: Thank you. Commissioner Fritz?

Fritz: I'm finding it difficult to see a parking review that would convince me that commercial parking near light-rail and in this very congested area would be a good thing. I appreciate residential zoning off the block, I don't see that we get all that much more compliance with or

December 4, 2014

furtherance of the comprehensive plan by changing to a commercial zone, and I'm very reluctant to do zone changes that have multiple conditions attached which then get really difficult for staff to track. If it's the will of the council to go through the parking review, that would have given me more information to make my decision had I had it today. However, I do start -- after having had this process -- I'm starting from the -- I don't know the right verb is, but thinking that residential zoning is probably more appropriate for this block.

Hales: Thank you. If there's ever any doubt that Council members weigh these cases carefully and don't come in with a bias, I think our agonizing over this case should help reassure some people. Because I found this case very difficult to weigh. I wrote down two words that a lot of my thinking on this case turn around. One is possible, the other is assured. I'll come back to those words and hopefully they will mean more when I get back to them. Comp plan amendments are the big event and the rare event in our deliberations on land use cases, and the burden of proof is always on the applicant. You to prove first to the hearings officer and then to us that this is better than what the community agreed upon in the legislative process -- and that's a very high bar. I keep articulating that test in every case that we have, because I feel that's really important. That's the deal that we all have in the land use planning process -- that what's in the code and in the plan is something we can all rely on but every now and then, for the right reasons in a particular case, we'll make a change. My feeling about this particular case is that it might be possible that a building that incorporated additional parking for the MAC club and the short-term units, in addition to the housing that was already permitted on the site, might be as good or better a neighbor than what the base zone allows. But it's not assured. And so therefore, to approve a comp plan amendment and zone change in hope that we'll get to that outcome is very difficult for me to agree to. In fact, I'm not willing to agree to that. I'm not willing to say, "we can hope." This is an institution that has a long history. There's a developer here who does great projects, and I'm sure that the design process with his work and his architect and our careful review and the neighborhood's careful oversight could make sure that we got a really great building. And if I was a neighbor to that site that would be a key consideration to me. Not just the parking issues, but I would want the building that from a design standpoint was a great success and something the neighborhood would be happy to welcome to the neighborhood. So, another bias I have here -- and there are comp plan provisions at work -- is it is fully expected by the city of Portland, including the neighborhood that worked on this comp plan, this site is going to grow a lot of housing. For anyone who is harboring an illusion that it will remain in its current condition, I think that's an illusion. It's supposed to be high density urban housing, it's a block from light-rail. So please, if anyone thinks this is going to be a dog walk forever, you're kidding yourself. It's going to be a high density urban housing project. But the question before us is, should it be that and these other things as well? And that is not assured well enough for me today to agree to the comp plan zone change. But again, as you can tell, I am on the balance on that question. So, Mr. Janik, and your clients, I am saying to you that as a member of this Council, it is possible I could approve this if I saw a CCPR and a design that met and exceeded our expectations. Finally, one side note. Aside from whatever happens on this block, believes, please, please, let's not have any further discussion of a site owned by the transit agency on light-rail becoming a parking garage. I'm not sure what's going to happen down there, but that's not what should happen. Commissioner Fish?

Fish: So, in answer to the question, I have an open mind going through this process, and am continuing to weigh and evaluate the evidence, and I have some factual legal issues that I am struggling with. If any of us had a bias coming into this proceeding, we would have to have disclosed it or someone out here would call it out. I have to say, I'm constantly surprised by the outcome of these proceedings. In part because I very rarely come in having a clear understanding of where my colleagues are, because they come in with an open mind waiting to hear the evidence and

December 4, 2014

the law. The one thing that always stays in my mind is Commissioner Fritz's admonition to stay in my lane, follow what the comp plan and the law says and apply those criteria. And sometimes people in rooms like this are very disappointed with those outcomes and sometimes delighted, but I try to stay in my lane and follow the law and the code. So, in answer to the question of could I ultimately side with the applicant based on the findings of the CCPR, I have an open mind. But I appreciate the mayor saying this is a tough case, because it is without a lot of precedent. These are unusual cases -- comp plan amendments, zone changes in this way. I think we have a -- the bar is high for us to get it right. And that's why in tough cases, we take a little extra time and we struggle because we are trying to get it right. Easy cases -- we can dispose of an easy case in 15 minutes. Sometimes, the mayor signals to parties you don't have to use all your time, just let's open and close the hearing because we can move forward. This is a harder case. I would benefit from the CCPR being completed, and I'm also going to take additional time to go back into the record in some areas that I think we touched on in the give and take here, but I think warrant me going deeper to make sure I understand it and being faithful to the process. For me, the other point worth noting is that there's an as-of-right use which the applicant can at any time choose to pursue. And if this makeshift approach is burdensome, or at some point there's some change to the dynamic, the applicant has the right to move forward. And as Mr. Janik eloquently pointed out, they are quite similar in some important respects. So, I would be comfortable with the approach that we're trying to craft, and I would continue to maintain an open mind.

Hales: Thank you. So, is someone ready to make a motion based on that discussion? I turn to you, Commissioner Fritz, because you just might be able to do that.

Fritz: Well -- thank you. I'm wondering if the applicant wants to tell us at this point what you -- are you still wanting us to continue with this application?

Janik: Let's proceed. I think what you're looking for is a continuation of this proceeding without a decision, and then hearing the case after there's been adjudication of the CCPR and you can look at that.

Fritz: OK. Thank you.

Janik: I would just clarify, Mayor Hales, one thing. You mentioned continuing this case until you could look at the CCPR, the design of the building. That we can't do. That's a whole different set of criteria, and we'd have to spend two or \$3 million to get a design done to bring to you to review. And we wouldn't put that at risk with the uncertainty of the outcomes now of the comp plan change, of the zone change, then the CCPR.

Hales: OK, I hear you.

Fritz: Thank you, Mr. Janik. So, I could ask staff to come back and give us your recommendation on the way that we should do what we have outlined, which is to in some way come back to Council after the staff and the hearings officer have reviewed the Central City Parking Review.

Frugoli: What we would suggest is yes, we think that legally it's possible to defer your decision. We will be very careful procedurally in doing all of the proper notices, perhaps submitting a new staff report with this amended approach in taking the Central City Parking Review application to the hearings officer and following all of the notification requirements, etc., to make sure that we're covering the amended proposal that includes the Central City Parking Review.

Fritz: So, Development Services would allow the applicant to amend the application to add the Central City Parking Review request, it would then be noticed, the hearings officer would hold a hearing on the entire package as well as the parking review. Is that correct? That it be an amended proposal?

Frugoli: Perhaps Kathryn could speak to that as well.

Fritz: Kathryn? Like Commissioner Fish, I have learned to stay in my lane. And I'm not a lawyer, I just play one on TV. [laughter]

December 4, 2014

Frugoli: If I may, I think that there are findings from the hearings officer that speaks to a different proposal, so ultimately, the findings will have to be revised to this proposal.

Fritz: Right. So, there's two principles I'm looking at. First of all, it's extremely expensive to apply for a comprehensive plan change. And since the analysis on the plan change has been done, a lot of the staff work has been done, it doesn't seem reasonable to start over and require another payment of that portion of it. That's one principle. The other principle is that community members, everybody has at least as much opportunity to participate in what we're doing now as you have had in this because it's been extremely helpful that the community has given us so much good input. Sounds like with that explanation, we may have a recommendation from staff.

Fish: Kathryn is caucusing with the attorneys.

Fritz: I will now sing the Parks song. [laughter]

Hales: Always a good idea.

Novick: During the caucus, it might be useful of all of us said what kind of information we think would be useful to get out of the CCPR process. I think looking at what normally comes up -- I would be looking for what normally comes up. If any member of the Council has specific questions they would like to see answered in that process, it might be useful.

Fritz: Actually, Commissioner, in my 25 years of participating in land use, I've never been involved in a Central City Parking Review, so I don't know the approval criteria are.

Novick: And all I know is what Erika told me today.

Beaumont: Mayor Hales, one idea that just surfaced I think with the concurrence of both counsels is perhaps to continue this for a month to allow discussions to occur between staff, the respective parties about the best way to move forward -- procedurally -- cleanly.

Hales: OK. I think that might be best in that this is again a very unusual case. We're trying to synthesize a decision that's neither an outright denial nor an approval, and that's not the norm in these kinds of cases.

Fish: In which case we could come back at a date certain to either receive a stipulated agreement or we would then determine what our course would be. No further testimony.

Hales: We're not going to take further public testimony.

Fish: Mayor, can I ask a procedural question before we debate this? This is to our counsel. I want to understand conceptually -- what's the difference between what we're currently talking about doing and potentially -- in this or any other case -- agreeing with the applicant with a condition subsequent?

Fritz: That's really different, Commissioner.

Fish: I'm asking because I want to be educated.

Beaumont: I'm not entirely sure I understand your question. I think what you're asking is, what's the difference between a consolidated application if they had applied for all three at once versus approving this comp plan amendment and zone change with a condition subsequent being -- ?

Fish: The parking issue being resolved to our satisfaction.

Fritz: The difference -- if I can butt in here -- the difference is that we would be making the decision that the approval criteria had been met. I think we have all agreed we don't have enough information to know whether the approval criteria have been met.

Fish: So -- that's what I thought, I just thought it was helpful to have that explained. Thank you.

Beaumont: Commissioner Fritz is correct, thank you.

Fritz: I love it when the City Attorney says, "Commissioner Fritz is correct." [laughter]

Hales: She says it pretty often, actually. So, I don't believe we need a motion to continue the hearing, correct?

Beaumont: That's correct. It would simply be continued for a month for Council deliberation.

Hales: So, do we want to set a time certain for that in January?

December 4, 2014

Moore-Love: Looks like I have Thursday, January 8th, at 3:00 p.m.

Hales: Is that satisfactory to Council for both sides of this debate? OK, so that is what I'm going to rule, that we're going to continue this until January 8th, 3:00 p.m. At that point, we will take staff recommendations and any particular stipulations in writing from the parties.

Fritz: But no testimony.

Hales: No further public testimony.

Fritz: Or attorney testimony. So, if you want to watch it on Channel 30 rather than coming down, that would be fine. You're welcome to come down too, but it will probably still be raining even worse.

Hales: Thank you all very much for being at this hearing today. That is our decision, and we're adjourned.

At 4:10 p.m., Council adjourned.