



CITY OF
PORTLAND, OREGON

OFFICIAL
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **23RD DAY OF FEBRUARY 2011** AT 9:30 A.M.

THOSE PRESENT WERE: Mayor Adams, Presiding; Commissioners Fish, Fritz, Leonard and Saltzman, 5. Commissioner Fish left at 11:10 a.m.

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

Item No. 185 was pulled for discussion and on a Y-5 roll call, the balance of the Consent Agenda was adopted.

COMMUNICATIONS	Disposition:
173 Request of Joe Rossi to address Council regarding Portland Immigrant Statue Project (Communication)	PLACED ON FILE
174 Request of Amelia Salvador to address Council regarding Portland Immigrant Statue (Communication)	PLACED ON FILE
175 Request of Christopher Paulson to address Council regarding boat moorage at public docks (Communication)	PLACED ON FILE
176 Request of David Parsons to address Council regarding selective enforcement on public docks in Portland (Communication)	PLACED ON FILE
TIMES CERTAIN	
177 TIME CERTAIN: 9:30 AM – Accept the 2010-11 State of the City Preservation Report from the Portland Historic Landmarks Commission (Resolution introduced by Commissioner Leonard) 45 minutes requested (Y-5)	36847
*178 TIME CERTAIN: 10:15 AM – Authorize \$54,302 in grant agreements for the East Portland Neighborhood Office 2010-11 East Portland Action Plan Grants Program (Ordinance introduced by Commissioner Fritz) 15 minutes requested (Y-5)	184430

February 23, 2011

<p>179 TIME CERTAIN: 10:30 AM – Tentatively grant the appeal in part, deny the appeal in part of South Portland Neighborhood Association and uphold the Design Commission’s decision to approve a building addition at 4310 SW Macadam Ave with modifications (Findings; Previous Agenda 172; LU 10-145100 DZM) 5 minutes requested</p> <p>Motion to amend page 6 of Findings to replace the word “aliens” with “detainees”: Moved by Commissioner Fritz and seconded by Commissioner Fish. (Y-5)</p> <p>(Y-5)</p>	<p align="center">FINDINGS ADOPTED AS AMENDED</p>	
<p align="center">CONSENT AGENDA – NO DISCUSSION</p> <p align="center">Mayor Sam Adams</p> <p>180 Reappoint Alissa Keny-Guyer and Dan Saltzman to the Portland Children's Levy Allocation Committee for terms to expire December 31, 2013 (Report)</p> <p>(Y-5)</p>		<p align="center">CONFIRMED</p>
<p align="center">Bureau of Planning & Sustainability</p> <p>*181 Amend grant agreement with the U.S. Department of Energy's Energy Efficiency and Conservation Block Grant competitive funding program to recognize Clean Energy Works Oregon as a subcontractor (Ordinance)</p> <p>(Y-5)</p>		<p align="center">184423</p>
<p align="center">Bureau of Police</p> <p>*182 Authorize application to U.S. Department of Justice, Office of Justice Program, Bureau of Justice Assistance for a grant of \$199,883 for the FY 2011 Intellectual Property Crime Enforcement Program (Ordinance)</p> <p>(Y-5)</p>		<p align="center">184424</p>
<p align="center">Bureau of Transportation</p> <p>183 Set a hearing date, 9:30 a.m. Wednesday, March 23, 2011 to vacate the alley between Blocks 23 and 24, Arlington Heights (Report; VAC-10071)</p> <p>(Y-5)</p>		<p align="center">ACCEPTED</p>
<p>*184 Grant revocable permit to Portland Saturday Market, Inc. to use parts of SW Ankeny and parts of SW 1st for market operations and to close parts of SW Ankeny, SW Naito Pkwy and NW Naito Pkwy during certain hours (Ordinance)</p> <p>(Y-5)</p>		<p align="center">184425</p>
<p>*185 Authorize Intergovernmental agreement with TriMet for the Portland – Lake Oswego Transit Project (Ordinance)</p> <p>(Y-4; Fish absent)</p>		<p align="center">184433</p>
<p align="center">Office of Management and Finance</p> <p>*186 Pay claim of Mary Maes involving Bureau of Environmental Services (Ordinance)</p> <p>(Y-5)</p>		<p align="center">184426</p>

February 23, 2011

<p>*187 Update procurement Code to conform to new state law and make technical corrections (Ordinance; amend Code Chapter 5.68) (Y-5)</p>	<p align="center">184427</p>
<p>188 Authorize a contract with Owen Equipment Company dba Ben Ko Matic Equipment Co. to furnish catch basin cleaners in the contractual amount of \$1,137,543 (Report) (Y-5)</p>	<p align="center">ACCEPTED</p>
<p align="center">Commissioner Dan Saltzman Position No. 3</p> <p align="center">Bureau of Environmental Services</p> <p>189 Amend contract with Skylab Architecture LLC for additional work and compensation for the Columbia Boulevard Wastewater Treatment Plant Support Facility Project No. E09023 (Second Reading Agenda 165; amend Contract No. 30001585) (Y-5)</p>	
<p align="center">Commissioner Randy Leonard Position No. 4</p> <p align="center">Bureau of Water</p> <p>190 Amend contract with Black & Veatch Corporation to increase compensation and scope of work for Bull Run Dam No. 2 Tower Improvements (Second Reading Agenda 166; amend Contract No. 37587) (Y-5)</p>	
<p align="center">REGULAR AGENDA</p> <p align="center">Mayor Sam Adams</p> <p align="center">Bureau of Planning & Sustainability</p> <p>191 Adopt fees for extreme economic hardship exemption applications under Containers in the Right of Way rules (Ordinance) 15 minutes requested (Y-5)</p>	
<p align="center">Office of Management and Finance</p> <p>*192 Pay claim of Gregory Benton involving Portland Police Bureau (Ordinance) (Y-5)</p>	
<p align="center">Commissioner Amanda Fritz Position No. 1</p> <p align="center">Office of Management and Finance</p>	

**PASSED TO
SECOND READING
MARCH 2, 2011
AT 9:30 AM**

February 23, 2011

193 Establish a City policy discouraging employee use of personal scented products in the workplace (Second Reading Agenda 168)
(Y-5)

184432

At 11:24 a.m., Council recessed.

February 23, 2011

A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **23RD DAY OF FEBRUARY 2011** AT 2:00 P.M.

THOSE PRESENT WERE: Commissioner Leonard and Mayor Adams, Presiding; Commissioners, Fritz and Saltzman, 4. Commissioner Leonard presided until Mayor Adams arrived at 2:50 p.m.

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

<p>S-194 TIME CERTAIN: 2:00 PM – Improve land use regulations and procedures related to schools as part of the Schools and Parks Conditional Use Code Refinement Project (Previous Agenda 599-2010) Ordinance introduced by Mayor Adams; amend Title 33) 1 hour requested</p> <p>Motion to amend the code language in the Recommended Draft, dated March 18, 2010, as shown in the memo from Mayor Adams, dated February 9, 2011: Moved by Commissioner Leonard and seconded by Commissioner Fritz for purposes of discussion. (Y-3; N-1, Fritz)</p> <p>Motion to substitute the ordinance from Mayor Adams, dated February 22, 2011: Moved by Commissioner Saltzman and seconded by Commissioner Leonard. (Y-3; N-1, Fritz)</p>	<p>Disposition:</p> <p>SUBSTITUTE PASSED TO SECOND READING AS AMENDED MARCH 2, 2011 AT 9:30 AM</p>
---	--

At 3:10 p.m., Council adjourned.

LAVONNE GRIFFIN-VALADE
Auditor of the City of Portland

By Susan Parsons
Acting Clerk of the Council

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

February 24, 2011

THURSDAY, 2:00 PM, FEBRUARY 24, 2011

195 TIME CERTAIN: 2:00 PM – Review protocols for cooperating with the Federal Bureau of Investigation on terrorism investigations (Resolution introduced by Mayor Adams) 3 hours requested

**RESCHEDULED TO
MARCH 10, 2011
AT 2:00 PM
TIME CERTAIN**

February 23, 2011
Closed Caption File of Portland City Council Meeting

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

Key: ***** means unidentified speaker.

FEBRUARY 23, 2011 9:30 AM

Adams: And the city council will come to order. Sue, how are you?

Parsons: Very well, thank you.

Adams: Good. Our best wishes and sympathies to Karla and her family. I understand she's out on a family emergency. Family leave. So can you please call the roll?

[roll call]

Adams: Quorum is present -- here. Very dramatic. The quorum is present and we'll proceed starting with communications. Sue, please read the title for item number 173.

Item 173.

Adams: Mr. Rossi, please come forward. Welcome. For anyone that's new to the chamber. You need to give us your first and last name, we're not interested in your address. Just for your privacy.

Please tell us if you're a lobbyist or authorized to represent another organization. Or business. And three minute countdown clock in front of everybody who testifies helps you keep track of time.

Joe Rossi: Thank you. Joe Rossi. Member of the Parkrose community. Northeast Portland, and president of the Parkrose community foundation. I want to introduce a project to you guys that will be really visible coming up this year. I'm excited about it. It's the Portland immigrant statue project and we have a project where we can honor all of our immigrant citizens that have come to Portland and contributed to our business community. And life in Portland. I'm really excited about this, because everybody is a product of immigration. My family, your families, everybody here came from another country. And this is a really exciting project because what we have is something where we can honor everybody, and hit everybody. And I like this project because the proximity to the Portland airport. You can tell on the brochure where is the project is located. People traveling to our community can see their country that they came from is honored for their contributions here.

I'm excited because visiting dignitaries or people who want to visit our city can see a symbol where we appreciate the contributions from people from their country. So we're going to have a dedication ceremony October 1st. My job is to raise funds. It's all private money so I've got a lot of work cut out for me. But this is going to be my full-time volunteer job between now and October 1st. And this also -- I've got a lot of excitement from the Parkrose community where the statue is going to be because I've timed this to correspond with our 100th anniversary which is cool. So I've got the whole community energized to put on a nice dedication ceremony and working with the superintendent of the Parkrose high school to have a nice celebration for our community and offer this as a gift to our city of Portland.

Adams: For those listening. The proposed location of the -- of the memorial and the statue is?

Rossi: 98th and Sandy Boulevard. Where Killingsworth and Sandy converge. The entry point to the Parkrose community which is off the freeway in close proximity to the Portland international airport.

Fish: I noted in -- in an article we pulled you're working with ODOT on this and Shelli Romero and they've raised a question about the location. Under their policy. So if for any reason this location was not viable, when you're finished with your ODOT conversations, do you have a backup site that you're looking at?

Rossi: I really don't, because everything from ODOT's been real positive. Actually, they have no issues with this site. The only issue was early on our setbacks, but we've agreed to an 18-foot

February 23, 2011

setback from the curb face and really that was the only issues I had to resolve with them. I'm open to other sites but because everything's been so positive and we have such a highly visible site, the pedestrian access and bicycle trail to the site and signal crosswalks and the traffic count as you can see that the roads have, I haven't revisited another site just because everything looked so good at this one.

Adams: Where did your country immigrate from?

Rossi: Italy. My great grandfather came from Italy in 1880 and farmed in Ladd's Addition before it was houses.

Adams: Oh, really?

Rossi: And once they built houses he had a farm near this site. And Parkrose, it's a great historic location because a lot of immigrants came down Sandy Boulevard looking for work when they first came to this country. This is a historically accurate site. It was pretty much all immigrant farms and people came from other countries, not just Italy. My other half of the family came from Germany after the depression and things were really bad and it's a common -- I've done research on a book I'm working on. It's fascinating. The one common theme is people leave a country because of adversity and come here and we kind of forget where we came from. You know, I look back, there's a lot of adversity we came from. We actually lived in a two-room house with a dirt floor, seven kids and the oldest son came to America and started a new life here and I'm a product of it.

Thank goodness and honored to be here. So --

Adams: Well, thank you. You've -- you've provided your leadership and efforts on a number of projects to make Portland and Parkrose a better place and it's a great project. So thank you for that.

And would you mind stopping up and ask for Cary Clarke, or his business card. Because he's our arts and culture liaison.

Rossi: Sure.

Adams: I want to make sure he's dialed in to what you're doing.

Rossi: Cary Clarke. Thank you.

Adams: Thank you very much. Sue, please read the title for communications item number 174.

Item 174.

Adams: Good morning, welcome.

Amelia Salvador: Good morning, commissioners. Good morning, Mr. Mayor. I'm here on behalf of the Portland immigrant statue. I'm Amelia Salvador with the Parkrose business association as a board member. I'm also on the marketing director for the project here. And I'm here to really share my support and my enthusiasm here with you in the city of Portland about this ground-breaking project. I too, am a correct product of immigration. My parents immigrated from the Philippines here and their landing was in Parkrose, of course, which many immigrants do. They got their first hotel room there. Their first apartment. Their first house is one block away from the site. So truly, this project really hits home with all of us. We're all immigrants in some way or form. And really, it's here to preserve our heritage and history of where we came from and I want to show my support in honoring my parents and commemorating them and all immigrants for taking the courage to come here to the city of Portland. They could have gone anywhere but chose to come here to start their lives and begin their families. And I just really would like Portland to welcome home this statue and make home to it. So I appreciate your time and thank you very much.

Adams: Well, thank you for your good work. This is really impressive. And again, if you talk to Cary Clarke. You can apply for a grant with the regional arts and culture council to potentially help on the funding of it.

Salvador: Thank you.

Fritz: This is one example of why the Parkrose business association won the spirit of Portland award this year and thank you for your work. This is one the community-generated projects

February 23, 2011

bringing together the neighborhood association and the business association and the school district.

Thank you for your work.

Adams: Thanks. Sue, please read communications item 175.

Item 175.

Adams: Mr. Paulson, hi. Welcome.

Christopher Paulson: Appreciate you letting me come up and speak. I've been down at river place marina with my sailboat and I've been chased off there after their 72-hour limit by the harbor master and the park rangers. And yet there's one boat in question that's been there since august on the public dock, but yet he can stay for six months while everybody else gets shoed away. And I was just -- I don't know if you guys are aware of this thought I'd bring it to your attention.

Fish: As the parks commissioner, I have jurisdiction over the dock and the issue and we've been involved in a couple of similar issues there and another dock. And I appreciate you coming and testifying and it would be enormously helpful to me if you stopped in my office and ask for Danielle and give her your contact information and we'll keep advised as to the steps we're taking to address this problem.

Paulson: Thank you.

Adams: Sue, please read communications item number 176.

Item 176.

Adams: Mr. Parsons.

Parsons: He's not here.

Adams: That gets us to the consent agenda. Does anyone wish to pull any items from the consent agenda?

Saltzman: I do.

Adams: Which one.

Saltzman: 185.

Adams: 185. Any other items to pull from the consent agenda? If not, Sue, please call the vote on the consent agenda.

Consent Agenda roll.

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

Adams: Aye. Consent agenda is approved. [gavel pounded] Move uses us to time certain. Please read the title for resolution item number 177.

Item 177.

Adams: Commissioner randy Leonard.

Leonard: Thank you, Tim Heron and Art DeMuro, were you going to come forward and make a --

Tim Heron, Bureau of Development Services: Tim heron, BDS, it's my pleasure to present the chair and vice chair of the landmarks commission.

Leonard: Good morning.

Art DeMuro, Chair, Portland Historic Landmarks Commission: I'm Art, the chair of the historic landmarks commission and --

Carrie Richter: I'm Carrie Richter, vice chair. We're grateful for you to allocating this time and we'll review our report with you and as you never fail to do, please interrupt us with interesting questions and any discussion during the report.

DeMuro: The commission met 17 times during 2010 and conducted a retreat just a month ago. We received 12 briefings addressing a broad spectrum of topic, including a Irvington historic district and Portland public schools historic assessment, historic Portland parks system, Portland-Milwaukie light rail project and Portland loos and others and 2011, the odds fellows hall, the made in Oregon sign and the new Blanchet house of hospitality. One type IV, the Kiernan building. Three design advice requests and 49 type II decisions and eight registered national nominations reviewed. While the check shift has -- the ratio the design review cases to historic design review

February 23, 2011

cases three to one to less than two to one and reflects rehabilitation versus new construction throughout the city.

Saltzman: Can you repeat that?

DeMuro: The point was that the ratio of design review cases to historic design review cases reduced from three-to-one to less than two-to-one and seeing that in the development world as well. The emphasis has moved to rehab versus new construction.

Richter: We're going to identify our preservation priorities. The first is the Portland plan. Developing the Portland plan, have incorporated historic resources by designating both contributing historic landmarks and -- in other words, as planners consider zoned capacity of building property in terms of potential growth and expanded density within our city, they've acknowledged it will require constrained growth in relatively small pockets within the study the landmarks commission approve s of that approach. The national registered district comprise only 4.4% of the city's area. Therefore, concentrating density outside of historic districts encourages infill and minimizes sprawl and maximizes the character and mass and scale that's so critical to these protected areas. The chair of the landmarks commission is serving at on the advisory group as this plan moves forward.

DeMuro: Historic resource inventory. While significant accomplishment at the time, the 1984 HRI is out of date. Why now? Projected population growth and anticipated housing demands anticipated to grow at significant levels over the next two decades. Increases in density will cause redevelopment throughout Portland's neighborhoods potentially affecting hundreds of historic resources in the process. Consider this. Even in the economic downturn, jurisdictions across Oregon, such as West Linn, Lake Oswego, and Cottage Grove and the United States, the largest effort being in Los Angeles, are revising their historic resource surveys as a springboard for economic development. Indeed, economic develop can actually be spurred by historic resource surveys because it can provide city, state and federal agencies, such as the Port, PBOT, PDC, ODOT, FTA and private developers comprehensive resource information to better plan projects around historic resources identified during the HRI. Agencies and developers currently spend thousands of dollars each year on project-specific cultural resource surveys but this information is scattered and can complicate project scheduling if surprises are found late in the planning process. Another point is expanding access and opportunities for local, state and federal incentives and grants for historic preservation activities and provide planners with historic resource information that can be integrated with larger planning initiatives such as the Portland plan. Reduce can the potential for zoning and project conflicts and facilitating growth. Better anticipate the potential for future historic districts. Provide the city's downtown and neighborhood residents and commercial enterprises with renewed sense of place and cultural identity. Provide city neighborhoods with resource information for use in neighborhood improvement projects and educational materials. Recent survey efforts in Portland have been funded by city funds, and institutional and neighborhood associations. East Portland historic survey project, that surveyed mid century residential subdivisions paid by the city and publicly owned properties, paid for by the city. PSU architectural survey of campus buildings paid for by PSU. Portland public schools survey relative to the upcoming bond levy. Institutional paid-for survey. And national register -- and Buckman and national register nomination in process, paid for by the neighborhood and the Brooklyn neighborhood completed a lot of survey work not long ago, privately funded. A multi-year phased of the HRI would be focused on areas with the greatest potential for population growth and redevelopment. The HLC would like to partner with other agencies to seek private, state and federal matching funds for the HRI revision. A project would range between \$2.5 million to \$3 million. The cost could be balanced by developing strategic relationships with funding institution, neighborhood groups and historians and preservation nonprofit, consultants and city agency staff. Costs could be spread out over a period of years to balance expenditures across budget cycles. The HLC will develop a feasibility study to further develop funding sources and strategic partnerships,

February 23, 2011

program administration and project management. The landmarks commission asks for your help by incorporating it into future budgets.

Richter: Next topic is historic districts. The first district I want it talk about is Skidmore/Old Town. It has been 28 months since we forwarded to you our proposed design guidelines for approval and in cases continue to be presented to us that must be reviewed in accordance with the woefully antiquated guidelines. We just heard another this month. Generated documents are the paradigm for all historic review guidelines in the city. Yet they sit on a shelf unadopted. The controversy block aiding the cast iron resolution is all centered around the zoning ordinance which calls for inappropriate height and scale in our national landmark district. In order to move the process forward -- asking the council to adopt Skidmore/Old Town historic guidelines and cast iron resolution and deferring decision of the Portland plan and the central city 2035. Again, we want to mention, item two, antiquated design guidelines. There remain other district design guidelines inadequate to perform fair and predictable design reviews. The standards are low, vague and often not currently reflective of neighborhood interests. Please consider allocating resources for such work in the districts of Lair Hill, Yamhill, Ladd's Addition, east Portland, Grand Avenue and the 13th Avenue historic district. You should know the last retreat, we decided to create a work committee whether we would create a master set of guidelines and general principles and come out with more details, guidelines that would deal with particular unique characteristics of the district, thereby, consolidating our efforts.

Adams: It's sort of my work understanding, that would require us to change, to get a long-sought change in state law, or no?

Richter: No, we wouldn't need to change the state law to revise the design guidelines.

Fritz: They wouldn't apply --

Richter: Only within the historic districts and the landmarks, places they do now.

Adams: You're saying citywide and all historic landmarks --

Richter: We're trying to consolidate the effort, instead of a separate set for each district. Exploring the idea of consolidating.

Adams: That makes sense.

DeMuro: Number four --

Saltzman: Can that be done independently of the historic resource inventory?

Richter: Yes, we would like to do both.

DeMuro: Number four, public commission cooperation. One of our goals for 2010 was to promote improved communication between the historic landmarks and planning commission as we're presented more and more matters that overlap. We're pleased to report that code changes were implemented that deleted the unmanageable provision for common members on multiple commissions. Instead of the chairs of all three commissions meet quarterly to update and discuss topics that are of common concerns. You saw tangible results when all three commissions testified before you on the city's tree policies.

Richter: Next, the threatened landmark list. Last year, we can report four of them are being actively addressed. First, Union Station. P & C construction and architectural resources group have teamed for a large scale this year. The northwest cultural center, exploring a rehabilitation plan for this alphabet district landmark. The 511 building, the PNCA has selected a project manager and begun its planning process.

Fish: The 511 building project, which is very exciting may be delayed a little bit in light of the council's decision we're about to finalize on the land use issues with the ICE facility in south waterfront. So if there's a delay this that project, it probably delays this project.

DeMuro: I think that will buy them additional fund-raising time which may be of assistance.

Richter: The resources that remain of serious concern. One, Skidmore/Old Town, proposed zoning amendments that remain under consideration by council threaten the loss of national

February 23, 2011

landmark designation for our city's most important historic commercial district. Number two, centennial mills, in addition to the lack of visible progress on this project, we remain concerned about the lack of stabilization being performed to preclude this complex's further deterioration. PDC has informed us that they anticipate finalizing a DDA this year, but rumors sustain our concerns. Number three, Memorial Coliseum. The national register protection offers short-term relief but only a commitment. A long-term use, justify the necessary investment to restore and renovate our newest landmark. Number four, Portland public schools, the bond levy's success would certainly push this pool of city treasures off our list. Number five, Morris Marks house -- Dori Court apartments. 1134 Southwest 12th Avenue. Discussions of possible relocation have begun. Item six, the U.S. customs house. GSA has identified a local property management firm which intends to acquire and relocate its offices there. We hope this leads to the reinvestment into this property and availability to the public. Brooklyn roundhouse. It remains a concern. As will the locomotives until funding is secured. Number eight, Portland gas and coke building. A 1910 icon on St. Helen's highway south of St. John's is a superfund site.

DeMuro: Number six, the preservations success. Tops on the list is the Made in Oregon sign, or Portland, Oregon sign and now public stewardship.

Adams: Yay.

DeMuro: Yay, amen. Campbell memorial, protected by the national register. The Yeon building, Rose Festival office, rehabilitated and protected by the national register. Bull Run lake cabins and we should give commissioner Leonard a nod related to the cabins and the Yeon building as well as the Campbell memorial. And then finally the Irvington neighborhood has been accepted and officially a national register district.

Fish: I believe the Campbell memorial is a parks district. But we'll share credit on that.

Leonard: Be careful what you ask for.

DeMuro: Thank you for the correction.

Richter: Next I want to talk about solar panels and conservation districts. This past year, the landmarks commission considered a series of green bundle amendments to the city code. Known as Ricap 5. Roof mounted solar panels from design review and setting standards for the location of water cisterns and wind turbines. The before adoption of Ricap 5, the installation of roof-mounted solar array in historic districts required discretion rather review by either staff for HLC. In conservation districts, rather than being labeled as mechanical equipment, they were classified by building permit staff as exempt from review. After adoption, on flat roofs with a parapet and panels on sloped roof where is the panels faced rear property lines and were not visible, they were exempted from review. We've made some situations easier. And street-faces solar panels in both historic and conservation districts in order to identify those situations where such alterations would not have an negative effect on the integrity of the district. After city council adopted the landmarks commission recommendation, solar industry stakeholders objected to the requirement of review for street-facing solar panel installations. Our thanks to the mayor's office who then invited HLC to directly address these concerns with BPS staff, solar advocates, providers and Susan Anderson and individual council members and the public. This was a great opportunity. The discussion illuminated that the real rub relates to the historic design review mandated in conservation districts.

Development in the city's six conservation districts. Including Elliott, Kenton, Mississippi, Piedmont, Russell and Woodlawn, may occur either through discretionary review by the city staff or approval through the compliance with a clear and objective series of design standards approved by the design commission. As much as a social, cultural and economic driver as for the identification of the historic structures that work together to tell a story of an era gone by. It is possible that infill development in these areas over time has eroded the historic fabric so far that these areas are no longer suitable for protection or that review powers should switch it a design commission where a standard of aesthetics could be assured without regard to the impacts to the

February 23, 2011

resources. The only way to make informed decisions in this regard would be to inventory the building stock in these areas to determine in the conversation district classification in these areas should remain. If some of these districts should be converted to national register districts and relative greater protections or some wholly declassified. Again, the landmarks commission renews its request for funding.

DeMuro: Number eight, Portland development commission, the landmarks commission feels that our communication links with the city's urban renewal agency, the PDC, needs improvement. We feel that a stronger bond would facilitate communication and help influence PDC's planning as to better ensure that the PDC-supported projects can be supported at the HLC level. PDC has reached out on multiple occasions such as early involvement in the central city west side URA study. HLC was asked to identify historic resources. Two, lands commission representatives have been asked to participate in the RFI selection committees. The Ankeny and Burnside project and sustainability committees and PDC provided a centennial mills briefly recently. Areas where prompt can be made are. Early landmarks commission involvement in PDC-financed project plans. A prime example is Japantown/Chinatown, where high-profile projects like Uwajimaya and Blanchet house have been proposed -- uh-huh?

Fish: A new issue involving -- excuse me -- Blanchet house that we haven't addressed.

DeMuro: That's going through review process right now and set for a vote on the 28th by the commission.

Fish: That's what you're referring to?

DeMuro: It related more to the Kiernan demolition. It was the primary reference.

Fish: Thank you for the clarification.

Saltzman: What about the Uwajimaya?

DeMuro: The project is a full-block development in a historic district and it's been planned in many ways and funded and there's neighborhood organization and Portland development commission has never come before landmarks once to present the plan and I don't even know the details of it, but --

Adams: The -- to use this opportunity for a little bit of back and forth, we don't have a funded project. Is we don't have a design. But that doesn't mean we couldn't have early communications about it.

DeMuro: Here's the concern, that -- there's certainly sketches that have been done that -- that the community has commented on and so there's a certain amount of support or enthusiasm that's generated but it could be a plan that might not be acceptable to landmarks commission. But everybody gets on board and then landmarks sees it at the end and there's pressure to approve it, where the blockade to the popularly supported project.

Adams: If there's a way to have informal discussion, I think that would be useful. The swings and money and otherwise, whatever sketches we put out there, might or might not move forward.

DeMuro: Mr. Mayor, sometimes what will happen is staff will be entertaining a project like that, and they'll invite just the leadership of landmarks to meet with representatives and chat.

Adams: Let's make that happen.

DeMuro: Investment in maintenance of some PDC-owned historic resources has been sparse. We believe that PDC is not modeling the type of care that a fragile resource should receive and we worry about potential precedence for cases of demolition by neglect. Consideration of a change in PDC policy would preclude the expenditure of public funds to demolish a designated historic resource. Ensuring that a landmark commission representative is appointed to committees investigating options for a historic resource, such as Memorial Coliseum. We believe a good start to explore options in these areas.

Adams: I think that's a good idea.

DeMuro: Thank you, mayor.

February 23, 2011

Adams: We'll make it happen.

Richter: The landmarks commission has begun a goal of increased communication.

Representatives of the Bosco-Milligan foundation, historic preservation legal of Oregon, state historic preservation office and we had a report from travel Oregon, travel Portland. Have attended landmarks commission hearings to present organizational updates for opinions on topics of common concern and attended events sponsored by them and to facilitate communication and coalesce support for common could you say. Thank you.

Fish: First, thank you for an excellent report. This is your second annual?

Adams: Third.

Fish: Third?

Adams: Qualify this as an institution.

Fish: Time is flying. Another peace of good news that probably was so late in the day it didn't make your report. Council last week appropriated about \$400,000 to do some exterior work on the Pittock mansion. And the council agreed to spend that money and that's good news for Pittock which is a great landmarks.

DeMuro: Absolutely.

Fish: And the second, I wanted to ask a question. Do you have any updated information on the status of the landmark process involving the Halprin fountain sequence?

DeMuro: I think Tim may know the answer to that.

Heron: Tim, BDS. No.

DeMuro: Wrong again.

Adams: You're a lot of help.

Fish: Probably the short answer is it's still in progress?

DeMuro: Uh-huh. We've invited Jeff and Randy to come before landmarks and update us but I think they've not got to that point.

Fish: To close the loop -- we've got the application for landmarks status and the three relevant bureaus, water, transportation, parks, agreeing to collaborate and we've got the Halprin conservancy willing to engage in fundraising to help us with the capital work and the mayor has proposed, at least preliminarily, a sub-district that could capture the history and vitality of the fountain area. That should be exciting once we get the designation.

DeMuro: We would enthusiastically look that.

Saltzman: I have a couple of questions. Your statement that consideration of a change in PDC policy could preclude the expenditure of funds to demolish historic resources? This is something on your wish list?

DeMuro: It's something we would -- we proposed before the west side URA subcommittee and would like to suggest again for the PDC to consider.

Saltzman: And then -- I'm curious about the Portland gas and coke building. The 1910 landmark we see as we're driving north on highway 30.

DeMuro: Going to Sauvie Island to get our pumpkins.

Adams: The scary building.

Saltzman: The scary building. What does the landmarks commission, what would you like to see happen? It's sitting in the middle of the superfund site, right?

DeMuro: Really, commissioner, our point is, it's a difficult project, it's just a significant building that we would like to see dealt with, but you're asking for a program to suggest --

Saltzman: Is there any maintenance of it ongoing?

DeMuro: I don't know. I've placed a call not long ago to PGE that --

Saltzman: Northwest Natural.

February 23, 2011

DeMuro: Northwest natural, I beg your pardon, and there was no interest in pursuing it or maybe no course. Maybe it's worth a call to them again. Maybe there's federal funds available that might help. I don't know. It's -- we're just waving the flag, but no, we don't have a solution.

Saltzman: And I'm assuming it's a big building, probably made of unreinforced masonry and assume moving it is not logically feasible?

DeMuro: I don't know. I'll tell you what, we'll make a call and look into it.

Saltzman: It's a great looking building from the outside.

DeMuro: It is. Thanks for bringing attention to it.

Adams: Other council discussion? So work on getting that roundtable discussion with PDC and Randy's office and the Bureau of Development Services.

DeMuro: We appreciate it.

Adams: All right. Thank you very, very much. Oh, we're about to vote on it? It's a resolution, I think. Is there anyone here -- thank you. Thank you.

DeMuro: Thank you.

Adams: For your great work and a really fantastic presentation. Glad you're coming to go council every year. Thanks so much.

Adams: People signed up.

Parsons: Fred Leeson.

Adams: A historian, in his own right. What's the name of your book?

Fred Leeson: That was "Rose City Justice."

Adams: And can it be purchased on Amazon?

Leeson: I don't know, I haven't tried to purchase it.

Adams: Trying to help you out.

Leeson: I'm here as chair of the Bosco-Milligan foundation and I want to thank them for the work they do and the quality of the planning staff and most of the people in this room today, in less than 90 seconds, I want to reinforce the need for the historic inventory. The digital tools we have can make it less expensive. In the past year, the Bosco-Milligan foundation has done the work on the David anti-camping bell, the fireman's memorial and the Buckman's district. The organization was not involved in the Irvington district but our board members and active members of Bosco-Milligan were involved in that magnificent piece of research. We continue to believe that great cities respect the past and reserve the past as they move forward and we think that Portland can be one and we believe there's a growing body of evidence that suggests that the greenest possible building you can have, the most sustainable is the old building you renovate rather than building new. We're working with the is to have to make sure that those values are incorporated in the plan and thank you very much.

Adams: Thank you, Fred. Anyone else wish to testify on this matter? Sue, please call the vote.

Item 177 roll.

Fritz: Thank you very much for this report. For the good staff work and certainly all the diligent volunteer work. It's amazing we have citizens willing to contribute time and talents to a venture such as the landmarks commission and also doing this annual report. I do highlight one of the pieces that we did get done this past year, the Portland state inventory, that was something we followed up from last year and appreciate the work and as I said before, if we don't preserve our historic landmarks there won't be any. So I very much appreciate what you do. Aye.

Fish: Across from the director park is the Admiral Apartments which has a plaque announces it's a historic landmark. And as my colleagues know because they've supported financial investments in that building, it's been back to its old glory and a beautiful building and houses some of the oldest and poorest and most disabled citizens in our community in the middle of downtown that is a beautiful building that's an asset to the downtown scene. So preserving these buildings is not only the right thing to do, but it greatly enhances the urban experience and in this case, provides a

February 23, 2011

wonderful address for people who are otherwise used to being priced out of the market. It's a win-win. Thanks for an excellent report. Your third annual report. And I guess they keep getting better and we appreciate your vigilance in addressing these issues. Aye.

Saltzman: I want to thank the landmarks commission for your good work. Your no punches pulled report. And appreciate it. Thanks, aye.

Leonard: Appreciate it. Appreciate the report, and I want to point out that the one project mentioned that was significant, the Portland, Oregon sign wouldn't have happened without him and his -- what I learned are excellent negotiating skills combined with generosity, which is a powerful combination. Aye.

Adams: I would echo commissioner Leonard's comments. Art, thank you. And thanks to the entire commission and Tim and the team. Randy's office and his team. And I just want to reiterate my thanks to the federal government for resources that have gone into the union station. As we've opened it up and sought to make it better and restore it, we have found that it really needed the help. It's been a fascinating -- so thanks. Aye. [gavel pounded] So approved. Sue, can you please read the title for time certain at 10:15 an ordinance. Emergency ordinance. 178.

Item 178.

Adams: Commissioner Amanda Fritz.

Fritz: Thank you, mayor. And if I can have a community representative come forward. It's an exciting initiative a true partnership between the city and community for Tuesday year. 26 action items developed by the community in east Portland action plan which council adopted shortly after I came on board in 2009. This provides guidance and directions to public agencies and nonprofits and businesses and individuals to address the opportunities and challenges facing east Portland. I acknowledge and thank the great community leadership that's guided this effort. With 35 members.

And it's exciting to have the opportunity to approve the third year of the east Portland action plan that helps to implement the actions identified in this plan and I note that the east Portland was the only area of the city that did not have cuts in its neighborhood action grants half the year and I appreciate the count fulfilling our commitments to east Portland by funding it in the 2010-11 budget when all other areas of the city did not receive the same allocation of neighborhood action grants and I'm happy to present this package for the \$54,000 in taxpayer money going to support specific projects that will greatly benefit the community in east Portland, and, therefore, our whole community. And here to tell us about what you're going to be doing is Jon and Larry. Thank you.

Jon Turino: Thank you, commissioner Fritz. Good morning, Mr. Mayor, commissioners. Thank you for making time on your busy agenda to hear this report on the small medium grants awards of the east Portland action plan. It's our privilege to provide this report on behalf of the committee. As you may recall, the east Portland action plan has been funded for with half a million dollars. And of that total, \$50,000 has been allocated for grants for community-based organizations, to support projects that adhere to the prioritization criteria established by the working group. The main idea was and continues to be to support low cost high impact high visibility projects across as much of east Portland as possible and spread the grants amongst cultural and language types as possible. It consists of seven members of the EPAP working group and assisted by our able advocate, uses independently arrived at numerical scores to draw up a initial ranking of the grant applications and hold meetings which so far have avoided fisticuffs to rank the finalist as through compromise arrive at a consensus which grants to award.

Larry Koten: As we consider our 2011 grant awards, I want it take a moment what our 2009-2010 awardees have accomplished. \$50,000 in grants for the previous year, we went to 18 different projects and that represented about half the projects that submitted requests for funding but ultimately only able to fund 22% of the total in dollars that were requested. But on this slide here, in particular, take a look at the last two bullet points. Our \$50,000 leveraged \$345,000 worth the donated money and materials and volunteer time. Almost a 7-to-1 return. And that's a huge

February 23, 2011

success. The funded projects can be loosely grouped as you see here. Almost 12,000 to healthy living and food security projects and \$9,240 to projects designed to build community. \$14,000 for youth-related projects and \$12,500 for cultural and language specific programs. Here's a few examples of the things that got done in the 2009-2010 grant cycle. The -- you see the cover of the handbook. They asked for funding to provide textbooks. And we gave them \$1,000. They leveraged an additional \$3,000 from Multnomah county and were able to produce a handbook used not only here to teach the Zolai language, but use it nationally as well. Great bang for the buck.

Saltzman: Who are they?

Lore Wintergreen, Office of Neighborhood Involvement: They're village people that came from Burma-Nepal border and were recently moved as new Portlanders to this area. The goal of this grant was identified within the east Portland action plan as gang prevention. In terms of supporting new community members to have parent who is perhaps don't speak English while children are learning it to be leaders in their family and communities by sharing their culture and language.

Saltzman: Thank you.

Koten: Graffiti as we know has been a persistent problem and our grant award there has turned this scene here into this scene here. We've had over 70 volunteers and over 1,000 graffiti reports compiled as a result of our grant award. And then lastly -- two more. Next, our grants, we've discovered brought people together in ways we didn't expect. The northwest housing alternatives provided for a grant to produce a multicultural share fair. And we suggested they work together and the outcome was successful with the multicultural fair becoming a part of the eco-expo and reaching many more people than they had hoped. And lastly, two kids taking advantage of the swimming lessons at David Douglas high school but I'm going to let the head instructor's words speak for themselves. This is from her grant report and she wrote once the kid who's qualify for the grant check in and go to the locker room and to the enter the pool and no one knows the difference. And she's speaking about the ones who wouldn't be able to participate because of lack of funding. Gentlemen jump off the diving board and smile when they get their face in the water or get to the other side of the pool, just like any other kid. Would these parents have the option to take \$45 rent, food, or utilities budget to spend on swim lessons? And we know the answer. Probably not. There you go. No kid should have to grow up scared of the water because their parents can't afford to put them in swimming lessons. The grants help to take away the economic barriers and I'm turn it back over to john. These are examples from the prior year's grant successes.

Turino: Thank you, Larry. As a result of our most recent grant cycle, we've selected the organizations to be represented on this slide, as recipients of grants ranging from as little as \$500 for northwest housing alternative. To as much as \$5,000 in support of the east Portland expo held in partnership with the multicultural share fair in the summer. In addition to these, there are a couple of transit oriented project, two community organizing project, four farming and food oriented projects, and two refugee integration projects and graffiti cleanup and continued swimming lesson for underprivileged east Portland kids. All in all, a wide range of deserving projects championed by community activists and volunteers. In summary, we've selected 17 grantees from the total of 31 grant applications considered this time. To receive the total of \$54,300. As you can see from the slide, we have an estimated \$350,000 in leveraged funds from the volunteer services, donated services and physical items supplied by partners and supporters of the various projects. That 646% represents a healthy return, again, on the grant dollars invested by the city of Portland under program. We think this clearly indicates the value of the small to medium grants program in mobilizing and motivating community groups to get involved and give their time, effort and services for the betterment of all residents of east Portland. Thank you again, Mr. Mayor, commissioners, for your time this morning and support of the east Portland action plan. We urge

February 23, 2011

you to approve the previously budgeted grant awards today and look forward to presenting a more complete report on the entire east Portland action plan in March.

Adams: Thank you for that report. And John, it's good to see you. Thank you for your efforts as well. Good work. Any other council discussion? Anyone signed up to testify on this matter? Anyone who wishes to testify on this matter? Can you please call the vote for this emergency ordinance.

Fritz: Thank you, Jon and Larry, for taking the time to come in and Lore Wintergreen for your staffing of this project. And support of the community members, rather than taking it over. That's a skill that's really needed and I greatly appreciate your work. And for those interested, they can contact east Portland neighborhood office to get involved in any of those wonderful projects and we always need more volunteers and it's an exciting time to be in east Portland and to have these projects going forward. Building community at a time when the community most needs it. Thank you very much for your work. Aye.

Fish: You know, this matter could very well have ended up on the consent agenda when we do grant awards like this. I'm delighted commissioner Fritz decided to put it on at regular agenda with a time certain so we could get a briefing and have a chance to say thank you for what you do for our community. Aye.

Saltzman: Thank you. This is tough work, making decisions about grants when you have many more requests than dollars but looks like you've done a good job here and I think always, the ability to leverage other resources is an important criterion and looks like you've done that and leveraged quite a bit. These look like good grants and very reflective, I think, of the diversity of east Portland. Thank you for your work. Aye.

Leonard: I think it's worth remembering that State Representative Jeff Merkley pestered me to get east Portland action plan process begun. I went to then Mayor Potter who immediately embraced the idea. It's particularly rewarding for me after having participated in the process from its inception to see it at the level it is now. Actually, spending dollars to achieve actual results to improve lives of people in east Portland and we shouldn't forget Jeff Merkley's tenacious focus to make sure this happened and remember to thank him when we see him out and about and he still lives in David Douglas and he's in the community quite a bit. Thank you for your good work. Aye.

Adams: Thanks, onward. Aye. [gavel pounded] Thanks to commissioner Fritz as well for oversight of the -- getting this done. Can you please read the title for looks like got a findings report on a land use issue. Time certain 10:30. 179.

Item 179.

Adams: All right. So -- turn to the right page here. Kathryn, can you please come forward? That was what I was supposed to say.

Kathryn Beaumont, Chief Deputy City Attorney: Good morning, Kathryn Beaumont, city attorney's office. You have before you a set of findings prepared to reflect the tentative decision you made last week to grant in part and deny part of the appeal and to -- and your determination that part of the proposed ICE facility is a detention facility and also adopted some revised and new conditions of approval. They're reflected in the report before you and Kara and I are here to answer questions but it's just a chance to take a final vote and adopt the final findings.

Fish: My recollection with a lot of prompting, it was commissioner Fritz who tried to frame by consensus what we were trying to do. Amanda, have you had a chance to review this?

Fritz: I have and I think you've done a good job.

Beaumont: A lot of the credit goes to Kara.

Fritz: Good work on your part too. I have one suggested word change. Page 6. It refers to the people in this facility as aliens. And the rest of the document refers to them as detainees and I think

February 23, 2011

it's more accurate to refer to them as detainees, besides which having been a temporary resident alien always made me feel I was from mars or something. That's the only thing I could find.

Beaumont: I think we need a motion to incorporate that change into the findings.

Fritz: I move we incorporate that change into the findings and adopt the findings.

Fish: Second.

Adams: Moved and seconded. Any council discussion? Anyone wish to testify on this motion? Sue, please call the vote on the motion.

Adams: The motion to amend.

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

Adams: Aye. [gavel pounded] The motion is approved. Unless there's additional council discussion, I would take a motion to -- or just vote?

Beaumont: I think you can go ahead and just vote --

Adams: Please call the vote.

Fritz: Again, thank you for all of the good staff work on this. Thanks to Tom and Vanessa in my office for their diligence and thank you to the community, to Jim Davis, the south Portland neighborhood association chair who raised the appeal and it's very principled, what we're doing here, and it honors my delight in the land use process that we're doing it this way. And I think it's highly likely when it goes to the conditional use process that the facility will be approved with perhaps conditions that will help the neighbors feel safe and understand that the traffic issues are being addressed and to me is one of the wonders of the land use process that we're able to get the issues addressed as part of the discretionary review and my colleagues, who thought carefully about this and I think it's a good outcome. Aye.

Fish: This was a hard case because it did not fit squarely within our code and this is where reasonable people can agree or disagree with the outcome. But what's important is how we go about procedurally reaching our decision. In my view, we had a superb staff presentation which provided all the relevant information we needed to come to our own conclusions. I thought the testimony from citizens who either came in person or sent us emails and letters was first rate and I think caused all of us to reflect very carefully on the legal issues. And I want to echo what commissioner Fritz said. I thought the council discussion was especially thoughtful. I believe this is the right outcome but I think it was appropriate to take our time to get it right. Aye.

Saltzman: Well, I just want to say I think this is the right outcome as well. I think that upholding the design and subjecting the detention facility to -- when you can have upward to 50, maybe 100 detainees on-site that requires a special review by the city which is what our conditional use process is about. And so I think the council has landed in the right place on this decision and pleased to vote aye.

Leonard: I am going to support this, but I do so reluctantly and I want it say why. One of the -- one of the things I've learned in public life is that the citizenry can have expectations of its elected officials that sometimes we inadvertently ourselves create and sometimes they're false expectations that when we don't follow through on creates more of a backlash than had we not created the expectation in the first place. To be specific on this case, as my colleagues have said, I think while we have initiated a more elaborate public involvement process, my sense is that the community thinks they have, to use their words, "won," and don't really understand the nuance what the next steps really mean. Notwithstanding, I think that the makers of the motion last time I thought made it clear what it meant. That, ultimately, the end result could end up being that the facility will be built as is, however, maybe with traffic modifications, etc. But there's a wide gulf what the community thinks is going to be built there and what the facts made clear is going to be built there and I saw nothing happen in between the discussion that caused the community to come closer to the reality of actually what's going to be constructed there, which was a temporarily facility that people will be temporarily housed in and shipped to Tacoma, part of the testimony on the

February 23, 2011

community was they were convinced this was going to be a Tacoma style facility. So the problem is solved for now. Some future councils however will have another hearing and the community, I will predict for you, will not understand why there's another hearing because in their mind they've already have the hearing and the community will not understand when the council approves to -- votes to approve the facility. So whatever level of disgruntlement existed in the current process will be exponentially greater in the future land use hearing because it appears that this project will be approved but with some limitations on traffics and etc. So I appreciate the thoughtfulness, the intent of having a more thorough process, I frankly hope I'm not here when the next hearing happens because I'm in the looking forward to the reaction I fear is going to occur when people realize exactly what this meant ultimately. Aye.

Adams: Aye. [gavel pounded] 179 is approved. That gets us to the regular agenda. Please read the title for nonemergency ordinance, first reading, 191.

Item 191.

Adams: Mr. Armstrong, how are you today?

Michael Armstrong, Bureau of Planning and Sustainability: Fine, thank you, mayor.

Adams: What do we have here?

Armstrong: Michael at the Bureau of Planning and Sustainability. It's a fee schedule that would allow to go through the public process to adopt administrative resumes dealing with the remaining containers in the right-of-way. We're eager to go down that path so we can have the rules in place that establish the process through which businesses can apply for the economic hardship exemption. Once that's in place, they can come to the door and apply and we'll review those applications and finally lets us address the remaining containers in the right-of-way. Staff at bps have spoke with the fire marshal about their concerns and looked at other related programs that try to deal with the issue of economic hardship. The fire marshal really assured us that containers are not such a big deal it them when they're not right-of-way, although they're interested in make sure as they're moved out of the right-of-way, they're done in a with a that protects life safety and asked additional language in the brochure and we've included their language there and looked into other city programs for other ways of dealing with issues of economic hardship and there are few examples out there. There's a city in Florida that has a economic hardship application for dealing with historic resource issues and they have a \$50 fee for applying for that exemption. There's -- exemption. There's another one in D.C. where they do it on a per unit for multifamily house. And there are a few examples. And relatively modest fees realizing it's an application to show that you are under economic hardship and the level of the fee is a judgment call trying to balance the need to discourage frivolous applications while recognizing they're trying to show they have an economic hardship. So that's a judgment call. Up to you and that's what this ordinance would do, is set the fee. As we go into the admin rules process. This is a typical administrative rules process and welcome chemicals from the you and the public and once the ordinance is established, we'll set a date for the hearing and meet with you and the interested members of the public and go through the process. I'm happy to answer questions. And I think there's probably interest, testimony from the public as well.

Saltzman: Does this allow fees for economic hardship in perpetuity? This establishes a fee. Council adopted a ordinance in 2007 that establishes the existence of the economic hardship exemption and the ability to have that renewed. This is establishing the fee.

Saltzman: So the hardship, the previous code we adopted allows the hardship to be continued in perpetuity?

Armstrong: Yes, yeah, it's subject to renewals and part of the rules process is how does that work. What documentation do you have to show and what's the level of review and at what point would it come back to council, for example.

February 23, 2011

Fish: For those who are wondering why Mayor Adams was walking around during Michael's commentary. Could we turn the heat back on in the chambers and adjusting the thermostat so we could get above freezing for the balance of the meeting.

Fritz: To follow up on commissioner Saltzman's comment.

Armstrong: Sure.

Fritz: I'm only willing to support these fees if the administrative rules come back to council, because I don't think \$250 is a significant disincentive to continuing to ask for economic hardship year after year after year. So I would hope that the administrative rules will have some other disincentives, otherwise I'd like you to come back with a progressively increasing fees. \$250 the first year, but \$1,000 the next and \$5,000 the next, or whatever. I'm willing to go this route but like to ask the mayor to bring the administrative rules back to council so we can determine whether we've been stringent enough in discouraging endless extensions.

Adams: I'm willing to bring the initial administrative rules back.

Armstrong: That's certainly a council decision and one other thing that's occurred to us as staff is to come back with a report, 18 months from now and we would have worked through the round of applications and seen how many have gone back for renewals.

Fritz: I'd like that as well.

Armstrong: We're happy to do that.

Fritz: But I would like to see the initial administrative rules.

Adams: All right, Sue, who signed up to testify?

Parsons: We have one individual. Dan Anderson.

Adams: Welcome back, Mr. Anderson. [inaudible]

Adams: Indeed. Look, we mentioned your name and the sun comes out.

Daniel Anderson: I'm Daniel Anderson, 2144 N.W. Flanders, Portland, 97210. And because I live in a prewar neighborhood, I contend with dumpsters on the sidewalk on a daily basis. And I was a member of the working group. Item 191 is the same matter before you last December 1st and that incarnation, it was item 1549. It's obviously an ordinance to collect fees from those who would claim hardship exemptions to justify their open-ended storage of dumpsters on our sidewalks. When the matter was last before council, each of you identified specific shortcomings in the bureau's proposal. Because of your concerns, you took no action last December 1st and returned the matter for further work. Stunningly, none of these concerns are addressed in the proposal before you today. Because of this, I think it's useful to review the concerns, fewer 90 days ago, the concerns remain relevant today. First, several of you asked the revised fee proposal be returned to council at that time with any -- revised fee proposal, one to eliminate the current code provision which tolerates unlimited or rolling exemption. 191 is silent on this point. Second, several of you expressed concern that the presentation of a revised fee proposal ought to also include a well-vetted administrative rule setting out standards for hardship exemption. Per commissioner Fritz's observations, there's no administrative rules presented to you today. It's a fee-only proposal and if you read it, it frankly doesn't even get at the concerns raised by commissioner Leonard on December 1st regarding BDS and Fire Bureau review and concurrence, notwithstanding the remarks of Mr. Armstrong who proceeded me. It's not there in the ordinance. I encourage you to read it. Fourth, you also suggested that any revised proposal should set a fee level high enough to disincent applicants to use it for short term gain and avoid compliance with established city policy. Again, item 191 makes no change in the trivially low fee proposal presented to you last December 1st. It's the same schedule of fees. No change. Simply put, 191 falls well short of an approach which would address your previously expressed concerns and the concerns of those who have to live with this problem in the neighborhood. It's notable for what it doesn't say. Given the wide gap between concerns voiced by the majority of the council last December 1st and the content of item 191 on today's agenda, I think, frankly, this should be sent back to the bureau for further work to

February 23, 2011

align your guidance with the substance of what's brought back to you. This is the kind of thing where if we wait 90 days we can do the same silly things again and maybe you won't recall your previous guidance. I don't get this.

Adams: I need you to wrap it up -- I've let you go longer.

Anderson: Thank you for your leadership in this matter and may we get the dumpsters off the sidewalks in our life sometime?

Adams: Thank you, Mr. Anderson. Mr. Armstrong, please come up. Your response to administer Anderson's concerns?

Armstrong: Many of you -- of these issues are the ones we would work through in the administrative rules process and you would have the fees established and we can go through that process and if you would like us to bring those back, we can. And we're in agreement we want to get this in place so we can deal with the dumpsters still in the right-of-way. These are the issues we address through the development of the administrative rules and hope to do -- the administrative rules and hope to do that as soon as possible.

Adams: And come back for consultation with the city council. I'm comfortable asking council to consider this next week. Because I think the -- this issue, which is long-standing, makes progress incrementally and when there's efforts to -- well-intentioned to jump forward a couple of steps, it's actually closed several things down. I appreciate Mr. Anderson's concerns and I agree they're in many ways well founded but we want to keep moving forward.

Fritz: Thank you very much for being willing and what I'm hoping for is that the administrative rules will come back for a hearing before council.

Adams: It will be back -- we'll put it back before council as a resolution.

Fritz: Thank you.

Saltzman: When would that be? Roughly?

Armstrong: We'll post the notice, it has to be 60 days in advance for the initial public hearing. That's going to be probably end of April, early May. And then we've got to -- let's see, trying to think if we need to finalize them. Once we've gotten the public comment, revise them and bring them back at that point. I'm developing a specific time line but the initial public hearing about 60 days from when we get it posted.

Saltzman: I'm unclear --

Adams: Three or four months?

Armstrong: The goal is that these are finalized by early summer. So -- no later than June.

Saltzman: I'm unclear, is -- we're doing the fee without yet having the rules to define the exemption, hardship?

Armstrong: Yeah, the -- we need you to set the fees so we can write the rules. These are related in part depending on the level of the fee, that would change how to process works.

Adams: We also -- I mean, there's a whole group of people out there that this doesn't -- business owners, that this doesn't become real for them until we put out -- what? -- the potential fee -- hardship fee might be. And also shows we're moving forward incrementally on this, maybe too slow for some people's tastes, but this has been -- you know, 100 years in the making.

Saltzman: When will they receive the notice about the fee?

Armstrong: The fee will go into code as soon as it's effective. But the rules that define how you go about how you go about applying for economic hardship won't be in place until after he adopts the administrative rules. In the neighborhood of June.

Adams: We want to send out notices to let them know that this is in place, administrative rules are coming. So get them clued in. What I don't want to have happen, we get down the road on administrative rules and this is incremental. The fee doesn't -- they're not eligible for the hardship until we get the rules in place, but I want this in place because I've learned over years, until you get it adopted, we can always change this later. We don't get people's attention. So I want to get

February 23, 2011

people's attention and make sure that we're not here in two, three months and we've got all kinds of small business people screaming at us and we reverse course, zigzag yet again.

Armstrong: It's a relatively short list of businesses that have indicated they intend to apply for the economic hardship exemption and notify them and make sure they're aware of the process.

Saltzman: How many roughly on the short list?

Armstrong: 16.

Saltzman: Ok. Thank you.

Adams: Any other council discussion? This is a nonemergency. Unless someone else wants to testify or council wants to opine further, it moves to second reading next week for further consideration. Please read title for item 192.

Item 192.

Adams: Good morning. Welcome back.

Mark Stairiker, Risk Management: Liability claims manager for the city. The Greg Benton litigation for \$25,000 is before you. Risk management and the city attorney's office have evaluated the costs and risks proceeding with litigation and compared to costs and risks with the amount of the proposed settlement and recommend that council approve the settlement. Trial is scheduled for later this year and we can answer any questions. This matter have been reviewed by police upper management and Chief Reese regarding lesson the learned and refer it back to training for the community care taking statute with the officers one more time.

Fish: Can I press on that -- mayor, my policy is to defer to city attorney's office, commissioner in charge, police bureau, particularly there there's a mitigation and I federal judge recommends a settlement. I would be curious, having read the description you gave us, what precisely did the officer do that is going to require review of our procedures?

Stairiker: Well, he had the authority to go into the apartment to look for an injured party. But he - - the officers may have exceeded their authority when they started to do a search. And picture frames and looked around the apartment.

Fish: This is not the right forum to have a maybe -- you know, a long discussion about this, but a police officer is called to the 1600 block of northeast Killingsworth because of reports of a weapon being discharged. Because there's some concern that there could be a shooter or someone injured, they then do a systematic search of each of the apartments, knocking on the doors and making sure that the citizens are safe.

Stairiker: M-hmm.

Fish: When they got to the plaintiff's door, while he refused entrance at some point, more than one officer heard the chambering of a round into a bolt action firearm. Followed by the sounds of what they thought were multiple rounds of ammunition being dropped to the floor. At that point, the officers, as far as I can tell, had a reasonable belief there may be imminent harm to the officers and might be someone in the apartment at risk. And my understanding is that based on those facts, there's no hearing on this case, so we have to take the facts as alleged by both sides, based on those facts, however, the officers had no probable cause to enter the apartment. And I just -- you know, like every one of my colleagues is a stickler for constitutional protections but based on what I've shared with you, the facts we've been given, why would an officer not be acting within some reasonable scope of their rights to enter a apartment if -- if based on the shooting, based on the report of a shooting, based on concerns of the safety for the people in the building and based on what they believe they heard, which is their perception and i'll give them the benefit of the doubt on that, i'll accept the recommendation, because as the note mentions, the cost -- the legal fees could exceed the amount we're being asked to settle this case, but I didn't -- have to say, I read the factual narrative and wondering what an officer would do differently in those circumstances, particularly since an officer has a duty to make sure he or she is not in harm's way but other people in the

February 23, 2011

apartment building aren't put in harm's way and ultimately dinged for not having probable cause to enter the apartment seems to be a very close reading of the law.

Stairiker: The memo may not have gone far enough to explain that in all probabilities with a technical violation, they exceeded that authority and looking -- by looking around for non-related items doing a caretaking search.

Fish: That's not in our memo and, again, if the city attorney's office has participated in a all-day meeting with a federal judge and makes a recommendation, but --

Adams: I appreciate the airing out of the issue. Anyone wish to testify on the item 192, emergency ordinance? Unless there's additional council discussion, sue, call the vote on item 192.

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

Adams: Aye. [gavel pounded] 192 is approved. Can you please read the title and vote, second reading on item 193.

Item 193.

Fritz: First, thank you to the Bureau of Human Resources for their diligence in reviewing this policy and the employees who commented, most in favor of it. The ridicule in the media and emails I've received on this policy is very disturbing to me. This is a matter of people willing able to breathe. This is a matter of employees being able to do their work without getting sick and it's about avoiding healthcare costs which are borne by the taxpayers. And yet some have treated it as if it's frivolous and we shouldn't spend time as something as important as employees' health and people's health. And I realize that people don't think about their disability and don't in some ways seem to care about their disability and don't make allowances for people with disabilities in a way we would hope as Portlanders who value each other and care about each other. It's something as simple as if you can help a human being by not doing something, which you can be free to wear your colognes and perfumes in the evenings and weekends why would you not want to help out your coworkers and help them be more productive and the people on the bus who may have a serious reaction to your choices. And it reminds me also of my work for 26 years in mental health nursing how people today still believe some -- some people today believe that people with mental illnesses should just pull themselves up by their bootstraps and what's the big deal. I'm proud of our city for being a thoughtful city where we do care about people with disabilities and care about health and safety and the clean air in our workplace environment and I'm grateful to everybody for your work on this and proud to vote aye.

Fish: I want to commend commissioner Fritz for taking this forward and I will tell you, I've got a number of emails that came to our office and they were almost -- they were overwhelmingly supportive of this matter. And I suspect that when once upon a time it was proposed people wear seat belts in their cars, that was ridiculed and wear helmets when you ride a motorcycle, that was ridiculed and heavy handed government and I suspect every time we move the bar, you're going to hear from the same group of naysayers and that's their right, which they put their name to it, which I find more appealing than the anonymous ones which I don't read anymore. But there was misinformation in the last hearing that I thought you artfully cleared up. This is not an absolute bar. This is not written in such a way it's followed automatically by disciplinary action. This is written to discourage people from using scented products and to have a reasonable protocol for people to raise complaints and work out their differences. So I think this is a common sense and reasonable approach and thank you for your leadership in bringing this forward and pleased to support it. Aye.

Parsons: Fish.

Fish: Aye. [laughter]

Parsons: Sorry. Saltzman.

Adams: We like to vote often and early.

Leonard: We weren't paying attention to you. [laughter]

Adams: Commissioner Leonard was dozing.

February 23, 2011

Saltzman: My turn. I believe this is a reasonable protocol and is an issue that does bear us addressing in our workplace. Thank you, commissioner Fritz. Aye.

Leonard: And I agree with both of the sentiments just expressed and as commissioner Fritz might know, I'm familiar with being on the adverse end of publicity and I've learned through my own experience that the vast majority of people that agree with something never communicate it via a blog or call into a radio show but I too have received many positive emails about this issue and I appreciate you bringing it forward. Aye.

Adams: I'm pleased to support this. I want to thank commissioner Fritz for bringing it forward and I thought -- I was not aware that Jerry, who is one of my colleagues in transportation, suffered, I thought her representative story and experience on this was in addition to the emails I received, very compelling. And like any large employer we have a variety of items in our personal policy that might seem incredibly obvious to the average person such as appearance and language and things. But when you're an organization of almost 6,000 people responsible for 146 square miles and almost 600,000 residents, being clear about our expectations is a reasonable thing. Aye. [gavel pounded] Can you please read emergency ordinance item 185.

Item 185.

Adams: Commissioner Saltzman, did you want to lead with some questions or concerns?

Saltzman: I guess first I'd like an explanation of this expenditure. I guess my larger concern is we seem to -- a few months ago there was an emergency ordinance item to contribute \$670,000 to this project. This looks like to me we're contributing \$183 and yet we haven't had any kind of a council decision as to what our degree of participation in this project will be, what the scope of it is, what the cost of the benefits are. And from what I understand, it's a pretty expensive project. We tend to count federal money as free money, it's still a lot of money and we don't know whether we'll get 50% or 60% or none. So I'm concerned that we are incrementally backing into this project without any affirmative council discussion. So explain to me what this advance doing.

Paul Smith, Bureau of Transportation: My name is Paul Smith, the planning commissioner of the -- manager of the Bureau of Transportation. To my right is Patrick Sweeney, the project manager for the Portland Lake Oswego transit project. This ordinance would authorize the mayor and the auditor to enter an intergovernmental agreement. And that intergovernmental agreement authorizes the city to pay \$183,000 to tri-met for the process which is currently underway related to the development of a locally preferred alternative or LPA, we call it. These funds are already in PDOT's budget for the current year. There are no city funds committed beyond the LPA phase. And we would need to bring before you a new intergovernmental agreement before we could move beyond the LPA phase.

Saltzman: Will you define LPA?

Smith: The locally preferred alternative. Patrick will make a couple points about how this LPA phase fits within the draft environmental impact, which was recently completed.

Patrick Sweeney, Bureau of Transportation: The Lake Oswego-to-Portland transit project has been going on for quite some time. I've been with the city since January 2007, and it goes on even years before I got here. But from 2007 to current, Tri-Met and Metro, which are the sponsors for the study, have initiated an alternative analysis and drafted an environmental impact statement they have been working on diligently up to now. We're right towards the end of that process, the draft environmental impact statement was publicly issued for public comment in November, a 60-day comment period, which closed the end of January. There was a citizen advisory committee made up of roughly one-third citizens from Portland, one-third citizens from the Dunthorpe area, and one-third citizens of Lake Oswego. They recently wrapped up 18 months of monthly meetings, discussing the draft environmental impact statement and the impacting of the projects weighing the cost and benefits, and they voted last month 16-4 in favor of streetcar as the preferred mode for the transit corridor project.

February 23, 2011

Adams: As part of that they looked at all possible higher-speed transit options, right? Buses, the status quo, everything.

Smith: Correct. They evaluated three modal options, one as typical in an environmental impact analysis, have you a no-build, which is do nothing, and they evaluate an enhanced bus, and the streetcar. The streetcar alternative would operate in Willamette shoreline mostly in the Willamette shoreline right of way, which a consortium public interest, the city of Portland, city of Lake Oswego, Multnomah county, Clackamas county, Tri-Met, and Metro bought the Willamette shoreline freight right of way in 1988 for just under \$2 million. Now valued 22 years later, at between 70 and \$100 million. This is a huge opportunity with this project because we can use that as local match towards the capital costs of the project. So the CAC weighed the options and found that with the streetcar in the long run it's an investment, will have higher ridership and better travel times because although enhanced bus put more bus capacity on highway 43, it's subject to getting stuck in the congestion of highway 43 that we're trying to find options for. So by the streetcar option is like adding a lane to highway 43, so we're increasing the amount of people that can move through the corridor.

Saltzman: I appreciate this briefing, but it shouldn't be coming because I pulled an item off the agenda. And we had the briefing a few weeks ago and I asked the person -- for more cost benefit information and nothing has been forthcoming to my office since that meeting. So I guess my larger point is, this is great information, but I think we need to have it in a council session where we actually reach a decision about how much we're in this project for. And that --

Adams: I got council authorization to proceed with the steps at a previous council discussion. We were very clear in the previous authorization that doesn't lock council into anything. This has already been budgeted to complete the process says to come back to council for its consideration. So the fact that it was budgeted out into -- is being authorized out to segments, it was in the budget and it was contemplated, it was called for in previous council actions, and the process of studying the various options was also called for. This doesn't lock us into anything and will be coming back to council, but we've got to complete the process legally under federal rules, we've got to complete this process before we can come back to council. Where you'll be able to discuss the full cost and benefits. By authorizing this today we're able to finish the process of coming up with total cost and total benefits as required by federal law. You and council might decide to do -- ask us to do additional cost benefit analysis and we'll do that, at your direction. But we need to comply at least with the federal rules in order to have this \$100 million benefit at least the option of this right of way included as a local map. So unlike having to come up with all this cash and a lot of other projects, this one we bought for \$2 million 20-some years ago, could be valued the by the federal government at 90 to \$100 million as if it was cash.

Saltzman: Which is great, but I'm not sure that should be the guiding imperative, and --

Adams: And it won't be, because you have to -- it has to come back to council for its consideration on next steps. But we have to fulfill, and I think you would want us to, because you also operate under federal rules, we have to fulfill the federal responsibilities here.

Fritz: It comes back to council in April?

Sweeney: April 6th. And we're --

Smith: And to emphasize one point I made earlier, we'll have -- I sit on the project manager group and the mayor sits on the steering committee. We -- the city of Portland and the city of Lake Oswego in particular are going to need to if this project were to move forward down the road, if you will, it will have financial implication and we will be discussing those with you and the decision even on April 6th does not commit the city to move forward even into preliminary engineering.

Adams: There usually that's all these transit problems, they're usually -- I try to be very clear at each step what the significance of the step is, as Paul just reiterated, I understand this is controversial for some folks along the right of way, and it will be watched closely, and regardless of

February 23, 2011

that I appreciate any and all questions about it. But this isn't anything other than I've already asked authorization to do on a time line that we set out and this group of fine staff are completing as envisioned, and we have to follow established federal expectations, that isn't -- doesn't preclude us or you from making any decision based on anything or asking for more information.

Saltzman: The decision item on April 6th is what?

Smith: Where the city council would consider the locally preferred alternative. Which is the recommendation, the narrowing of the alternatives that have been studied, and for example --

Adams: Conveyance alternative.

Smith: What is the mode, and Patrick has participated in four meetings of the planning and sustainability commission. There is a letter to the mayor with respect to our work, a lot of what has been rewarding if you will is we've been working with the people of the residents of Johns Landing for quite a few years because the Willamette shoreline right of way goes in close proximity to a lot of condominium buildings. Even within eight feet of some of them. So the staff and the consultants over the last several years have worked out what I think is a really good compromise to come out to macadam and run in macadam for a half mile through the sort of main street area, avoid the condo impact. So at the CAC the residents of Johns Landing have overwhelmingly supported what is called the in-street macadam alternative. So -- but I --

Saltzman: I get that, and I appreciate that. I want to assure members of the council I'm not raising my concerns on behalf of any residents of Dunthorpe, but on behalf of what I believe citizens of Portland and taxpayers should be asking questions about. And that's what I'm doing. I appreciate this discussion, and I'll be happy to support this. I'll look forward to getting more information to make a better informed decision on this April 6th.

Sweeney: If I could just add, I will be working diligently with you and all your staff to make sure that there is -- we all have the right background information that you all need to have our discussion on April 6th.

Adams: And I appreciate that clarification, because the -- maybe it's through second, third, and fourth sort of transmutations, or -- but that is sort of the crying call for Dunthorpe, whether you know it or not, and I -- reasonable people can disagree, I just want everyone as we usually do to look at the facts, and this potential action allows us to assemble the final batch of facts. Others? Ok. Thank you. Anyone wish to testify on this matter? Sue, would you please call the vote.

Fritz: Thank you mayor Adams and commissioner Saltzman for that discussion, and also the staff, and I recognize and thank all the good work that's been done by staff and consultants and citizens in southwest Portland and Lake Oswego. This ordinance, resolution -- ordinance is paying for work that's already been done or is in the process of being completed by the advisory committee and the community to decide between no-build, intense bus transit service and streetcar as the proposed locally preferred alternative that will come to council on April 6th. So it's budgeted and paying for what we've already been doing. This is a citywide issue, however, and the prioritization of funds for this project versus other projects is something that I'm interested in discussing at the April 6th hearing to discuss whether to move forward as well as how to move forward should we choose to do so. I appreciate this discussion and clarification. Aye.

Saltzman: I appreciate this clarification and discussion too, and I do think as commissioner Fritz mentions, it also is a prioritization of city dollars on transit projects and whether this is the highest and best use, and I look forward to seeing if there's anything that will compel me to support this as indeed the high and best use of our dollars. Aye.

Leonard: I did do a ride on the streetcar line in the mayor's absence, with representative DeFazio and representative Schrader, and I was struck that the only protests were from people living in very nice houses along the line. Yelling at the streetcars that went by. I'm not sure it had the impact on me that it was intended to have. Or the congressional delegation as well. So I do think we need to look at this issue based on the facts and not as some may characterize it that live in Dunthorpe as

February 23, 2011

the light rail makes its way back and forth from Portland to Lake Oswego, and I as commissioner Saltzman and Fritz have said, want to look at all the facts. But I definitely won't be persuaded by just a very narrow view of how that important transit corridor might impact a few people along the line. Aye.

Adams: South Portland remains our biggest mobility and access travel challenge on both sides of the Willamette River. That's why in an unprecedented manner I suggested and council approved money to get the Sellwood Bridge moving forward. It's why we're looking at following up on a 20 some-year-old vision for the best use of this rail right of way. It's why we're looking along Barbur of the next potential extension of light rail to Tigard. Its full cost, full benefit. I met with the folks of Dunthorpe personally, have sat in their -- a living room and heard their concerns personally. And we're trying to be responsive, and I think that's as evidenced by the fact that as we took a fact-based review of the modes, including the status quo, we've taken a fact-based review of alignments because there are other concerns that you heard a little bit about. And I want us to move forward as we always have with an understanding of full cost and full benefit, short-term, long-term, intermediate term, and I appreciate commissioner Leonard's comments. We've -- when some of these transit options, some transit options in some neighborhoods where it's never been before really engender a lot of anxiety, we've seen that with light rail, we've seen that with streetcars, we've seen it with buses, bike lanes, the whole series of things. And I want to air those out. And I want to be very transparent and how we sort of study those. But I want to do it at least initially in those discussions inspired by a basis of fact. So thank you. Aye. [gavel pounded] 185 is approved. We are in recess until 2:00. And I just heard that Obama ordered the justice department to stop a defending the so-called defense of marriage act. Because it's unconstitutional.

At 11:24 a.m., Council recessed.

February 23, 2011
Closed Caption File of Portland City Council Meeting

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

Key: ***** means unidentified speaker.

FEBRUARY 23, 2011 2:00 PM

Item 194.

Leonard: Today we are once again taking up the schools and parks conditional use code refinement project. First we're going to hear from Deborah Stein from the Bureau of Planning and Sustainability who will recap last year's hearing and discuss three technical staff amendments. Deborah? Good afternoon.

Deborah Stein, Bureau of Planning and Sustainability: As commissioner Leonard just said, I'm going to do a quick recap because it's been several months since I was here last.

Parsons: Excuse me, I need to read the title.

Stein: I was here before you in April and want to start with a recap of the two hearings you held on this project back in April so we can all remember where we left off. As I did last April, I'm here to present the planning commission recommendation, it's now planning and sustainability commission, but I'll refer to the planning commission because that's how they were known at the time. I'll be here to present the planning commission's recommendation ha has been forwarded to you in March of 2010. And following my overview that I understand there will be an introduction of a mayor's alternative proposal. And after that is presented, you'll be opening up the floor to testimony and because of this is a continued hearing from last April, people who have testified before are welcome to testify again. But we do have all of the testimony from the April hearing is in the record. Quick recap of April of 2010. **[MP3 audio recording of meeting begins here.]** On April 22nd, you heard four topic areas that were part of this project having to do with both schools and parks. There were four topic areas. The number one, two, and four relate to schools, and those are before you again today. And I want to mention that all of the school-related zoning amendments that we're talking about today affect all of our school districts, the six school districts in Portland, and they also affect private schools as well. Back on April 22nd, 2010, you heard testimony on these amendments and you began deliberations, but the council meeting ran out of time and then you postponed to the following week. What happened then at the following meeting on April 28th, 2010, was that you had narrowed the focus of your discussions to the third topic, which was recreational fields, and you voted to adopt a set of recommendations -- voted to adopt a set of amendments related to recreational fields on that date, and those are now in effect. That then left the school-related amendments to be discussed at a future date. And here we are today. There was -- there were two questions that were common to all four of the topics discussed in this project and those two questions are, first what are the appropriate thresholds to trigger a conditional use review, and secondly, if a conditional use review is appropriate, what type of review should it be? A type two or type three? And those two as you know, differ in terms of the cost, the time, and the appeal body. So that's the difference between the two and the three. Those questions are common to all three school related amendments we'll be talking about today. What I'm going to be presenting is the planning commission's recommendation back from March of 2010. In the first topic, enrollment fluctuations. The question before you is what are the appropriate thresholds to trigger conditional use requirements when schools have enrollment changes? Fluctuations in enrollment that are common to every school. The planning commission's recommendation would allow the fluctuations in enrollment and staffing without a conditional use. Instead of counting enrollment, which is very

February 23, 2011

difficult because almost literally enrollment can change day to day for any given school, so rather than have a very difficult to implement requirement, what the planning commission recommended instead is we use the increase in square footage as essentially the proxy for expansion. If a school is expanding square footage, that's an indication of growth, and if that growth and square footage is over a threshold of 1500 square feet, we determine that would be the trigger for a conditional use review rather than a counting of heads. And that seems to be a much more workable and sort of common sense trigger for a conditional use. And I want to note that 1500 square feet is important because first of all it's already in the code for other things, but more importantly for some of the things we've heard in testimony, concerns about portables, for example, they tend to be over that threshold, approximately 1700 square feet. So what this means is with this adoption of this amendment, a conditional use would still be triggered if a portable were added to a school. The other thing about this particular topic is that we wanted to reflect -- acknowledge the fact there are other kinds of regulations that really control the size and capacity of a school. So there are a number of fire code and other health and safety issues that come in to play to look at whether a school campus can accommodate particular enrollment. So we felt those other requirements were in place and were enough after safeguard to make sure a capacity was commensurate with the size of the school. The next topic area is the subject that has generated the most discussion through the whole process, and that's the change of grade levels. The question before us was what are the appropriate thresholds to trigger conditional use requirements when a school has a shift in grade levels? At the April hearing you heard testimony about zoning code compliance cases. A lot of testimony I imagine might hear more of that today. There were a number of complaints, cases filed against Portland public schools, not our other school districts, but Portland public schools, because they did a number of grade configurations -- reconfigurations back in 2008 where they converted either an elementary school to a K-8 or some middle schools, adding some lower grades. That generated a lot of discussion. Those enforcement cases were put on hold at the time because there were some ambiguities in our zoning code that had different interpretations and were difficult to interpret based on the confusion. So it was that set of enforcement complaints that in part prompted this project in the first place. I do want to note that once you take action today on any amendments, those old enforcement cases that have been on hold will be reviewed against the new code that you adopt. So that's something to keep note of.

Fritz: Can I just interrupt there? Do we know that that's going to be acceptable to the state with the no changing the goalpost rule? Can we change the rules and review them with the new rules?

Stein: I think it's because the code was unclear the interpretation was up in the air. So that it's -- I think when we would say is that we're clarifying something that was ambiguously interpreted. And therefore it's not a new rule, but clarifying something that was ambiguous before. One of the things the planning commission's recommendation did in this area is to clarify the designations previously -- our zoning code referred to grade -- school types like elementary school and middle school, used those terms, which did not comport with the state definition. State calls an elementary school K-8, our zoning code had a different definition. So we would be bringing our definitions in play, but what we would do instead of referring to elementary, middle or high school, we would talk about the grade levels themselves. So the planning commission's recommendation is tied to the actual grades. So K-5, 6-8, 9-12, rather than use those terms. The most significant change from our existing code to what the planning commission recommends is that under their recommendation adding lower grades, meaning any grades K-5, to a school that contains grades 6-8, or above, would trigger a type three conditional use review. And that was the real change from what the code said today. Other than some other clarifications. So that was a particular recommendation, it was backed by testimony you heard in April from three of our planning commissioners, because of their concern about the safety impacts of mixing younger students with older students. So in a situation where you have -- had formerly been called a middle school, you were suddenly adding lower

February 23, 2011

grades. The planning commission had a lot of concerns about those potential safety impacts when you're mixing kids of those ages. That was the significant part of their recommendation. What we called topic number four, but the third much our school-related amendments has to use with conditional use status for vacant school properties. The question is what's the appropriate period of time that must lapse before a vacant school property would lose its conditional use status. This is because most schools are in a residential zone, they have a conditional use, status to allow them to function as schools, if the school were to vacate and the property was vacant, currently our code says after three years that status of the school would go away, and a new school coming into that facility would have to go through a new process. What the planning commission recommended was to extend that to five years, recognizing there's some needs for flexibility if a school were to need major repairs after a fire, for example, or if there were other significant changes they might need more than that three-year period to get the school back up and running, and we wanted the flexibility, we agreed, the planning commission agreed that having more flexibility made sense. And the planning commission also recommended that a type two review would be required to reestablish after that five-year period rather than a type three. But a type three would be required if that period were extended after 10 years. And my recollection is this is not an amendment that generated any discussion or opposition. Because it's been a while since April 22nd of 2010, I just wanted to recap the major issues we heard through both written and oral testimony. You may hear some or all of these issues come up again today. A number of concerns expressed about transportation safety when you mix the grades, and again, this was the primary point the planning commissioners made and some other testifiers made this point as well. There was a lot of testimony that the need for expanded coordination between our school districts and the city of Portland, there was testimony about the impact on communities about school closures and boundary changes. And I think that's another issue you might hear about today. A number of concerns expressed through testimony about code enforcement. Public's role in conditional use reviews, and also just the differences in terms of public involvement with a type two versus a type three. And then finally, there was some testimony about safe routes to schools and how effective that program is in looking at addressing concerns about traffic safety. So the planning commission's recommendation to you was to do two things. One is to adopt the schools and parks conditional use code requirement and that's the proposal that was originally contained are in this blue document dated March 18, 2010. I also provided to you a memo dated February 9th of this year with three very minor technical amendments. There are not substantive in any way, but they were clean-up issues. Planning commission's recommendations plus those amendments. But I also want to make note of some other things that the planning commission wanted you to direct staff to follow up on. Some of these issues have to do with some of the other testimony that was not directly addressed in this code amendment process, but are bigger policy issues. So planning commission is asking you, council, to direct us to develop agreements and policies that would do things like recognize school districts in the city's mutual interest and collaborating on issues having to do with the role of schools as heads of community, and the role of -- the interplay between our livability and schools. The planning commission wants you to direct us to ensure some consistency with city goals and policies for transportation connections, reduce dependence on auto travel, equity and overall livability. There needs to be more collaboration which I think we're doing a much better job these days in talking with our school districts about how our mutual policy decisions affect each other. So we'd like to continue that work through intergovernmental agreements and policy through the Portland plan and our comprehensive plan update. The planning commission also wanted to encourage good neighbor agreements and other kinds of non-regulatory tools to provide for those better relationships between schools, parks, and the public. And finally, they wanted us to encourage -- wanted you to encourage opportunities for communitywide discussion regarding some of the non-

February 23, 2011

educational impacts of school facilities and any changes to facilities. So we would look for direction there as well.

Fritz: Did the planning commission review the current city schools policy in the comprehensive plan?

Stein: That came up in testimony, and I have talked about that having some very good policy language that we would like to carry forward. We're taking parts of that through the Portland plan and through the comprehensive plan update. So, yes, we did talk about that document, and --

Fritz: You didn't review it in detail and say which parts they wanted more study on?

Stein: No. Not to my knowledge.

Fritz: Can you tell us what the work is being done on the schools issues in the Portland plan?

Stein: M-hmm. There's a lot of work -- we've been working with a technical advisory group that involves the superintendent and staff from all of our school districts. We've not worked with Riverdale but our other districts to look at in part looking at the cradle to career initiative and how that requires the alignment of policy decisions and some increased collaboration. We've also started talking about having some agreement and starting to outline what those agreements between Portland and our school districts might say in terms of how and when we'd collaborate or talk about particular issues and how we could build some more structural changes to the way we collaborate on particular issues. So those conversations are ongoing. I think the policies in the Portland plan are likely to say this is where we want to be going, and the details would be worked out through subsequent agreements.

Fritz: What kind of involvement from neighbors and parents have been in that work so far?

Stein: We have had discussions through workshops and other public events with neighbors. I believe that -- I'd have to look at the composition of the work group, but I think that there have been some conversations with some parent organizations, parent -- Portland parents for -- public schools.

Saltzman: Committed parents for public schools.

Stein: It's escaping me. And those would continue. Right now it's still at kind of a broad policy level. But we definitely want to be involving those kinds of organizations and those discussions as we move into a greater level of detail. In fact, we're just at that point now with the Portland plan where we're looking at going from the broader strategy to some specific actions, and that's where we need to identify community partners as well as agency partners to say how do we make this real instead much just being policy language.

Fritz: I hope you'll involve the neighborhood associations and other community groups as well as the parent-teacher groups. When we were doing the southwest community plan it was important to communities that had a school in their community that that was the glue that stuck it together.

Stein: In fact I was at an education summit a couple weeks ago and one of the participants, Will Fuller from SWNI was noting that the neighborhood associations need to have a stronger roll in the school discussion, and he noted that SWNI was the only coalition that has an education committee and tried to raise some awareness, sort of a missing partner in the larger discussions about education. So I thought that was a very important point to make.

Leonard: Thank you, Deborah. Council's had distributed to them from mayor Adams' office a memo dated February 9th, 2011, attached thereto are a series of amendments to the planning commission's proposal. I'd like to move the amendments and get them before council so we can have a presentation. I'd so move.

Fritz: I'll second it for discussion.

Leonard: The amendments that are before council rather than regulating the three school levels and requiring a type three conditional use review, when adding lower grades to a middle school as the planning commission would do, this amendment on the other hand would regulate just two school levels. K-8, and 9-12. The amendment would put our city code in alignment with the state definitions of grade levels. The mayor's alternative proposal also addresses the planning

February 23, 2011

commission's concern regarding transportation needs of lower grade students through a robustly funded and more comprehensive safe routes to school program in partnership with Portland public schools. There's a draft memorandum of agreement in your packet and that will be formally be on the agenda next week alongside the second reading of the code. And hopefully with the amendment as part of that. Specific components of the memorandum of agreement in your packet includes an intergovernmental agreement that has some of the following points. Using the safe routes to school program which has a proven track record in getting needed improvements built as the primary vehicle for prioritizing and building transportation improvements, second, creating a prioritized master list that includes all Portland public schools, and those that participate in safe routes to schools and those that do not yet participate would be included. The process for creating the list will include clear evaluation criteria and a public involvement element. Third, presenting the new master project list prioritizing process to the planning and sustainability commission for their approval, and finally, the district has agreed to commit \$5 million from the upcoming bond assuming that it passes, towards the program outlined in the MOU over the next six years. We've got public testimony unless council has any questions at this point.

Fritz: I have a question about the components of the mayor's proposal. I don't know if you or staff know the answer to them, but --

Leonard: We will get somebody up here from the staff very quickly.

Kurt Krueger, Bureau of Transportation: Good afternoon commissioners, Kurt Krueger with the City of Portland Transportation Bureau.

Fritz: What's the status of the safe routes to schools for the 90-odd elementary schools that we have, and the --

Krueger: I'm going to call up on Dan Bower. That's a good question.

Fritz: How many schools in Portland public schools?

Dan Bower, Bureau of Transportation: In safe routes to schools and PPS we have 72 safe routes to schools programs.

Fritz: How many schools do we have in Portland public schools?

Bower: K-8, 85. That includes high schools.

Fritz: So we don't have the -- they're not all done. What's the total amount of funding that's needed to provide improvements in those?

Bower: For the physical improvements? I can't say we can put a number to that. It would be in the tens of millions. Right now the safe routes to school program is only at K-5 or K-8 schools. We haven't done any assessments around high schools. We have engineering reports for 27 schools, 22 within the PPS boundaries. At those 22 schools we've identified all the needs around them.

Fritz: Do we know how much that number is?

Bower: I'm not going to put a number on it right now.

Fritz: You're a wise man. I appreciate -- that's careful. Do you know how much we've spent on physical improvements in the safe routes to school program?

Bower: Since the program launched four or five years ago, we've spent close to 2 million on physical improvements. Most of that's coming through federal funds flowing through the state for safe routes to schools project specifically.

Fritz: That's very helpful. And do we know what happens to that memorandum of understanding if the bond measure doesn't pass?

Krueger: I think we would be giving up the conditional use review for the grade level changes and that would be the biggest significant changes over what we have today. Portables and other typical conditional uses around schools would still be in effect.

Fritz: We would still lose the conditional use even though we couldn't provide the improvements? And I was wondering from the city attorney, do we know if this would be -- that using this capital

February 23, 2011

improvements list as a basis for approving proposed conditional uses as they currently are, is that -- does that meet state land use requirement?

Kathryn Beaumont, City Attorney's Office: I believe it would in the sense that state land use requirements don't specify what we need to look to to determine what kind of transportation improvements need to be made. If the improvements are identified in our tsp, in our road—in our transportation element, if our transportation staff recommends certain improvements, I believe we would be consistent with state law.

Fritz: Thank you. Those are my transportation questions. Thank you.

Leonard: Susan, can you please call the list?

Parsons: Yes. We have three testifiers.

Leonard: Good afternoon. Welcome to the Portland public schools.

David Wynde: Good afternoon commissioners. I'll wait for these folks to get seated.

Leonard: Would you like to go first or last?

David Wynde: I signed up first, so I think they'd like me to go first. I'm sure if there are questions you have you will address those to us as you see fit. Good afternoon commissioner Leonard, commissioner Fritz, commissioner Saltzman. My name is David Wynde, I'm a member of the Portland public schools board of education and chair of the board's finance audit and operations committee. Thank you for the opportunity to testify today on the schools and parks zoning code refinement package. I'm here this afternoon to provide comments on behalf of the school district regarding the proposed zoning code changes and the memorandum of understanding related to transportation improvements. I'd like to take this opportunity to thank the city's planning and sustainability commission and their staff for their effort throughout this process to clarify and update a number of confusing and ambiguous issues in the city's zoning code related to the regulation of public schools. We certainly appreciate their work in this regard. I have appeared before you a number of times in the past seven and a half years and there has been a continuing theme underlying my appearances which I think is important to acknowledge. That is the growing partnership between the city and the school district which I believe is a good thing for our city and for our school children and the work that is coming before you today is another example of that collaboration in partnership. Regarding the recommendations before you today, Portland public schools supports the mayor's alternative proposal to change the zoning code regulator restructure for schools and the memorandum of understanding developed between PPS and the city to establish a partnership to assess, prioritize, and fund transportation safety projects on a district-wide basis. While we support the planning commission's recommendations regarding enrollment fluctuation and conditional use status of vacant school property, we cannot support the planning commission's recommendations for changes in grade levels for reasons our superintendent and chief operating officer provided you with last April. The mayor's proposed alternative provides greater flexibility needed by public schools to deliver robust, educational programming and is mindful of the impact schools can have on neighboring properties. The memorandum of understanding contained in the mayor's proposal to address transportation improvements around district schools was developed through a collaborative and cooperative process between district and city staff over the last few months. I think it's clear from the level of detail in the MOU that this has been a deep and substantial work. I'm used to the MOU's that are one, one and a half pages long this, is almost seven pages long and fairly detailed. The proposed MOU builds on the partnership the district the city currently enjoy in the form of the safe routes to school program. And provides a great example of how the district and the city can address an issue of common interest beyond using just a regulatory approach. I commend the mayor's office for the forethought and flexibility in identifying alternative approach to funding transportation safety projects at district schools, **Sue start here.** I think it's this collaboration and cooperation that strengthens our partnership in delivering quality educational programs to the students of Portland public schools. The Portland school board is

February 23, 2011

scheduled to take up the MOU at its meeting on February 28th, next Monday, and we'll consider a resolution recommending approval of that MOU from the board's finance committee. So thank you for the opportunity to testify today. I'm certainly happy to answer any questions you have and there are district staff who can cover for me when I don't know what I'm talking about.

Fritz: Thank you for your service on the school board and for being here today. I appreciate you taking the time.

Wynde: You're welcome.

Fritz: We just heard we need tens of millions of dollars of improvements around the schools, in the Portland public schools, never mind the east county jurisdiction, is there anything in the memorandum of understanding which says you will let the city know when you're thinking of adding more students to a particular building so we can take what -- do some planning ahead of time to take whatever scarce resources we need to provide the sidewalks at that school rather than one of the other 85?

Wynde: It's my understanding that that is the purpose of the prioritization that is envisioned in the memorandum of understanding. Is that we can be try and be as clear as possible about where the highest level of need is.

Fritz: There's a lot of schools with a lot of need in terms of transportation, we know that from the level of infrastructure or lack thereof in the neighborhoods. So how it is proposed to go about deciding if we have \$5 million over six years, that's one or two schools, how would we decide which school got those?

Wynde: I'm going to look for help.

Fritz: They can come up and testify.

Wynde: I don't know the answer. I think district staff or city staff can clarify on that. We are faced -- the scarcity of resources and not having enough to do everything we need to do is something that we're all facing. We're proposing a capital bond which we hope will provide the funding for this. That will raise only a fraction of what we know we need to do in all of the schools in Portland. We're used to having to prioritize where we think the greatest need is. And I think that's the same kind of process in terms of dialogue between city staff and district staff to figure out how we can allocate the resource this would provide.

Fritz: How does that play in with your decisions about grade level?

Wynde: I don't know that it does necessarily. I mean, I think what this is talking -- what this is focused on is the fact that it's -- there's an underlying belief that when a school serves kids in grades k-8, as opposed to high school, that whether it's k-5 or 6-8 or k-8, that the number of students is more important than the specific configuration of those grades. And it changes when you get into high school. Because of the relative transportation patterns you're likely to see with high school kids as opposed to kids in elementary school.

Fritz: Thank you.

Leonard: Further questions?

Saltzman: In the draft memorandum of agreement it talks about the district funding of the projects contingent on project eligibility for capitalization. Is there any question these projects would be eligible for the bond measure?

Wynde: I don't think -- I don't think there's any question -- I think the expectation is that any of the projects contemplated by this memorandum of understanding would be eligible for capitalization, but because it's a capital bond that is providing the funding for us, it has to be explicit that those have to be projects that are capitalizable and not capitalizable. Because the bond proceeds are specific about that. You can't use bond proceeds for routine maintenance, you have to use it for capitalizable projects. As a matter of form, we have to say that anything that we do with those processes would have to be capitalizable.

Leonard: Mark?

February 23, 2011

Mart Bartlett: Mark Bartlett, Mount Tabor neighborhood. I don't know if you've read my -- I don't know if you've read my submitted testimony, but I wanted to remind you that two years ago Eric Engstrom wrote to Gil Kelley they had no problem deciding these were in fact violations. So there's really no question that they were, and if they could determine them, they must have had some standard by which they did so. So the point I make there is, how do we go back and retroactively create a process where the impacted neighborhoods or community members or organizations or businesses have any input to participate in that changed process, since they just fail to file applications-- knowing that the neighborhoods would be bypassed. The planning commission was pretty clear after we presented our information, this is part of the reason why some of these changes were done without the notification process. And that's why they made the recommendation for type threes. I've asked planning and they say they don't have an answer, except maybe they were allowed by right and weren't violation, but I think it's clear they were. And as far as Amanda's question about the goalpost, I talked to both LCDC and the state CIAC --

Fritz: What is that?

Bartlett: CIAC. I don't know the -- [laughter]

Fritz: An important body at the state.

Saltzman: Sounds impressive. [laughter]

Bartlett: They've both told me clearly the goalpost rule is enforced. So I don't think that's a question, and I know that planning has told me Mr. Engstrom is also working with the city attorney trying to find a way to do whatever they were going to do with that question. So I am still not understanding from the proposal how these things can be retroactively approved when the rule is in place at the time should be the rules under which they are reviewed. Going forward that's a different matter. But there's a number of them pending that are still outstanding and an additional list we submitted over a year ago that they wouldn't acknowledge or even investigate. And getting back to my recent submission to you for the record, I was wondering how the recent changes would be reviewed and the traffic safety environmental impacts of the new boundaries and the high school redesign cannot possibly be known now. They just approved this three or four weeks ago. How could any analysis have been done as required by the regional framework plan? I'm just confused about how that question is going to be answered. And finally the last question I had was about the money, it's been discussed. What if the bond does not pass? So then we'll have no type two and no funding. We'll be right back where we started.

Leonard: Thank you. Mary Ann?

Mary Ann Schwab: Thank you. Happy to be here. My name is Mary Ann Schwab, Sunnyside neighborhood resident. Why am I nervous? That three-minute clock. I have to slow down. I need to tell you what I need to tell you. I'm with the PPS parent union. One of the zoning compliance at all 11 schools. And most recently just finished working with the League of Women voters on an education equity study, and I want to make it clear we've done a lot of homework on this, the presentation was made formal February 8th. You are all invited to either attend or watch the replays. I am not speaking for the league today. These are Mary Ann's comments, and please take them as such. I'll start. We have many questions regarding this matter and any changes you might make to the current zoning code. An education that is suitable for all Portland students will never be sustained by practices from our segregated past. Segregation and educational apartheid in Portland should hold no attraction for any of you. Yet your changes to the zoning codes urge us right back in that direction. When it comes to our children, one violation of the code should be made too much for the city. The fact that the city has allowed 250 or more zoning violations to be filed and has done nothing for these children for three long years is criminal. The city has made itself an accessory to Portland public schools segregationist practice and has made a mockery of a speedy justice. It -- number one, and I have 11 of these. It has been nearly three years since the citizens filed over 200 valid zoning code violations that were harming our children's education and

February 23, 2011

quality of life. Those violations all related to one single paragraph of code. The current code lays out a clear process that which must occur before grade configuration changes are made in PPS. During school closures and reconfigurations over many years, PPS neglected to go through the mandatory conditional use practices required to close or rearrange our public schools. Why do you refuse to enforce your own clear zoning code when by doing so you would begin the process of ending racial and social economic discrimination in Portland? Why for three years have citizens had this conversation with the city? The people. Please enforce your own zoning code quickly and help speed a great education for our children. City staff: We can't enforce our own code because it's too confusing. The people: But the code, if the code were confusing why could we file approximately 250 or more valid zoning violations? The city staff: Well, the zoning code is not confusing to the layperson. It is only confusing to the mayor, city council, city staff, and school districts. Number three, if the zoning code grade thresholds were complicated, how could your principal city planner, Engstrom, write this to the director back in July of 2008? I quote, The zoning code has a very detailed threshold identifying the changes in the school activity that trigger conditional use review because no conditional use reviews were filed by PPS for the identical changes there have been many violations of the zoning code, unquote. Number four, if your changes to the current code are for clarification, why are they so complicated? Number five, why has the city not responded to the new 40 zoning code violations we filed in May 2010? Regarding violations including but not limited to illegal grade configurations, sound pollution, light pollution, and Astroturf. How can you even be discussing this matter today with 40 outstanding violations and no response? Number six, why do you continue to propose zoning code changes which will not comport with state law regarding elementary, middle and high schools in Oregon OAR 581 division 22 state standards. Number seven, if this is a democratic process and you understand that zoning code complainants are parents, students, teachers, and grandparents, why do you hold today's meeting on this critical issue at 2:00, when everyone knows all Portland public schools let out between 2:00 and 4:00 and parents must pick up their children? Why hold this meeting today when --

Leonard: If you keep going, we'll make it for them to be here in plenty of time. Your minute -- you're a minute and a half over.

Schwab: I beg your indulgence, commissioner Leonard.

Leonard: I was just pointing out we made the open in plenty of time for the parents to get here. Go ahead.

Schwab: May I finish?

Leonard: Go ahead.

Schwab: Thank you. If you want public participation in this process, why did you bury the fact that you would allow a system of pre-K to 12 into any PPS school? It's in your chart blue pages, page 50. Number nine, if the mayor's new amendment is simply the nose of camel under the tent, fully allowing the possibility of extreme grade configurations like pre-K to 12, just like the planning commissioner smith's spring version of 2010. Under the Mayor's scenario, once you allow one grade to come into a school from the next level, under a conditional use, the district is free to add the whole level with no further land use review. How is that productive to our neighborhoods, to our children? Number 10, why has the city hung a Christmas tree of their own zoning code violations on the backs of PPS students? We have filed zoning violations that prove students from at least 25 neighborhoods at 11 different schools are suffering current and ongoing discrimination. Why have you hung on our children zoning code violations that have nothing to do with them or the discrimination they face? Zoning code changes to gulf courses, boat ramps, cemeteries, concessions, parking, college institutions, do you think we don't know this blue book reads like a litany of your other zoning code violations? Should we file complaints on all the other violations that we know about when the city hasn't even responded to the recent 40 violations filed in may of 2010? Number 11, why do you continue to provide retroactive immunity for Portland public school

February 23, 2011

violations that would affect our children and neighborhoods, When it comes to transportation, children are at risk. Number 12, if you make these changes, what process will assure that school facilities are appropriate for the age of children attending that school? How can you assure citizens that fire exit codes and bathroom facilities are safe for small children? How can you be sure middle school and high school students will have adequate science labs and sports fields? If PPS has proven anything in this zoning process, they have demonstrated they'd cannot be trusted to do anything right for our children. I will ask you what I have again asking for three years. Make no changes to the excellent zoning code on our records today. Instead, help us speed up to a better greater education for our children. Thank you.

Leonard: You received an extra four minutes for a total of seven.

Schwab: With my work, thank you for your patience. I'm hoping you listened to the seven minutes. Actively.

Leonard: Absolutely.

Schwab: And will do what you can to answer the questions for Mark and the rest of us. There's lots of written testimony that's been given to you in the last 3-4 months, and we have heard nothing.

Fritz: Have you submitted what you just said into the record in a written form?

Schwab: I will when I get home.

Fritz: That would be great. Thank you very much.

Leonard: Does council have any questions of staff? Thank you all for being here. Appreciate it. Who would you like, commissioner Saltzman?

Saltzman: Deborah. So I guess under the mayor's proposal -- if you allow one grade to change, that applies to all grades. I can't find where that is --

Stein: I caught that too. Let me see. Can you clarify?

Sandra Wood, Bureau of Planning and Sustainability: Sandra Wood with Bureau of Planning and Sustainability. I think Ms. Schwab's point was that under the mayor's proposal if a grade is -- if a school contains any grades between K-8 and a ninth grade was added, a conditional use would be required to add the ninth grade, but then once they have the ninth grade they could add 10th, 11th, and 12th grade without an additional conditional use. The same goes for the planning commission's proposal. It's K-5, 6-8, 9-12, once your -- you have grades in any of those segments, you can add other grades in those segments. And those grade levels without an additional conditional use, which was I think our point was.

Saltzman: So the planning commission was recommending --

Wood: Three grade levels versus the mayor's proposal recommending two grade levels.

Saltzman: Type three reviews.

Stein: Depending on which -- depending on which way you go. Up or down. It could be a type two or three. Under both proposals. Planning commission and mayor's.

Wood: In the mayor's proposal adding higher grades would be a type three, adding lower grades if you had a high school adding lower grades it would be a type two, which is consistent with how the zoning code is mainly currently structured.

Saltzman: And I guess a related issue, I probably you -- you should probably know the answer, Governor Kitzhaber has envisioned the notion of pre-K -- pre through eighth schools possibly being full service, or full-service preschool facilities. Do our amendments foreclose or encourage that type of thinking?

Wood: It's not included in these amendments, and the zoning code regulates preschools as a different use category than schools. And colleges are separate also. So we didn't look at it during this -- these proposed amendments. And preschools are more permissive in general.

Saltzman: More permissive --

Wood: M-hmm. Because they're allowed in a variety of zones.

February 23, 2011

Saltzman: I'm wondering if we go with the new regime, whichever it is, we're talking about K-5. If they --

Stein: If you added a pre-K to K. It would not trigger, under this proposal that doesn't suddenly trigger a new conditional use. If you had a K-5 and you were to add a pre-K to that school --

Wood: It's a new use category, so I need to look at the zoning code to double-check that.

Stein: Do you know if preschool --

Wood: We can look it up for you.

Saltzman: Ok. This is our first recent new reading.

Stein: Right.

Adams: Sorry I'm late, I was in the front row of the state of the city address by the mayor of Vancouver.

Fritz: A little hard to slip out.

Adams: It is a little hard to slip out. I apologize. I've been briefed a little bit, we're in council discussion and there's proposed amendment on the table, what you're discussing right now, is that correct, and other issues? Ok. More discussion.

Saltzman: I think it was --

Wood: The day care question.

Saltzman: I think you answered that. I guess I was concerned about the moving goalpost, as commissioner Fritz referred to it. I'm not familiar with land use that much, but I do understand the concept of moving the goalpost, so is there or is there maybe Kathryn -- are we allowed to do that or not with respect to all these pending violation cases? By changing our rules are we able to eliminate --

Wood: May I answer the question about the day care? Day care is a different use category. And they're allowed by right on any school site. So if you had a high school and you add a day care, you could do that. If you had a K-8 and you needed to add a day care, you could do that by right. And that's currently in the zoning code.

Saltzman: Thanks. I guess the -- tell us about the moving goalpost.

Beaumont: Well, the new -- no moving the goalpost rule is specific to quasi judicial land use applications for zone changes, permits, land divisions. And what it provides is once that you can't change the standards that apply to an application while it's under review. That in no way precludes the council from amending its zoning regulations over time such that maybe things that were disallowed before are allowed now or things that are allowed -- were allowed before are disallowed now. So no changing the goalpost rule applies in a quasi judicial setting. It doesn't take away the council's legislative powers to change zoning regulations over time.

Leonard: And to be clear specifically in this instance, there are some in the community that believe there were zoning violations, but that doesn't necessarily mean there were zoning violations, as I understood the answer from Deborah that this was a gray area that while some may have felt there were some improper things occurring with respect to mixing of grades, that the planning commission, BDS didn't see the issue that starkly, and that what we're attempting to do is take a gray area and clear it up.

Beaumont: That's my understanding.

Stein: And they would be re-reviewed in the context of the new amendment. Because there were some that may still be evaluated as violations and that those would have to be looked at with the new amendments in place.

Leonard: But just to close the loop on the closing -- on the moving and the goals, that is just not a principle that's applicable to this situation.

Fritz: I guess I disagree with the characterization that it was not in violation before. I think we are saying we want to change the rules to make it not in violation. But I don't think --

February 23, 2011

Stein: There were different interpretations based on same words in the code, how it was interpreted, whether it was a violation or not was not a clear answer. Even among staff in looking at the same words. So that's where we found there was ambiguity in the code, and if it's interpreted in different ways that was a trigger to us that we needed to rethink how the code is read because it needs to be as clear and objective as possible, and if different people are interpreting the same words differently, that is indicated to us, we needed to clarify the code.

Fritz: To me the important value is we all care about kids' safety, we all care about kids' education, the question is when the school district for reasons of educational need or financial need wants to change the grade level, what is the city's responsibility making sure the children can get to that school safely? I don't think the current -- the mayor's proposal with all due respect does that, because of the amount of money. We've got tens of millions of dollars worth in transportation needs and sidewalks, I think if Markham elementary school, 15 years ago at least was a million dollars to put the sidewalks in there, and that was 15, 20 years ago, I'm thinking if Jackson middle school, it would be \$5 million right there to do the sidewalks on 35th and Huber. So -- and if we're thinking of smaller children going to middle schools and perhaps not being able to get bus service if they're not within a certain distance, older children walking through what was previously a grade school because they're not eligible to get bus service or there isn't any bus service, to me our responsibility as the city, as the school district decides they'd like to do that particular school, to have a conditional use process so that it can come to council and we can decide to prioritize our -- that year's capital improvement budget for that particular project. That's why I support the type three, it's very similar to what we did this morning with the ICE facility. That if you have a conditional use process as commissioner Leonard very helpfully pointed out this morning, the answer is probably going to be yes. It's a discretionary review, but it's not really a discretionary view yes or no, it's how. It's what are the safety factors and how do you take care of them? That's what the type three conditional use gets to us, and that's why I support the planning commission's recommendation, because I believe that gets it to council which is the proper place for us to prioritize our scarce dollars. I appreciate -- I agree we want to get \$5 million in the bond measure to pass, but that's not going to be enough to do the capital improvements on all of the grade school and middle schools citywide.

Leonard: The other issue that needs to be addressed also is we can't allow our zoning code to be used as a tool by those who oppose what the school district is trying to do to stretch the dollars, limited dollars they have to educate as many kids as they can, because that's really the elephant in the room here that we're not talking about, is some have using the code, attempted to achieve an end by utilizing our zoning code and to make us somehow be the enforcer to achieve some other goal. That's not lost on me. I don't want to pretend like it's not an issue here, because it is. So what's very -- I think the points that commissioner Fritz is making are good, but what's also important to me is that we not just say we work closely with the school district, but we in fact work closely with the school district as we try to achieve similar goals, and it's very important to me when I have a member of the school board here who is elected, and by the way, works for nothing, why you agree to do that is another conversation that I would enjoy hearing your answer to, for the grief you put up with, including this today -- but it's very significant to me when the school board is sitting here saying we do not support the planning commission's proposal, but we do support the mayor's proposal. That feels to me like we are trying to achieve some balance and do what I think the community expects us to do, work closely with the school district to achieve their goals of educating children in a safe manner as we do it in a proper fashion.

Adams: If I could, we have made a priority of safe routes to schools. And to address the planning commission's concerns, we have this commitment for the master plan and money which we can use to leverage other money. It's important that we chip away at this and more than chip away at this, that we prioritize it, and we have as a city council and as transportation commissioner, but I have to

February 23, 2011

agree with -- and at the same time we're given \$160 million to the county for the Sellwood Bridge that could have gone to this. We as council have made a variety, as we are required to do, a variety of balancing decisions. And if we're going to prioritize the success of our schools, I think we need to as commissioner Leonard said, be a partner with them in both allowing them to move forward with the facility decisions that they need to make, which are not popular, and at the same time make sure that they're a good partner with us on the transportation side. Which is the master plan and the financial contribution should the measure pass. But we could have said no to, for example, the Sellwood Bridge. It's all about where you want to put your pivot point and what discussion we're talking about on a particular day. And we could have put sidewalks around every school. With \$160 million over the next 20 years. So I just -- I caution us as a community from cherry picking. When folks came to me that had been behind expressing these concerns, they had a variety of concerns as commissioner Leonard talked about. A variety of concerns. And transportation was on some lists, but not all lists, and it wasn't at the top of all lists either. So we have to vote on the amendment. Call the vote on the amendment, please.

Parsons: These are the mayor's amendments.

Adams: They've been --

Parsons: February 9th memo. Ok.

Fritz: We're voting on the entire package of amendments, and I have to vote no because the amount of money that's being proposed is not enough to prioritize even the most urgent needs in sidewalks around schools. And there isn't -- there aren't going to be a lot of pots of federal money or other money coming in to help with those sidewalks. Therefore if we've just got \$5 million, which I appreciate it coming from the hundreds of millions being proposed in the school bond measure, we need to have a process which the city council can say, yes, of course the school district you can do what you need to do academically and putting children in different facilities. What we are responsible for as a city council is providing safe routes to the schools and not saying, it's in the plan and we'll get to it when we have the funding. We have to be honest. We don't have enough money and so therefore we have to have a mechanism which I believe is the type three conditional use which the planning commission recommends and I support. And that's the only way we're going to be able to prioritize and give the neighborhood what's they need in being able to participate in discussing what particular safety improvements are needed if grade level changes are required by the school district. No.

Saltzman: I will support these amendments. Aye.

Leonard: Aye.

Adams: I appreciate commissioner Fritz's concern. I am not convinced that through the type three process that it will result in any more sidewalks or any more investment than what we have in front of us. So I think obviously well intended and well stated, I think actually this will help provide more money for more sidewalks at more schools than a type three process. Aye. [gavel pounded] All right. Where are we now?

Beaumont: You have adopted the -- your proposed code amendments, the council has. I think the next item before you would be to substitute the ordinance that would adopt your code amendment the for the ordinance that's before the council.

Adams: Hear a motion?

Saltzman: So moved.

Leonard: Seconded.

Adams: Moved and seconded to do what Kathryn just said. So this is a motion to substitute as described by the city attorney. Sue, please call the vote.

Fritz: No. **Saltzman:** Aye. **Leonard:** Aye.

Adams: Aye. [gavel pounded] Motion passes. Now what do we do?

Beaumont: I think you can move the substitute ordinance to second reading.

February 23, 2011

Adams: So the substitute ordinance moves to second reading. I do have to have a date or just next week?

Beaumont: Let's announce a date and time.

Adams: We don't do these legislative actions very often.

Parsons: March 2nd at 9:30, regular agenda.

Adams: March 2nd at 9:30. Next Wednesday. All right. We stand in recess. [gavel pounded]

Beaumont: Actually I understand there's an announcement to be made concerning what was scheduled for tomorrow afternoon.

Adams: Yes. Talk about spoon feeding me. Thank goodness you're here. The conversations with -- among the city council and the discussions with the FBI and the Oregon U.S. Attorney's office department of justice have been fruitful and constructive, but as the commissioner in charge of police, I need more time, so tomorrow's 2:00 p.m. time certain hearing on protocols for cooperating with the FBI and others on terrorist investigations will not be occurring. And my goal is to reschedule it. Do we have the date?

Parsons: We do.

Adams: And we'll reschedule it so everyone is here on March 10th at 2:00 p.m. Takes a whole village some days. Unless it's -- unless any objections, it is so done. We're adjourned. Thank you. [gavel pounded]

At 3:10 p.m., Council adjourned.