



CITY OF
PORTLAND, OREGON

OFFICIAL
 MINUTES

A REGULAR MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS **23RD DAY OF OCTOBER, 2013** AT 9:30 A.M.

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

Commissioner Fish arrived at 9:33 a.m.

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

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

COMMUNICATIONS	Disposition:
999 Request of Mark Hofheins to address Council regarding follow-up and update for September 25th communication (Communication)	PLACED ON FILE
1000 Request of Joe Walsh to address Council regarding justice (Communication)	PLACED ON FILE
1001 Request of John Mohlis to address Council regarding West Hayden Island (Communication)	PLACED ON FILE
1002 Request of Andre' Baugh to address Council regarding West Hayden Island (Communication)	PLACED ON FILE
1003 Request of Bob Sallinger to address Council regarding West Hayden Island (Communication)	PLACED ON FILE
CONSENT AGENDA – NO DISCUSSION	
Mayor Charlie Hales Bureau of Planning & Sustainability	
*1004 Authorize the creation of a Community Solar Special Revenue Fund to support the Solar Forward Program in the Bureau of Planning and Sustainability (Ordinance) (Y-5)	186295

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Office of Management and Finance	
*1005 Authorize an agreement with QwestCorporation dba CenturyLink QC and Qwest Communications Company to provide land line and data transport services for a not to exceed amount of \$7,500,000 for a five year term (Ordinance) (Y-5)	186296
*1006 Authorize an agreement with Cellco Partnership dba Verizon Wireless to provide wireless services for a five year contractual total not to exceed \$7,500,000 (Ordinance) (Y-5)	186297
*1007 Authorize a contract for CityFleet to purchase a special purpose truck for \$40,000 (Ordinance) (Y-5)	186298
*1008 Authorize a contract for CityFleet to purchase one hybrid sedan and one mini cargo van for \$55,000 (Ordinance) (Y-5)	186299
Commissioner Amanda Fritz Position No. 1 Portland Parks & Recreation	
1009 Accept a grant from the Oregon Department of Education and authorize a price agreement with Centennial School District for the Afterschool At-Risk Meal and Snack Program (Second Reading Agenda 985) (Y-5)	186300
Commissioner Nick Fish Position No. 2 Bureau of Environmental Services	
1010 Authorize a contract with Carollo Engineers, Inc., for professional services for the design of the Portsmouth Forcemain Drain-Back Improvements No. E10484 for \$225,700 (Ordinance)	PASSED TO SECOND READING OCTOBER 30, 2013 AT 9:30 AM
*1011 Authorize application to Oregon Watershed Enhancement Board for a grant up to the amount of \$200,000 for Crystal Springs Culverts Removal and Habitat Restoration (Ordinance) (Y-5)	186301
Water Bureau	
1012 Authorize a contract and provide payment for the construction components of the Carolina Pump Main Phase 2 Project at an estimated cost of \$2,850,000 (Second Reading Agenda 987) (Y-5)	186302

<p style="text-align: center;">Commissioner Dan Saltzman Position No. 3 Portland Fire & Rescue</p> <p>1013 Authorize contract with Open 4 Business Productions, LLC, for use of Portland Fire & Rescue's intellectual property (Second Reading Agenda 988) (Y-5)</p>	<p>186303</p>
<p>1014 Authorize contract with Trauma Intervention Program of Portland/Vancouver, Inc., for crisis intervention training and services at a cost of \$390,000 for a five year period (Second Reading Agenda 989) (Y-5)</p>	<p>186304</p>
<p>REGULAR AGENDA</p> <p>Mayor Charlie Hales</p> <p>1015 Extend a Street Closure Program in the Old Town Entertainment District through parts of NW 2nd, 3rd and 4th Avenues between W Burnside and NW Everett on certain days and during certain hours for a period of 1 year (Second Reading Agenda 997) (Y-5)</p>	
<p style="text-align: center;">Bureau of Police</p> <p>1016 Authorize a three year contract with Dr. David M. Corey for \$225,000 and Dr. Sherry L. Harden for \$45,000 to provide psychological and fitness for duty examinations (Second Reading Agenda 992) (Y-5)</p>	<p>186306</p>
<p style="text-align: center;">Commissioner Steve Novick Position No. 4 Bureau of Transportation</p> <p>1017 Amend Intergovernmental Agreement with Oregon Department of Transportation for SW Moody Ave Project: SW River Pkwy to SW Hamilton Ct to extend the completion date and project boundary (Second Reading Agenda 994; amend Contract No. 30001376) (Y-5)</p>	<p>186307</p>

At 10:00 a.m., Council recessed.

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A RECESSED MEETING OF THE COUNCIL OF THE CITY OF PORTLAND, OREGON WAS HELD THIS 23RD DAY OF OCTOBER, 2013 AT 2:00 P.M.

THOSE PRESENT WERE: Mayor Hales, Presiding; Commissioners Fish, Fritz, Novick and Saltzman, 5. Commissioner Saltzman arrived at 2:05 p.m. and left at 4:33 p.m.

OFFICERS IN ATTENDANCE: Karla Moore-Love, Clerk of the Council; Linly Rees, Deputy City Attorney at 2:00 p.m. and Roland Iparraguirre at 2:45 p.m.; John Paolazzi, Sergeant at Arms.

The meeting recessed at 2:38 p.m. and reconvened at 2:45 p.m.
The meeting recessed at 4:47 p.m. and reconvened at 4:55 p.m.

<p>1018 TIME CERTAIN: 2:00 PM – Consider the proposal of Don Goldberg of The Trust for Public Lands and the recommendation from the Hearings Officer for approval, to change the Comprehensive Plan Map designation from Open Space to Industrial Sanctuary and the Zoning Map designation from OS Open Space to IG2 General Industrial 2 for the Northern Parcel, and a Zoning Map Amendment to modify Environmental Protection and Environmental Conservation overlay zones on the site known as the Colwood National Golf Course, in the vicinity of NE Alderwood Rd and NE Cornfoot Rd (Hearing; Previous Agenda 922; LU 12-213885 CP ZC EN)</p> <p>Motion to accept Hearings Officer’s recommendation: Moved by Commissioner Fish and seconded by Commissioner Novick.</p> <p>(Y-5)</p>	<p>Disposition:</p> <p>ACCEPT HEARINGS OFFICER’S RECOMMENDATION AS AMENDED</p>
<p>*1019 Amend the Comprehensive Plan Map designation and change zoning of property in the vicinity of NE Alderwood Rd and NE Cornfoot Rd, the northern portion of the site known as the Colwood National Golf Course property, at the request of Don Goldberg of The Trust for Public Lands (Second Reading Agenda 923 introduced by Commissioner Fritz; LU 12-213885 CP ZC EN)</p> <p>Motion to amend Directive (a) and add emergency clause in accordance with staff memo dated October 23, 2013: Moved by Saltzman and seconded by Fish. (Y-5)</p>	<p>186308 AS AMENDED</p>
<p>1020 TIME CERTAIN: 2:10 PM – Authorize City Auditor Independent Police Review Division to directly question Portland Police Bureau employees, change Police Review Board public reporting requirements and other Police Accountability Reforms (Ordinance introduced by Auditor Griffin-Valade; amend Code Section 3.20.140 and Chapter 3.21) 1 hour requested</p>	<p>REFERRED TO OFFICE OF CITY AUDITOR</p>

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At 6:08 p.m., Council adjourned.

LAVONNE GRIFFIN-VALADE
Auditor of the City of Portland

A handwritten signature in blue ink, appearing to read 'K. Moore-Love', is positioned above the typed name of the Clerk of the Council.

By Karla Moore-Love
Clerk of the Council

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

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Closed Caption File of Portland City Council Meeting

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

Key: ***** means unidentified speaker.

OCTOBER 23, 2013 9:30 AM

Hales: Commissioner Fish I think is joining us. Good morning, and welcome to the October 23 meeting of the Portland City Council. Karla, would you please call the roll.

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

Hales: And let's start with communications items, please.

Item 999.

Hales: Good morning.

Mark Hofheins: Good morning. Mark J. Hofheins Jr. with UCARE, the United Coalition Against Repression for Equality. I come before you for few things. As of an update, since my last September 25 coming before you, number of outreach workers appear out front, none. Police calls for new homeless nuisance, none. Violent attacks on protesters, one plus. People off the street, none. So, I'm asking what's going on, why haven't done anything and why are we still sitting out here in front of you, and yet, still nothing's going on. I am understanding that you have offered the TPI building, the one that is abandoned, to R2D2 at one point, and I propose to you that we don't just want it, we need it as a pilot project for UCARE and humanity hub to show you guys how homeless can be -- homelessness can be solved. It's sitting there, doing nothing, if you offer it to them, why can't you offer it to us? Do we have to file a lawsuit? What? What's it going to take? Also, I still have a minute and 45 seconds here in a moment, and I want to let you have the opportunity to speak. This is communications, so if you can do that for me, that would be great.

Hales: Mark, thanks for coming. There are works in progress here, but the council meeting is not where we figure that out.

Hofheins: But, it's communications, so, I'm asking for communication. You please explain --

Hales: Communication this way.

Hofheins: I'm not so sure about that. But, regardless, the point, I mean, I'm here for answers, so where are the answers?

Hales: Right. But we don't operate that way on communications. It's for you to tell us what's on your mind and what you think we should be working on, and then we proceed to do the work.

Hofheins: Everybody is watching so I want you to be accountable for what say. So that's all I'm trying to get at.

Hales: My friend said that meetings are not work, meetings are where the work's figured out. That's kind of what we are doing.

Hofheins: And we had a meeting, and that was great. Where have you gone from there?

Hales: We are working on it, so --

Hofheins: Okay. So have not been invited to any other meetings so that's what going on?

Hales: Mark.

Hofheins: I'm just asking.

Hales: Thanks for coming.

Hofheins: It's communications, I'm not done, I still have 51 seconds.

Hales: Okay, go ahead.

Hofheins: But, Amanda Fritz, again, thank you, my prediction was correct, you did email me. And also, I have two days, Friday and Monday, and I've been out here with fundraiser, handing out

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cookies and I have not seen any of, Fish, you had meeting to go to. I understand that. Fritz, I shook your hand as you walked in the building on Monday, and I was not doing anything then. But, that's that. Anything else? Are we getting anywhere?

Hales: Alright, so, thanks.

Item 1000.

Hales: Good morning.

Joe Walsh: Good morning. My name is Joe Walsh, I represent individuals for justice. I'm here today -- the topic justice. Something going to happen this afternoon at 2:00, that you have the power, and the influence to make some drastic changes. What you are receiving there is a copy of the federal constitution, and I suggest Mayor, that you read the article, amendment one, called freedom of the press. Apparently, you are knocking out all the press from the building. That's not freedom of the press. It's not justice, either. But I'm really here today to talk about what's going to happen this afternoon. On the independent review board. I think it's called. The name of the organization from the auditor's office is unimportant, it's how you use it. And how use it, it's gotta be totally independent. That means no influence from anybody on this council, in the police department, anywhere else. Now I don't think that we're going to get that. But we're going to keep pushing for it, some day we will. There are three names people that were murdered on the streets, and I want to read into the record. And there were 139, that Copwatch, has put out in 1992, that have been murdered, or were shot at on your streets. By your police department. That you are trying to get some kind of control over. The three people that I know, or knew, and know about, is Aaron Campbell. He was shot in the back by a sniper while he was talking to the police. Keaton Otis, 25. He was shot about 20 times. He was stopped for no reason. None. And he ended up being murdered. Dale Collins, a man that was obviously sick, ill, had a very small knife in his hand, and a cop blew him away from 30 feet. That's what you are dealing with in your police department. These are all happening in 2010. It's not too far away. You are still under investigation from the federal authorities. You are still haven't done your jobs, so what I'm saying to you this afternoon, at 2:00, I want you to think about justice. And think about these people that died, and the people that will die. And I know that I'm out of time, Mayor.

Hales: Thanks, Joe.

Walsh: Don't thank me, please.

Item 1001.

Hales: Good morning.

John Mohlis: Good morning, Mayor Hales, Commissioners. My name is John Mohlis, I'm the executive secretary for the Oregon State Build and Trades Council, which is an umbrella organization for approximately 25,000 union construction workers. I'm here this morning to testify in favor of developing and preserving West Hayden Island in a sustainable manner. Allowing 300 acres to be developed into a port terminal and having 500 acres to be preserved seems like good common sense to me. And our council fully supports the Port of Portland's proposal to develop 300 acres into terminal, and we hope that you will give full consideration to the issues and concerns in the letter that Bill Wyatt sent to all of you that's dated October 7, 2013. If the Port cannot financially and feasibly develop that terminal, we believe that a great opportunity for economic development and jobs for our future and for our city and for our city and our region will be lost. We all know that sustainability is a three-legged stool. Environmental, social and economic. And I know that all of you have heard, or I am sure that all of you have heard numerous times the fact that trade related jobs and jobs in the harbor pay substantially higher than the regional average. And that's especially important for folks that can't afford to go to college. They need to have these types of job opportunities in the future if they are going to be able to support and sustain themselves and their families. We're all very proud here in Portland, and in our region, of our good school system, of our fantastic park system, of light rail, of streetcar. Of all the wonderful amenities that we all enjoy. I

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think that we all need to step back and remember that all of these come from people working a good family wage job and paying taxes. Oregon health sciences university celebrated their 125th anniversary recently, and, you know, I'm sure years before that, it was just a wooded hill. Somebody made the decision years ago to allow that to be developed. And I don't think that anybody would argue that that is not the right thing to do. That's a wonderful asset to our society. We, in the building trades, don't want every patch of trees cut down and turned into a development like that. But, I don't think that we can have every bit of it be like Forest Park, either, where it's just completely untouched. So, I think that this proposal is the right way to go. And I think that people 30, 40, 50 years from now, if this terminal allowed to move forward and be built, whether they are working at job on the terminal or whether they are enjoying the 500 acres that have been preserved as open space, they will look back and say, whoever the leaders were of the city, at that point in time, they got it right. Thank you very much. I would be happy to answer any questions.

Hales: Thanks. Appreciate coming. Thanks. Next one, please.

Item 1002.

Hales: Good morning.

André Baugh: Good morning, Mayor Hales, Council. André Baugh, planning and sustainability commission. I am here today to speak about West Hayden Islands on items. I think you should consider in decision-making. First, the superfund harbor may impact West Hayden Island. The superfund harbor settlements may include the city and the port and parties cities that may have mitigation obligations, as well as other private parties. The city, you, and the Portland others, may be looking for projects to do for mitigation, and West Hayden Island may have a role in that.

Fish: Could you get closer?

Baugh: Yes. And impact the role of mitigation in West Hayden Island. Keep in mind, the tribes are involved as members, as I understand it, in a group that will make decisions about the size of those obligations around mitigation. Second, the City of Portland may have the ability to regulate community concerns over the impact of a proposed port expansion on traffic, health, the environment, and safety. According to the Supreme Court of the United States, in case no. 11-798, and a case involving the city of Los Angeles and the port where they did regulate trucks and the amount of emissions those trucks. The comp plan and West Hayden Islands land relationship and the long-term ramifications for the city with your decision around that relationship. For birds, fish, and plants, and other creatures do not know the boundaries of 300 and 500 we humans have defined on west Hayden Island. Think about what the intention of the mitigation as you make a decision. Fifth, when considering costs, if West Hayden Island is built up to the full capacity, it may be the largest port facility in terms of bulk grain on the west coast. Then should the City consider partnership with the port and others in going to the legislature for a bill similar to senate bill 253, asking the state of Oregon to recognize the significant West Hayden Island regional industrial site, the value of that, and help them in performing due diligence assessments by providing grant funds. I raise this because the model used by the port in asking, in stating, I'm sorry, in stating 850 all that they can afford is predicated on the model they are using with a 15-year negative cash flow to do site prep and then turns into a 25-year positive cash flow from the revenue from the operating port. What makes the cost any of these parties a significant issue is the variables in any npv model. And those, as noted in the presentation to us at the planning commission, are market risk and uncertainty permitting and site preparation lag time makes what West Hayden Island an opportunity of the future -- the port has a limited investment capital. So is there is a need for, for private and public partnerships, and timing of the investment, versus the revenue. These variable -- these factors, you cannot control. Some of them you can't control and some of them influence, but certainly, a lot of them will be out of your tenure, past your tenure when they occur. Thank you.

Hales: Thank you. Appreciate it. Thanks.

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Fish: Thanks for all the time that you are spending educating us about this very complex issue. I know you have many other roles play, but we appreciate the time you are spending.

Baugh: Thank you, and I will get closer next time.

Hales: Thanks.

Item 1003.

Hales: Good morning.

Bob Sallinger: Good morning. Good morning, Mayor and members of the Portland City Council, I am Bob Sallinger, the conservation director for the Portland Audubon society. I passed out a document, basically, from the West Hayden Island documents that I will be referring to this morning. There are three sections, a, b, and c. I hope it goes without saying that at this point that West Hayden Island is an irreplaceable resource. There is ample evidence in the record from the agencies, from the tribes, from the city, itself, to validate that statement. You have entities coming hundreds miles down the Columbia River to tell you that this piece is critical to restoration efforts on the entire Columbia River corridor. We just don't have that many pieces left. But I want to focus today on some of the things presented at the hearing couple of weeks ago, and some of the things that weren't. First I want to talk about jobs. We're not only justifying Hayden Island's conversion, but also, we're talking about golf courses, rolling back environmental protections, a whole lot of different things that are going to affect the health of our communities and of our environment in the name of creating industrial jobs. And I think that we need to take a step back and think about what we're really doing here. We're destroying some of our last, best places in this pursuit of jobs. But, let's look at the context for a second. The industrial harbor, the first page, section a, this is from the eco-northwest report, from 2002-2008, we increased the amount of industrial land in the Portland harbor but jobs went down. Just creating new land doesn't create new jobs. And I see the city council and prior city councils doing absolutely nothing to ensure that those jobs are actually produced. It's a great windfall for the people that own the property. But no assurances the jobs are occurring. And at the same time, the Port of Portland wants to develop Hayden Island, we see other ports going towards coal, lng, and oil to fill long-vacant lands. Finally, we see terminal 6, and potentially an entire port terminal failing. I ask how, in the context of those things, we can justify destroying 300 acres irreplaceable wildlife habitat next to one of our most vulnerable communities, to boot. And this is 1950's style industrial development patterns, let's give them more green space, give them cheap land, and subsidize it without ever asking for insurances that those jobs will occur. We think that there is a better way to go forward. One, let's clean up the 900 acres of brownfields. Two, get through superfund. Three, let's require that when we do transition land, the jobs be produced and put something into these agreements that requires that. And four, let's force these ports up and down the Columbia River to work together. That was in the 1991 port master plan. They have never done it. And so, other ports are seeking out the unsustainable industries to fill long-vacant lands, and we're creating new land, let's make them work together. I want to talk about the uncertainty in the IGA. The IGA is riddled with loopholes and escape clauses. And if you look at section b of this, I have given you a lot of that language. I can't imagine the city or the port would ever enter into an agreement with -- to build something or do something with such a biased contract. Such a unilateral agreement. Where the port is assured they can go forward, but there is no assurances as to who is going to find the money for the public health benefits, for the environmental benefits. There is no, there is no accountability. It's metro, the city, the port, the state. And there are escape clauses that if that money doesn't occur, the port can come back and renegotiate or unilaterally terminate the agreement. We hear a lot about the three-legged stool. That we are going to improve the economy, the environment, and the community simultaneously, equity. This is not a three-legged stool. What we are doing is increasing the amount of the investable land at the expense of our community and the environment. We have no assurances of even what's in here, that it will

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ever come forward. I don't think I would want to sit on that three legged stool where one getting longer and two are getting shorter. Thank you.

Hales: Thanks, Bob. Ok. Appreciate those. Let's move to the consent calendar. I have not gotten any requests, I don't believe, for anything to be removed from the consent calendar, is that right? None here this morning? Let's vote on the consent calendar, please.

Novick: Aye.

Fritz: Just note that the office of neighborhood involvement is being bought a truck, and I am happy about that. Aye.

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

Hales: At one time you said you were looking for bureau with trucks. And unfortunately, that one didn't arrive in time, but now you have them. Aye. [gavel pounded]

Saltzman: We have a lot of them.

Hales: Let's move to the regular calendar, and I believe that they are all second reading items.

Item 1015.

Hales: Again, I just want to thank Chad Stover on my staff and others who have worked outside of the parameters of the job they thought that they had, and the hours that they thought they were going to be keeping in order to address this challenge in northwest Portland. Any other council questions or comments before we vote? Roll call.

Item 1015 Roll.

Novick: Aye.

Fritz: Thanks to the Mayor for taking this on and particularly Mike Boyer and Teresa Marchetti in the Office of Neighborhood Involvement who have been doing stalwart work for many years on it. I think this is mapping a path forward. Obviously, the neighborhood associations, the business associations, and the wider community needs to be involved in the wider entertainment district discussions, and I am glad that the stakeholder group being set up to do that. Aye.

Fish: Aye. **Saltzman:** Aye. **Hales:** Aye. [gavel pounded]

Hales: 1016, please.

Item 1016.

Fritz: Before we vote I would like to read into the record that I have had correspondence Christine Moody, the chief procurement officer, and she does not believe that we need to amend the ordinance because it says -- the ordinance says that the contract will be similar to the attachment that is posted. However, she has agreed to amend section J to add racial profiling to the issues that the consultant will address, and also to either section k, consultant shall attend the cprc, which is the community and police relations committee, and the Portland police bureau training on institutional racism as scheduled by the city. And section L, secure and train appropriate additional psychologists in all elements of the psychological evaluation for current community police officers, including but not limited to training through approved courses on diversity and cultural sensitivity.

Hales: Thank you. Ok. Any other council comments? Roll call, please.

Item 1016 Roll.

Novick: Aye.

Fritz: I appreciate the extensive work that was done to reevaluate this contract, and indeed, including the Albina Ministerial Coalition in reviewing and being part the hiring process. The excellent work by Christine Moody, the chief procurement officer and, and I'm appreciative that this is a three-year contract rather than the longer one so that there is the opportunity for others to learn the skills. And I am also appreciative of dividing the contracts that dr. harden is providing some of the services, and that's step forward. Aye.

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

Hales: Thanks, Christine. Appreciate you being responsive and getting the council's concerns addressed in how we are going to solicit these proposals. Thank you. Aye. Ok, 1017.

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Item 1017.

Hales: Mr. Novick, anything before we vote?

Novick: Nope.

Hales: Second read, roll call.

Item 1017 Roll.

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

[gavel pounded]

Fish: Before we adjourn, can I raise a matter.

Hales: Please.

Fish: Last night Commissioner Fritz and I had the honor of attending a forum that was held in chambers on the occasion of the centennial of the commission form style of government. And we were joined by former Mayor Bud Clark, Pauline and Lloyd Anderson, Joel Lansing, bob koch, who I am not sure that I had ever met, frankly, Amanda Fritz. And we had lots community members who were also here. The auditor, LaVonne Griffin-Valade, and her team set it up, and the team at the archives also organized the event. So I want to publicly thank them for the work that they did, and there is -- downstairs there is an exhibit that our archivist has set up which has the gems from our collection in a case. I urge you and all us to take the time to go down and look at some of the gems from our collection. And it's a reminder that the archives of the City of Portland are a public archives. So, if you want to go over and ask to see the original John Charles Olmstead report to the parks board on a vision for parks, or if you want to just look at what used to be on bud Clark's staff, it's all on that, and I encourage to do so. But I want to especially thank Amanda for joining us and for the comments that she made last night.

Hales: That's great. That's great. I will go and check out. And we're in recess until 2:00 p.m.

At 10:00 a.m., Council recessed.

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Closed Caption File of Portland City Council Meeting

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Key: ***** means unidentified speaker.

OCTOBER 23, 2013 2:00 PM

Hales: Council, please come to order. Karla would you call the roll.

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

Hales: I believe Commissioner Saltzman is going to be joining us. Let's move to item 1018.

Item 1018.

Hales: Do you want to read both items and then reopen the record?

Item 1019.

Hales: Okay. I understand we need to reopen the record and take in these letters and take testimony on those, is that correct?

Linly Rees, Deputy City Attorney: I believe staff is going to address that first with introductory remarks. I believe Commissioner Fish, who was not here at the last hearing -- is that correct? You were here? Maybe I'm talking about another one. You were here. Good. Alright. I think you need to hear from staff. And then you open the record to allow a couple of letters and some testimony on a narrow issue.

Hales: Great. Sheila, come on up.

Sheila Frugoli, Bureau of Development Services: Good afternoon, I'm Sheila Frugoli. As a brief recap, on September 25th, you heard extensive testimony on the ordinance to amend the comprehensive plan map designation and zoning on the property known as the Colwood Golf Course. At the end of the hearing, you tentatively approved the request, however, in response to concerns raised by the Sumner neighborhood association regarding required transportation mitigation improvements, you directed transportation staff to attend a Sumner neighborhood association meeting. That meeting occurred on October 8th. With your consent, I suggest you accept additional testimony from that Sumner neighborhood association, a response from the applicant's transportation consultant, and further input from the PBOT staff. You should also ask anyone who wants to testify on this, on the statements that you hear today, to also be allowed to do that. Again, the testimony today should be limited to the proposed i-205 Killingworth ramp mitigation project. After the testimony, I can come back and talk about the amendments to the ordinance, and take you through the next steps.

Hales: Okay. Great. I like that recommendation. Any --

Fritz: Mayor, I understand there may be an amendment adding an emergency clause, so presumably we will take testimony on that, too.

Frugoli: Yes, I will present that.

Hales: Okay. Now or later?

Frugoli: Later.

Hales: Okay. I will accept that suggestion and reopen the hearing for purposes of accepting these letters into the record. And then just call on first PBOT staff and then the Sumner neighborhood association.

Kurt Krueger, Portland Bureau of Transportation: Good afternoon Mayor, Commissioners. Kurt Krueger with the Portland Bureau of Transportation. I want to recap what had transpired since last meeting. We attended the Sumner neighborhood association with ODOT and Trust for Public

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Land's staff. Again, we expressed our apologies for the lack of notification to their neighborhood through this process and engaged them on a conversation around transportation issues and why we landed on a requirement for an on-ramp added to the existing two-lane on-ramp. Other transportation issues were discussed, deficiencies that we would like to correct if we had funding. But we have a limited applicant dollars to apply and we agreed on the project at hand. A vote was taken in support of continuing to support this project, recognizing that there were some concerns around construction and livability. The applicant has proposed \$10,000 of additional tree planting as mitigation. We need to coordinate with ODOT to make sure that that can happen appropriately in the state right of way. But that has been provided by the applicant. One minor -- one point of clarification, the Sumner neighborhood association raised a technical traffic issue. I have a PowerPoint that describes that. Karla, if we can put that up. As you'll see on the slide, the applicant's traffic engineer studied a number of intersections. The two in question was intersection 15, on the west side of i-205 and 16. The Sumner neighbors identified that there appeared to be a disconnect between the number of trips, vehicle trips, leaving intersection 16 and then arriving at number 15. There were more at 15 than there were 16. The answer to why that -- why those numbers are different is if you will notice the middle arrow, there is traffic heading north on i-205 that exits an off-ramp, is added to an add lane across Killingworth on the overpass, then center that intersection at 15. That was the discrepancy that was identified. It's not really discrepancy, it was just hard to illustrate in the information provided by the applicant's consultants. But the numbers work.

Hales: Thank you. Questions?

Novick: Could you explain the traffic problem that the mitigation is designed to address?

Krueger: Thank you. Right now, we have a number of vehicles that queue along Killingworth that stack up on Killingworth as they move through the area. The addition of the third lane on-ramp was an identified project in the regional transportation plan. This allows some of those vehicles to actually be queued on the ODOT on-ramp and not on Killingworth. One of the benefits for this is it removes a queue that backs up through the major exit out of the Sumner neighborhood at 88th. There is a signal at 89th and vehicles queue in that that can't get out because they're backed up. In addition at the on-ramp at i-205 southbound, vehicles that are -- it's easier with a map -- vehicles that are westbound on Killingworth, turning left and to the southbound ramp will tend to block that intersection because there is not enough storage space. That affects bicycles commuting through the area.

Hales: This happens because the ramps are metered.

Krueger: Correct. This will add a third meter to that ramp. It does not solve every single transportation issue in this neighborhood.

Fritz: And the additional trees are for mitigation in this area, not on the Colwood property.

Krueger: Correct.

Hales: So, between the new ramp and the neighborhood on the berm or in that right of way.

Krueger: That's where they've been identified. And just to be brief, this is an additional mitigation to other mitigations required by the applicant closer to and on the subject property.

Hales: Okay. Thank you. Other questions for staff? Thank you. Is there someone here from the Sumner neighborhood association? Come on up, please. Welcome.

Scott Somohano: Thank you. Good afternoon. My name is Scott Somohano, I'm the chair of the Sumner neighborhood association. A couple of you already know me. I'm here to kind of present our point of view. Thank you for allowing me to come and testify today on this. And thank you to Don and Mara and Kurt for coming to talk to our neighborhood association on October 8th. They filled in a lot of blanks for us. How long do I have to talk, is it three minutes?

Hales: You can take a little longer in this case. It's a land use case and we want to be sure that we have everything on the record. You are the neighborhood association.

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Somohano: Alright, thank you. So I am going to recap the letter that I put in writing for you all earlier. So, we learned a lot at the October 8th meeting. The main thing that we learned there were two things that changed compared to how they have handled this sort of traffic mitigation in the past. One was a new state law asking PBOT and ODOT to work together so that developers don't feel like a punching bag, and that's understandable. The other thing is that there was a Supreme Court ruling that limited the amount that developers could be asked to put on the table to mitigate their properties. Between those two things, what we had was a development, a proposal that had two firsts, that resulted in two firsts. One is the distance of the mitigation from the property a mile and a half away. That's unusual. And I believe that's a first. Kurt said on October 8th it was the first time he had seen something like that. The second first is that this will be the first three-lane on ramp anywhere in Portland. ODOT has a bottleneck study that identified a whole variety of bottlenecks up and down i-5 and i-205. This on-ramp is not one of those bottlenecks. So the fact that this will be the first three-lane on ramp is a little bit surprising and I wonder if it is a little disproportionate compared to the need for the on-ramp. That was really useful information. And that alone was worth having them come visit October 8th. So, the thing that I think will be important to the applicants that I'll say first before I get into the suggested change is that our neighborhood board voted to agree to work with ODOT to work with the applicant to mitigate for livability factors if the council sees fit to approve the third lane for the on-ramp. And, you know, mitigate things like safety, noise, odor, air quality, which is a significant issue for our neighborhood. And there is an ODOT property right there that is referred to as the sand lot that is green space, one of the only green spaces that we have in our neighborhood that serves as a buffer as well as a de facto park for our neighborhood. We don't have a park, so, protecting that green space is important. That's the important thing I wanted to say first before get to the objections and suggested alternate mitigation. Basically, the suitability out of it, four out of the five criteria that we cited back in June, still kind of stands. They haven't really done the livability thing, the different -- there were several different approval criteria. And one of the key ones was that traffic for industrial land north of the slough should be directed to the airport way on-ramps. You know, and that's -- and that still is not being addressed with this, among other things. The effectiveness of it, we wanted to draw attention to the fact that the Kittleson transportation impact report said that the new property would generate 2400 trips per day, and this on-ramp would handle 50 of those 2400 trips per day. So you're talking about a mitigation proposal that would only mitigate two percent of the traffic for this rezoned property. Now, I don't know what is typical and I don't know what's standard, but two percent doesn't sound like a lot of mitigation for the money that's being spent and it doesn't really -- it doesn't really seem to fit. So the idea that it is a mile and a half away, it's the first three-lane on ramp and it's only mitigating two percent of the traffic for this particular development, these things -- it doesn't quite add up. Let's see. And then also related to that, I mentioned the bottle neck study for ODOT. ODOT has a whole variety of bottlenecks. This on-ramp is not one of those bottlenecks. When they came on October 8th, our neighborhood association, the residents, I didn't prompt them, they came up with this on their own, cited the northbound on-ramp as being really the bottleneck that we're talking about here. And if I get a chance, I want to share something up on the screen. If I can see the mouse. So, this is an animated GIF that I put this on the web site just this morning. Most everyone is familiar with Google. Most everyone is familiar with Google Maps. This is a feature that I wasn't familiar with, Google Maps traffic. The traffic maps for Google. This animated GIF shows you the most recent five days of traffic. The dark color, the black shows you the backups, and you can see the southbound -- this is the southbound on-ramp right here.

Hales: Uh-hmm.

Somohano: And this is the backup eastbound from the property in question. And you can see, if you look at the last five days, the color code, you can see the northbound ramp is backed up down Sandy Boulevard, almost daily. Sometimes it's backed up, you know, coming from westbound Sandy to

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that northbound on-ramp. And it's hit or miss for the southbound on-ramp. You know. We, you know, our neighborhood, we understand that this is an important industrial route. We have the freeway, we have the airport, we have the train. We understand it is an important area for moving freight. But at the same time the data and the traffic flows and the experience of the motorists don't really back this up as being the place where we need the first three lane on-ramp in Portland. I mean, you could probably think of your own favorite place where you would like to see a third on ramp lane. So, there is that part. I will concede the part about the data accuracy. I really enjoyed looking at their report because I'm a data geek. So, I understand that this northbound -- this loop de loop northbound to westbound does not show up in this intersection over here and they did not have a good way to render that. I accept that data correction from them. But that's -- I think those are the key points. The last thing I will mention is that just off of this map up here, there was a \$16 or \$18 million improvement that was put in, called Columbia Parkway on the map, that, you know, greatly increased capacity for that section from this property down to the freeway on ramp. Suggested mitigation instead is for improvements at Alderwood, at Cornfoot and 82nd. The Port apparently has a proposal that just came up in the last month to put in a gas station, restaurant, convenience store at the intersection of 82nd and Alderwood. You might want to consider taking this money, because, really, it seems like the backup is at the signal itself, not at the on-ramp and getting the traffic through there. You could probably just adjust that -- the timing of that signal, you know, and mitigate this. Instead of buying a new door, why not just adjust the hinge. That is what we would suggest. It saves the applicant money, if they develop, you know, or improve 82nd at Alderwood where the port is already planning on putting in something else, that will be a significant impact on traffic at that intersection. I think that's it.

Hales: Great.

Fish: Do we have something in writing from you?

Hales: I think it is --

Somohano: Yes, this is the third letter that I sent in. The first was in June. The second I think, was August, and this is the third.

Fritz: Scott, I think you make some compelling points and I was concerned -- remain concerned about the notification and the inclusion. I think your participation has made sure that ongoing with these off-site mitigations that we're now allowed to do that that will happen in a more constructive and earlier manner. If the council decides as a whole to move forward with this project today, would you be averse to an emergency clause being added?

Somohano: I don't know what that means.

Fritz: It means this would go into effect immediately, rather than waiting 30 days as a regular ordinance.

Somohano: I just kind of assume that that would sort of be the case. Kurt said, and maybe things have changed, they didn't expect construction to begin until the spring. And Mara said that a design was supposed to start like last week, the week after they came to visit. So, we have committed to work with ODOT on the design. During the design and during the construction phase. If that can be added as a factor, that would be great. The thing I would mention, about \$10,000 worth of trees, the way that the letter was written in response to this, about \$10,000 worth of trees on property controlled by the neighborhood association. We don't control any property. That property adjacent to the on ramp is owned by ODOT. The whole green space next to it there. Let's see. Oh, it is not up there now. Could you share it one more time? This whole space over here, this whole area, that's all ODOT property. And if we were going to get trees -- and this is the mobile home park that is directly adjacent to Killingworth and the on ramp. This is where I would concentrate the trees, but it is ODOT property. It is not ours.

Fish: Where is the community garden that you led?

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Somohano: The community garden is about five blocks west of this here. It is on Killingworth at 87th. And we were just out there Saturday. We had great weather for that. Any other questions or comments? I really appreciate you making special opportunity for us to come here. I am concerned that if this becomes a new model, that we will just get hit again and again by these different developments. It was a blind side for us in terms of notification. We want a better relationship with ODOT and we're hoping this will help start that.

Hales: I think it has actually. At least I hope so. Thank you.

Somohano: Thank you all very much.

Fish: Thank you for all your great work.

Hales: Nice job. So, we've got that in the record. We want to give the Trust for Public Lands team, particularly the transportation consultant, a chance to respond or put anything else in the record. Don, you don't have to limp up here if you don't need to.

Don Goldberg: I came all the way this far, you can't stop me now. [laughter]

Hales: All right. Good afternoon. This project has clearly taken a toll on you already.

Goldberg: Well, if you recall three years ago, I know a couple of you weren't here, I had to get my body in here the same way for Riverview. It was right after I had surgery then. It seems to be a habit of mine. I do appreciate the Sumner neighborhood. They're very professional and they have good comments. I think it is important --

Hales: Put your name in the record.

Goldberg: Don Goldberg, the Trust for Public Land, 808 southwest 3rd avenue in Portland, Oregon. So, I think we need to separate the process of how land use is done and being able to reach out to everybody. My process here has always been to reach out to as many as possible to get as much support. And as you saw last month, it has been very successful. But not all of the golfers are going to be happy and there are always going to be some that unfortunately can't get everything they want, but we've tried to surpass all of the legal requirements and really reach out to the community. And, as Scott mentioned, I don't see the future park in Cully being a community park. This is going to be hopefully a major park for the city that will be -- serve the Sumner neighborhood as well. That is our goal at the Trust for Public Land to serve the entire outer northeast community. I have Mr. Kittleson here, who is going to address some of the questions regarding traffic.

Hales: Great.

Wayne Kittleson: Thank you. Good afternoon Commissioners and Mayor. My name is Wayne Kittleson, I'm the founding principle of Kittleson and Associates, our office address is 610 southwest alder in Portland, Oregon. I'll try to keep this pretty brief. So, if you have any specific questions that I might overlook, feel free to ask. I will start by saying that I agree with the comments that your engineer Kurt Krueger provided in all respects. In response to the questions or issues raised from the neighborhood and Mr. Somohano, a couple of things. One, I think the solution that has been proposed -- the mitigation that has been proposed is a very effective one. I'll point out that it is addressing one of only three intersections that were found to fail in 2035. And, in fact, it is the only intersection or interchange area that fails today. Of those three. It is basically a pretty straightforward improvement. It is not adding capacity to i-205. It's just taking the queue of vehicles that are currently queuing on kennelworth and moving these over to the on ramp. And in so doing, it's taking those vehicles out of the main through traffic, which reduces delay for the through traffic which also reduces accidents and accident potential. It has, therefore, because it is part of the i-205 system, an important system-wide effect on the transportation system as a whole. In terms of necessity, I concur with Portland Bureau of Transportation, with the ODOT, that it's probably the most appropriate place to place the mitigation improvements right now. It fits with the RTP. It is an existing issue. And in terms of suitability, it is dealing with a facility. It's dealing with the appropriate kinds of facilities on the major street and regional traffic ways. It is not encouraging or promoting any traffic through a neighborhood. One more thing, just a clarification or correction to a

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point that Scott made earlier. That is that there actually is a three-lane on ramp, ramp meter in Portland. And it's on Cornell Road, entering on highway 26. Up and operating that way right now. It doesn't mean you have three lanes coming in, but you have three lanes of storage that then meter on to the freeway.

Hales: Thank you. Questions? And do you want to add anything?

Mike Carbone: Yeah. Mike Carbone, 5415 southwest westgate drive and land use planner with Portland, Oregon. The only thing I wanted to point out is that that Kurt did address in his letter to you about the \$10,000. The intent is to work with ODOT to place that on ODOT's property in an appropriate place and I think that is the intent of everyone involved.

Hales: Right.

Carbone: And then the last one would be that that intersection was the intersection where the mitigation is proposed is one of the original study intersections that was within the TIA. So, while it may seem weird that it is a mile and a half away, it was anticipated that it could be impacted by the proposed amendment and it was studied through the process.

Hales: Okay. Great. Any further questions for the applicant here?

Novick: Just one clarification. In your letter responding to the neighborhood association's point, with regard to the 205 Killingworth northbound on-ramp, is there response to that? That the proposed lane use action isn't expected to have any impact on that intersection?

Kittleson: That's correct. We are not expecting any of the traffic generated by this site to go through that. Not to say it's not a bottleneck or it's not an issue, but our traffic isn't going through that because, as Scott rightly suggested, you want that traffic to go up to Airport Way. If they're heading north, they should be using airport way interchange instead.

Hales: Okay.

Novick: That wouldn't have been an appropriate site for mitigation, because it is not mitigation --

Kittleson: Well, because the project has no impact on that intersection.

Hales: A problem in the neighborhood but it's not a problem precipitated by this --

Kittleson: Or contributed to by this project.

Hales: Yeah, okay. That's good to get that clarification. Thank you very much. So, City Attorney.

Rees: So, because you have accepted testimony -- reopened the record to accept testimony on the 205 Killingworth mitigation, it would be appropriate to ask if there's anybody who wishes to testify to that very specific issue.

Hales: We have had testimony from the applicant and from the neighborhood association itself. Is there anyone else who would like to testify on this new information in the record? If not, then I think we can close the public hearing again. And take action. [gavel pounding]

Rees: So, staff would like to get back up and walk you through --

Hales: About the emergency clause. I knew there was a motion in someone's mind but we ought to let the staff explain it first. Okay, Sheila.

Frugoli: Karla is passing out to you recommended amendments to the ordinance. Staff is recommending, if you're ready to vote affirmatively on the -- and give the second and final vote today, staff is recommending that you add these findings under directive 1A of the ordinance. And this language reflects the final testimony that you heard today. And the information that was conveyed. And then finally, staff suggests that you adopt this amended ordinance as an emergency so that not to delay the approved map changes. That's it.

Saltzman: I would move the amendment.

Fritz: I actually have a question. That is, I don't see any reference to in the amendment to the \$10,000 in additional mitigation.

Rees: That was not added. No additional conditions were added. The conditions that you voted on on September 25th are reflected in that, in the ordinance. This amendment sheet does not include new conditions or speak to additional requirements.

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Fritz: Don't we need to add that?

Rees: That's up to you.

Hales: See what Kurt suggests here.

Krueger: Again, Kurt Krueger with the Portland Bureau of Transportation. Because this is ODOT right of way and we can't dictate what happens on ODOT right of way, we're reluctant to have a condition that says that we plant trees. The developers put that in the record. With the developer that we have here, there's a significant level of trust and commitment and staff to work with ODOT on this issue to get these trees planted if we can find appropriate places for them.

Fritz: Okay. Similarly, my understanding is that PBOT and specifically you Kurt have agreed to meet and collaborate with the Sumner Association of Neighbors to address their concerns during design and construction including the livability issues that were listed in Scott Somohano's letter.

Krueger: That's correct. Just to remind everybody, the Oregon transportation commission awarded a grant of a quarter million dollars to the City of Portland for this project that we will administer with the Trust for Public Lands design team. So the issues raised around safety, livability, noise, odor, we will do our best to work with ODOT and their contractor to minimize those impacts and keep Sumner involved along the way.

Fritz: With that understanding and knowing that you do what you say you are going to do, I'm happy to accept both of those.

Fish: I'll second Dan's amendment.

Hales: Alright.

Fish: Motion.

Hales: Further discussion to adopting the amendments that includes the emergency clause and these other changes to the directives. Further discussion. Roll call on the amendments.

1018 and 1019 Roll.

Novick: I want to express again that we're sorry that the neighborhood association wasn't originally informed and but I really appreciate Kurt's work on this and the work that the applicant has done. I probably should have waited until after the amendment but yes. Aye on the amendment.

Fritz: I greatly appreciate the Sumner Association of Neighbors' constructive participation in this. Putting aside the disappointment that they weren't included earlier, working with the staff and being here today to testify, it gives me more comfort to know that you are okay with the emergency clause and that's why I'm willing to support it. Aye.

Fish: Yeah, I also want to call out the Sumner Association of Neighbors and the folks who testified and the final speaker, Scott somohara. And I had the pleasure working with Scott on a very difficult project that he brought home, and that is a community garden in his neighborhood that is hugely beneficial. And it's a very high-performing, high capacity neighborhood association with really good leadership and we work better when that's the case. So, thank you for all of the time you put into that. And thank you, Kurt, and your team and Don and Mara for working this out. Aye.

Saltzman: Don't forget BDS in that, too. Aye.

Hales: Aye. [gavel pounded]

Hales: Okay. Now we need to act on each of these in turn. So, first the hearings officer adoption of the hearing officer's report, which I don't believe we made any modifications to, it's all to the ordinance right.

Fish: So moved.

Novick: Second.

Roll to adopt the Hearing Officer's decision.

Novick: Aye.

Fritz: Thank you very much to staff, Sheila Frugoli, Susan McKinney, I think this is one of her final projects. Everybody who has been involved in this. Trust for Public Lands and both neighborhood associations. I'm looking forward to seeing what happens next. A lot of testimony at the hearing

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about what happens next. And so we haven't made any decisions about what's happening next. I want to be very clear on that and that if I have anything to do with it as Parks Commissioner, we will definitely have a full public process to look at those issues of who, what, when, where, and how. So thank you very much for the next step in the process. Aye.

Fish: Don, let's not wait another three years. This is the second win for our community and we have a lot of areas in our city that are underserved with great public spaces. So, thank you for your tenacity. Thanks to BDS and the whole team for their good work. Aye.

Saltzman: Well, I also want to add my thanks to transportation, Bureau of Development Services, Trust for Public Lands, Bureau of Environmental Services, Portland Parks and Recreation, all who played very key roles in this in making this great asset into a permanent open space and also some industrial property that really aims to contribute great things we need to both. We need more open space and we also need more industrial land, as we know. So, this is a great win. Aye.

Hales: We talked about this last time, I kind of semi-flippantly but with some seriousness behind it called it a land use miracle. What was a big head-on collision turned into this very positive outcome. Just sitting here, you know, going through these procedures as we take these actions today, and I think it is also in a way kind of a public process miracle, if I can use that term twice. You know, we have been at this now for about 40 years in Oregon, having comprehensive land use planning, understanding of how the process works, although that has changed over time, we now have a new wrinkle of a new mitigation formula, and that deliberate effort by the City of Portland to foster neighborhood engagement through the neighborhood associations. And here we are, 40 years downstream, in a complex land use case where a constructive applicant with a public purpose in mind, maybe not the typical development, but a constructive applicant with a public purpose in mind, a neighborhood association with volunteers that want to learn, negotiate, get to an outcome that is positive for the neighborhood, and city staff working to engage everyone in the decision-making process, looks to me like success. Looks to me like people are still making this now 40-year-old system work and adapt to new realities. One of the new realities is the engagement of a nonprofit organization like Trust for Public Lands in this role, and I want to second what Commissioner Fish said. We need you, TPL. We need what you are doing for our community and for our state and for other places around the country. So, thank you for persevering and getting to a wonderful outcome and thank you all for participating in continuing the success story of how we work between community and development and public infrastructure to get to this kind of solution. Well done. Aye. [gavel pounded]

Hales: On the ordinance as amended.

Roll on 1019 as amended.

Novick: Well, first of all, consistent with what everybody has just said, I really hope that all of you can help out with resolving a land use issue we have in West Hayden Island. I think that this team can make sure everybody comes to an agreement on that. Second, I want to thank the Mayor from refraining this time from insulting the pine barons protection act. At our last meeting, the Mayor said perhaps the word land use and miracle never been used in the same sentence. I had to gently remind him the pine barons protection act had been referred to as a land use miracle. So, thank you Mr. Mayor. And I'm pleased to vote Aye.

Fritz: Commissioner, if you just listen to Parks, we'll do just fine on West Hayden Island. And thank you again for all of your good work. Aye.

Fish: Aye.

Saltzman: Aye.

Hales: Thank you. Aye. [gavel pounded]

Hales: Okay. Well done. Let's take a five minute break and we will take up the other major item on our calendar this afternoon. Give everybody a momentary breather.

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At 2:38 p.m. Council recessed.

At 2:45 p.m. Council reconvened.

Hales: We'll get Commissioner Fish and Saltzman back. Okay, Council will come to order please. That's the danger of taking a break, but we do need to get back to work here. We will call the Council back to order. I know our colleagues will be coming back in momentarily and we will allow our auditor and our IPR director to start the presentation. Read the item, please, Karla.

Item 1020.

Hales: Thank you. Auditor Griffin-Valade.

LaVonne Griffin-Valade, Office of the City Auditor: Good afternoon. Nice to be here before you, Mayor Hales and council members. I'm here to introduce Constantin Severe, Director of the Independent Police Review division in my office. Constantin will take us through the major police accountability reforms before you, which are essentially focused on four areas. Co-changes to strengthen IPR's oversight authority. Number two is expansion of CRC to 11 members and having CRC members serve on a rotating pool of community members on the police review board. Three, changes to the post-investigative portion of the police review board code. And four, policy changes that reflect national best practices. These are the most significant set of reforms since those we brought before you, before council, in March of 2010. In large measure, they reflect the police accountability portion of the city's agreement with the U.S. Department of Justice. IPR and the city attorney's office began drafting these reforms nearly a year ago to meet the requirements of the city's agreement with DOJ. As you know, implementation of the DOJ agreement has been delayed, but we fully expect those matters to be resolved in the near future. Passage of co-changes now will give us a head start on implementation of the DOJ agreement and institute additional reforms. So, after Constantin walks us through the proposed changes, we would like to call up an invited panel of guests. Michael Alexander, director of the Urban League of Portland; Jan Friedman, director of Disability Rights Oregon; and Kayse Jama, director for the Center for Intercultural Organizing. And then open up for public comment. Because the Mayor will not be here next week, we plan on holding over the second reading until at least two weeks from now. So, without any further comments, I will turn it over to Constantin.

Hales: Thank you.

Constantin Severe, Director, Independent Police Review, Office of the City Auditor: Good afternoon. My name is Constantin Severe, I am the IPR director. I have had the honor of being an employee of the city at IPR for the last five years. I have had the opportunity to get to know community members and hear their passion for real police oversight in the city and to get also -- also know, and actually get to know very well some police officers. We have a city that has accomplished a lot in the last 30 years. Just hearing the land use issue before us, I'm a land use nerd myself, and it is amazing to see how much progress that the City of Portland has made in the last 30 years and 40 years. When you look at the changes that we've made in police oversight, I think we have made dramatic changes as well. But at the same time, when you look at the police bureau line officers, the men and women of the police who protect us, who are responsible for Portland having one of the lowest crime rates of a city this size, a city that has had two officer involved shootings this year, which is a pretty low rate. Last year we had six. And it's amazing the quality of individuals who work for the city, and I -- unfortunately, I don't think our oversight system does the officers or the community justice in what it does. We have a system that the Department of Justice felt compelled to look at that. The police commissioner at the time and the mayor asked for a Department of Justice investigation into how Portland conducted itself in the use of force with the African American community and folks with mental health issues. The Department of Justice also looked at what other parts of our system were at fault and my presentation to you folks will kind of lay out where we've come from, where we are, and where we can be. Because I don't think there is

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anything that the collective wisdom of the 585,000 people who live in this city cannot accomplish. I think we are a great city. I think we are the best city in this world, and I think we can have an oversight system that is worthy of the community. So, with that, I will start. So, the Independent Police Review division is a part of the city auditor's office. It was created in 2001. It is the successor agency to PIAC, which was, back in those days, under Mayor Vera Katz's office. We have 12 employees. IPR's reason for existence is really well laid out in 321010. It establishes that the independent and partial office readily available to the public, responsible to the city auditor, empowered to act on complaints against police bureau and personnel for alleged misconduct and recommend appropriate changes of police bureau policies and procedures towards the goals of safeguarding the rights of persons and of promoting higher standards of competency, efficiency, and justice in provision of community policing services. I believe that statement is why we're all here today. I think compared to where the city was in 2001, we have made huge steps forward. I don't think we're there yet. I think we can get there. A little look at what the administrative investigation process looks like. And this is a simplified version of that. There is the intake portion, where whether it is a bureau initiated case or community member initiated case, whether it starts at IPR or the police bureau at internal affairs, there's intake stage, there's an investigation, there is a recommended findings by the officer's commander. If the case merits it, it goes to the police review board. There's also the possibility of a CRC appeal if the community member or the involved officer is not satisfied with the outcome of the case. There is the chief-proposed discipline, if there is discipline in that case. If the officer is found out of policy and then there's the chief's police commissioner's final discipline. And Portland's unique system of commissioner form of government, since we're a day after the 100th anniversary of that -- even though the Portland Police Bureau is a part of the city, the police chief answers to the police commissioner. And in -- so, it is the same way. If IPR does an independent investigation, we plug that into the investigation portion of the administration -- administrative investigation, part of the administrative investigation. IPR does not do findings. We review investigations and we review the recommended findings by the officer's commander. If we do not agree with the officer's commander's recommended findings, we can kick it to the police review board for the five voting members in normal cases and seven members in use of force cases to have that discussion and provide a recommended finding and/or discipline to the chief and to the police commissioner ultimately. All findings, discipline, until to gets to the police commissioner, are all recommendations. The original IPR ordinance was in 2001. And this is basically kind of bare bones of what IPR was at that time. IPR was seen as more of a triage type of a shop where community members could come with complaints and if there needed to be a real investigation, quote unquote, IPR would forward that to the police bureau, to internal affairs, for them to do the full investigation. So, community members file the complaint at IPR. CRC was created at that time. Professionalized staff, PIAC prior to IPR, only had one staff person. I think when IPR was originally created we had five staff members. Today we're at 12. You've seen that growth there. We had the authority to monitor internal affairs investigations and initiate independent investigations. We've had the authority to initiate independent investigations since the beginning of IPR history until the review we did in the Frashour case. That was the first time we had ever done any type of independent investigation, review. A lot of that was a lack of resources. The second part of that is the conflicting nature of our authorizing code and I'll go into that a little bit later. Another authority that IPR has always had is to hire outside consultants to review officer-involved shootings, in-custody deaths. You folks will probably recognize the park reports, there were several park reports and follow-up reports, and most recently the Office of Independent Review, or OIR reports. In 2010, as our auditor mentioned, there is a new ordinance that expanded IPR's powers and duties. We were able to open complaints at our own discretion. We gained the authority to approve investigations and findings, and it didn't really matter what the case was. Before there was more ambiguity about what cases we had authority to approve or not approve. The

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ability to controvert a commander's finding to the police review board in all cases. IPR was given subpoena power, which council decided to delegate its charter on subpoena power to us. That does not apply to PPB members. That is spelled out in the code that we subpoena documents, papers, or individuals that we need to talk to. IPR has used that power selectively. We have used it a few times in the last year. One of the big creations of the IPR reform ordinance of 2010 was the creation of the review board, the combined performance review board, and the use of force review board. It required that the board be facilitated by a professional facilitator who was not employed by the bureau. IPR became a voting member of the police review board. Previously, we had been an advisory member. Citizen members became members of the board through a recommendation by the city -- sorry -- by a recommendation of the auditor and a process by City Council. PRB was required to issue a public report at least twice a year. A little bit more to the current day. The Department of Justice settlement agreement ended a 15-month investigation by the U.S. Department of Justice that attempted to determine whether there were systemic violations of the U.S. Constitution or federal laws by PPB officers. It was motivated by a significant increase in police shootings of individuals, a majority of which involved community members with mental health issues. The DOJ's findings letter is, to be blunt, pretty scathing at the city. I think one of the practices that we've gotten into is laying the faults in our oversight system on the police bureau. This is something that we all own as either citizens of the city or city officials. The agreement between the Department of Justice is between the Department of Justice and the City of Portland. This is our responsibility to fix. It was our fault that Department of Justice had to come in and look at our issues. DOJ wrote that a lack of timeliness in Portland's accountability system undercut its effectiveness and community faith in the process. It said that Portland had a self-defeating accountability system. The settlement agreement was approved by this council -- well, by City Council on November 14th, 2012. Called for a lot of changes to how we do business in the City of Portland. Including the use of force policy, training, crisis intervention program, and officer accountability system. What we're talking about right now with this particular ordinance and these code changes is only about the officer accountability portion of the DOJ agreement, which is section 8 of the DOJ agreement. The agreement is between United States Department of Justice and the City of Portland. There has been recently a collaborative agreement with the Albina Ministerial Alliance. Important lessons learned from the DOJ experience. Portland, we have a really big city government. A lot of times people really feel comfortable in their silos. I think, hopefully, that the DOJ agreement has destroyed our silo, bunker mentality. There isn't a PPB or IPR or BHR investigation of officer misconduct. There is the city's administrative investigation into these cases. If we don't all succeed together, none of us succeed. What does the DOJ settlement agreement require? It requires that the city do administrative investigations in 180 days. That IPR has the ability to conduct meaningful, independent investigations. Investigations of excessive force will be subject to full and complete investigation unless there is clear and convincing evidence that the allegation has no basis in fact. The CRC will be expanded to 11 members. That there is a rotating pool of CRC members that serve on the police review board and the city will implement a discipline guideline.

Hales: Sorry. Let me just stop you there for a second.

Severe: Yes, sir.

Hales: You're able to cross-walk each of those provisions to a specific part of the DOJ --

Severe: Cross-walk, I will, sir.

Hales: Okay, good.

Severe: Post DOJ, through council support, IPR has been able to have five full-time investigators. That has been much appreciated. Historically for the last few years, we had 2 1/2 investigators. With 400 complaints on average a year, we really were at the treading water stage. And I don't think we were able to effectively serve this community with five full-time investigators, three of whom have extensive experience with mental health -- folks with mental health issues. One of them is a former

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Portland Police Bureau sergeant, and actually was the first female sergeant at the Multnomah County sheriff's office. And one of our investigators is a criminal defense -- former criminal defense investigator. We have a really diverse, smart, capable, proactive investigative core. So, it's one of the reasons why I'm here and one of the reasons why I have the passion about what I'm talking about, is it's important for us to be able to serve the city. Every one of us who works for IPR believes strongly in what we're doing. We left other jobs that we cared about, but we all have a dedication and a burning passion to serve this city and to do what we need to do to make sure that we have an accountability system that we can look at our friends and neighbors who -- myself, I live in the city and want to be able to look at my next door neighbor who knows what I do and say you know what, I'm making this accountability system better as opposed to drawing a paycheck. So, IPR and IA have worked together on a time line for every part of the administrative investigation covered by the Department of Justice agreement. A lot of this work was done by internal affairs and professional standard division led by the Captain Dave Famous, who is an extraordinary leader in the Police Bureau. Without Captain Famous, I don't think we would be as far as we are in trying to implement the Department of Justice settlement agreement. I think he shares IPR's sense of urgency about these changes that we need to make. We may or may not have differences of opinions on specifics, but I really respect the work that he's done and it's important that everybody understands that the ability, particularly for IPR, to talk directly to officers is not about Internal Affairs not being able to do the job. Internal Affairs, day in and day out, they do a really good job. They brought down their timelines to do investigations pretty good. They have increased resources from what I understand, and every one of their investigators who I know fairly well are tens. The issue for us at IPR is that the city code requires us to have the ability to do independent investigations. There are cases where we need to do independent investigations. But we have, inside the city code, contradictory parts of the city code that I think create confusion about what we are able to do. I think our system works best when we have checks and balances. Right now I don't think we had that in full effect. So that's where we're trying to get this accountability system to. Part of IPR's post-DOJ actions is expanding what we do on an initial investigations that it is pretty clear that we have the authority to do right now. So we're transcribing all witness interviews that end up being full investigations. We can prevent subsequent redundant interviews, which is part of the DOJ's mandate. So, why are we doing this right now? You know, there's several premises that I have that, you know, the city is serious about implementing the Department of Justice settlement agreement that even though it has been a year since the implementation, that we still have that sense of urgency in that we cannot backslide to the past. We have to increase the consistency and objectivity of our system. That is something that prior audits, the park report, OIR reports talk about at length. We need to increase the transparency. I think it is great that we have the Independent Police Review division. I think it is great that we have a professional standards division. But unless members of the public have access to information that is in a readable format and that they can access themselves while maintaining the confidentiality of the system, I don't think we're really getting to where we need to. And we also have to make sure that it is usable. So, our strategy is to implement the changes of the DOJ settlement agreement that are the most urgent. So, that's reflected in the current code changes. There are several things that are particularly CRC-related that we have decided to hold off until the agreement is much closer to being in implementation. Particularly the limitation that the CRC would only have 21 days to hear an appeal. I think that will be a significant burden on the CRC frankly, and I think it is important for the city staff, whether it's Internal Affairs, IPR, the chain of command at the Portland Police Bureau, I think it's important for us to get our act together before we put such an imposition on community members. Because currently, CRC takes about average of about 100 days to do an appeal. We are go to shrink that down from about 100 something days to 21 days. And that is something that is in the agreement and that we will try to work with the CRC in making sure that we implement that. But I don't think it is fair for us to do that right now.

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Saltzman: Is that 21 business days?

Severe: Calendar, calendar days. So, to do the crosswalk. So, independent investigations. On the left will be the DOJ settlement agreement terms and on the right what IPR's proposed code changes reflect. On the left, for independent investigations, the city will enable meaningful, independent investigation by IPR when IPR determines such an investigation is necessary. Section 3321070 big P provides IPR with the ability to compel bureau employees to attend interviews, cooperate, and answer questions during an administrative investigation. 321120 clarifies IPR's ability to conduct an independent investigation. 321020 expands the jurisdiction to include civilian supervisors of sworn PPB employees. And 321150 B 5 requires notification from PPB prior to termination by bureau of investigations that had not been assigned for recommended findings. Basically, cases that are terminated, at least in our opinion, prematurely or early, we just have to receive notification of that. And these are a package. Because we are not able to do a meaningful investigation if we don't know that the bureau for whatever reason is terminating an investigation early. If we are unable to have the ability to investigate cases that involve supervisors of sworn PPB employees -- we've had a recent case where there was an investigation of a supervisor sworn employees, where IPR did not have that jurisdiction. We had to cobble together a solution to that. And I think as a city, as an organization, when you try to do these kind of on the fly, ad hoc types of investigations, I don't think that is a recipe for success. We're trying to learn from that. Fundamentally, we have to have the ability to talk directly to officers at basically two phases. Right now IPR dismisses, I believe, 75% of the cases that we receive. That is one of the things that the Department of Justice, when they came into town and subsequent to the settlement agreement has talked to us about and they want IPR to gather information, as much information as they can, as early in the process as they can. Part of that requires talking to all the parties to an incident. IPR has the ability to dismiss cases if we feel there is no misconduct or we can't prove misconduct, but the DOJ felt uncomfortable with IPR making qualitative judgments about some of the cases. Particularly since we talk to the community members, we gather videotape or other dispatch records or that kind of thing, but we rely, at least in part, rely on police reports or dispatch records and they felt that was an uneven balance. The other part of it is when IPR has to do an independent investigation. We've done one this year and Internal Affairs with the liaison, as stated city code. I think when the situation does arise where IPR does have to do an independent investigation, having a police bureau liaison I think creates a weird dynamic. Usually it has to be a pretty significant case for IPR to be able to do the independent investigation. Every case we thought about doing an independent investigation, it was just pretty awkward all of the way around. So to have a police bureau person stuck in the middle of that I think is bad policy and I think that is not something that is sustainable over the long term. So, and this is relatively lengthy, but it is important to read. Because the current direction in city code of what IPR is supposed to do when we do an independent investigation is a prime example of why we need to change the code and why the Department of Justice called our accountability system self-defeating. So, here I go. When a collective bargaining agreement is applicable -- and this is talking about when we are trying to talk to an officer -- when a collective bargaining agreement is applicable and specifies that a member may only be interviewed by a police officer, director should notify the IED commander that IPR has undertaken an investigation and the reason. The IPR commander shall appoint a liaison investigator from that office within two working days to arrange and participate in interviews. When members represented by collective bargaining unit are being interviewed by IPR personnel, the IED investigator may repeat the question and or direct the member to answer the question. That's kind of the first prong. Second, when a collective bargaining agreement is not applicable and does not specify that a member may only be interviewed by a police officer, then the director shall ask the member the question directly and or direct the member to answer the question. I have reviewed several collective bargaining agreements between PPA, PPCOA. I have not seen one that says IPR has -- I'm sorry -- where a PPA member or PPCOA member may only be

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interviewed by a police officer. That provision does not exist. I have never seen that. I don't know if it was in the 2001 version of the collective bargaining agreements. So, that leads us to a point where, at least to my reading, and I believe the city attorney's office agrees with me, where in proposition number two, so when the collective bargaining agreement is not applicable and not specify that a member may only be interviewed by a police officer, then the director shall ask the members the questions directly and/or direct the member to answer the question. Within our city code right now, we have a conflict and we've been conservative in our attempts of exercising our authority to do independent investigations. We have just gone on the assumption of the first prong that I read. I think kind of a longer term, particularly in the light of the Department of Justice settlement agreement, I just don't think that is workable. Because there really -- there isn't a collective bargaining agreement that is applicable at this point. Current language, contradictory. creates ambiguity that is a potential risk to City if an IPR investigation leads to discipline and a subsequent grievance. It doesn't meet the Department of Justice settlement agreement and undercuts most importantly the city's charter right to have divisions within the city investigate possible employee misconduct through the use of compelled interviews. Here is proposed 321220. IPR shall have the authority to compel a bureau employee to attend interviews, cooperate, and answer questions during an administrative investigation of a member. If the employee refuses to attend an investigative interview after being notified to do so by IPR or refuses to answer a question or questions asked by IPR during the investigative interview, the employee may be subject to discipline or discharge by the police chief or police commissioner following a separate administrative investigation regarding the employee's refusal to attend the investigative interview or refusal to answer the question or questions during the interview. I think fundamentally it is important for council to speak clearly about what council wants IPR to do during these independent investigations. Does council want IPR to follow the DOJ mandate and for us to be able to do truly independent investigations that are meaningful? IPR interviews of bureau employees shall be conducted in performance of legal and collective bargaining provisions. Prior to being interviewed, a bureau employee would be notified of the time, date, location of the interview and formally the right to bring a union representative to the interview, read a statement that informs the employee that they have a duty to cooperate during the interview, must answer all questions truthfully, and failure to cooperate or engaging in untruthful behavior will be cause for separate administrative investigation that may result in discipline or discharge imposed by the police chief or police commissioner. And I think that last part is really important. IPR, we are not disciplinarians. That is the responsibility of the police commissioner or police chief. We are fact gatherers. We are part of the system where it is ultimately up to the police chief or commissioner to make a decision how to deal with these cases. But we want to be able to do the best job by the city that we can. Get all of the information that we need. Talk to all of the people that we have to. Current investigative practice. Involved in witness officers are compelled to attend interviews by Internal Affairs. IA investigators are for the most part civilian, retired law enforcement. IPR can conduct an investigation jointly with the IA or do an independent investigation with PPB officers compelled by IA. Another part that I haven't really brought up so far is that the Bureau of Human Resources conducts solely or jointly EEO investigations with IPR or IA. And the Bureau of Human Resources, as we all know, is a completely civilianized shop and they can compel officers and directly question PPB officers. And BHR also does its own findings. We're currently left in the position of one part of the city that is completely civilianized, is able to compel officers. And then the other part that is tasked with doing independent investigations through some byzantine, and I'm using another Department of Justice word, process isn't able to talk directly to officers. That calls to question whether the city is serious about doing an independent investigation or not. You know, as IPR director who serves a very strong auditor, it is my duty to do my best by the city and just to speak bluntly. And really it is not sustainable, the path that we're on right now. We have these new

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investigators who are doing scene canvasses, are talking to a number of community members, and so when we talk to our complainants, they have this expectation that we have talked to the police officer or we will talk to the police officer. And it's like, well, no, we're going to turn that over to the Police Bureau, which, that is, you know, I believe our system works when we're able to follow the case where it needs to go. And I think the Police Bureau, Internal Affairs, they do a great job in their investigations, but there are times when IPR needs to follow that investigation from the beginning to the end. So, right now, the city has put IPR in the position of: you guys can talk to the community members. You can gather all of the evidence. You can go drive around town. But if you need to talk to a police officer, well, okay, we have to set up this crazy system that the city itself hasn't really figured out. And, I mean, that really is self-defeating. That's absurd, frankly. The collective bargaining agreement, as I mentioned, I reviewed in depth, article 61 and 62 of the labor agreement between the City and PPA. In my reading, I'm only a formal criminal defense attorney so I might not know about these things, I just do not see anything that covers what IPR has to do. I vetted this issue with the city attorney's office back in May. And Mary-Beth Baptista, my director, my former director -- get used to old habits -- vetted this with the city attorney's office as well and they agreed that this was not a mandatory subject of bargaining. The next part is the excessive force investigations. That is section 129 of the Department of Justice settlement agreement. The City and PPB shall ensure that all investigations of excessive force are subject to full and complete IA investigations, result in findings, unless there is clear and convincing evidence to IPR that the allegation has no basis in fact. We put that in proposed 321110. All allegations of use of excessive force shall be subject to full and complete investigation resulting in findings unless there is clear and convincing evidence to IPR that the allegation has no --

Fish: Director, excuse me. I'm gonna ask you a question on something you said earlier.

Severe: No, go ahead. Yes, sir.

Fish: You said that -- in the prior slide, it says you vetted this issue about whether a subject of bargaining issue with the city attorney's office. What my understanding from the materials our office has been furnished, is that there's a healthy disagreement on that question. Do you have a legal opinion from either HR or the legal department that supports your interpretation?

Severe: I mean, I have the email chain that the city attorney's office provided to us when we had these discussions. I didn't ask for a formal legal opinion on that.

Fish: Hopefully at some point in this hearing we're gonna get some clarity about whether it is or isn't. That's a significant issue in terms of moving forward. I just want to say that this commissioner has now received advice on both sides of that issue. I'm hoping that we get some clarity, because this is not one that we want to do through guesswork. If it is a mandatory subject of bargaining, then we don't get anywhere if we implement it and it is later subject to a ULP. So I hope we get some clarity on that question, Mr. Mayor.

Hales: I agree.

Severe: I think that's a point well taken. And this is one of the reasons why IPR has discussed this with the city attorney's office and BHR, while bargaining season is open. If it is bargainable, folks need to do what they need to do. But, at least from my perspective of being IPR director, and who has a mandate and a council direction of following the DOJ agreement, however we need to get it done, I feel when the DOJ is talking to the city and asks me directly, are we in compliance with section 128 that says IPR has the ability to conduct meaningful investigations. If they asked me that question right now, I would say no. No. So, the 180 day timeline, that's section 121 in the Department of Justice settlement agreement. PPB and the City shall complete all administrative investigations of officer misconduct within 180 days of receipt of a complaint of misconduct or discovery of misconduct by other means. For the purpose of this provision, completion of the administrative investigations includes all steps, from intake evaluation through approval of recommended findings by the chief including appeals, if any, to CRC shall be resolved within 21

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days. We have tried to adapt that to 321230. All administrative investigations shall be completed within 180 days of receipt of complaint or initiation of investigation by either IPR or the bureau for the purpose of this section. An investigation is complete when the police chief approves recommended findings, appeals --

Hales: Excuse me. Sorry, no. Just because I coughed, not because I wanted to interrupt you, sorry.

Severe: If an administration investigation exceeds 180 calendar days, then the police commissioner shall be provided an explanation as to why the investigation exceeded 180 calendar days. This action should not be construed to prohibit the City from completing the investigation or disciplinary process if investigation is not completed within 180 days.

Fritz: Where is that language that you just read, that second sentence? That's an amendment that you're proposing. Okay.

Severe: Yes. We've received significant feedback from the community that I think is well taken that there is a fear in trying to have this benchmark, which I haven't really heard anybody be against the benchmark itself, but concern that the 180 days would be a drop-dead point, that the case would have to be dismissed or done away with. And that's not the intention. In my reading of the DOJ agreement, it is not the intention of trying to put that in city code.

Fritz: May I please see that amendment in writing? I'm very much a reading learner. I'm wondering why you didn't break it down further, this 21 days for the Citizen Review Committee to review it, 30 day period for the applicant -- the appellant -- to appeal, so why not make it that the IPR investigation has to be done in 129 days, and 30 days for the appeal, and 21 for the CRC?

Severe: Well, I mean, you know, the hope is that our system won't be as mechanical -- hopefully IPR doesn't take 120 days. But we have administrative time lines from basically the beginning of the case, where IPR, the expectation for our initial investigation will take 14 days. IA, if they have to do the investigation, is 60 days. CRC, when the DOJ agreement is implemented, they will have 21 days. I believe that is something that best done administratively. One, just in the time between November and now, we've come up with several different versions and we've been able to become much more efficient.

Fritz: But do you have those administrative rules written down somewhere?

Severe: I do. I can forward that to you. I have it on a thumb drive, which I can provide you a copy of that as well.

Fritz: I think that might give the community, as well as me, some certainty or a higher level of comfort knowing what the administrative process is that accompanies this code provision.

Severe: Yes, ma'am.

Fish: Can I go back to the question that Commissioner Fritz has raised? I understand the concerns that we've heard from the community about the 180 days. We're trying to figure out a way to make sure that if the 180 days is not met, that it doesn't prejudice the opportunity to weigh in and hold police officers accountable. The way I read this now, it says, consistent with the DOJ settlement, the investigation shall be completed within 180 days. We all understand what that means. Except where it exceeds 180 days. And you just have to give the police commissioner a written explanation as to why it exceeds 180 days. Is that a fair reading?

Severe: Well, yes. The hope for the 180 days is that it's a benchmark of what the expectation is. In over 90% of the cases, they'll be under 180 days. If the case goes over 180 days, which we hope it doesn't, but if it does go over 180 days, there has to be an explanation to the chief of police, the police commissioner, of why it has gone over 180 days.

Fish: But if it goes beyond 180 days, and it turns out that the police commissioner does not accept the explanation, what is the effect on the process?

Severe: At least right now, the 180 days does not have a -- there is not a dismissal for it. We're not in compliance.

Fish: Like a statute of limitations.

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Severe: No, no. I mean, the thing about the 180 days is that in the Department of Justice settlement agreement, if we do not meet the 180 days, we have to have a work plan and the DOJ will work with us to try to implement the 180 days in a better way. I think rationale behind having the, you know, if we go over the 180 days, having that go to the police commissioner is that is a similar format. Whenever the DOJ agreement goes away, we will still want to have these time lines. The police commissioner, they're in charge of this process, ultimately is the best person situated to deal with people not following through on meeting their time lines.

Fish: If this becomes a chronic problem of not being able to meet the 180-day rule goal, under this, the police commissioner would get notice. There might be a larger policy question, which is there's inadequate staff, or resources, or some structural problem in how we're doing this. How would that come to council?

Severe: Hopefully we will meet the 180 days. But for whatever reason we weren't meeting the 180 days, one of the things that IPR has done, and Internal Affairs, or professional standards is doing this as well, at least on IPR's point, we have a timeliness study that we look at all of these cases and we have a draft ready for just the cases before the Department of Justice settlement agreement that we want to present to council as well. I think this is something that needs constant reporting. And this is something that that's what we do basically at our weekly internal affairs IPR meetings is look at these timelines. We want to provide council with that information and the police commissioner as well.

Fritz: The Department of Justice settlement agreement says in paragraph 123 that if we're unable to meet the timeframe, we provide DOJ a written report of the IA process. So, shouldn't that be in the code, too?

Severe: We can put that -- I mean, the issue with putting that in the code, the Department of Justice settlement agreement lasts until 2017. Once the DOJ agreement goes away, I don't think we should have in city code that we're going to report it to the DOJ. That's why having the police commissioner receive the report is what we put in --

Fritz: Well, I realize that it has been 3 1/2 years since we did the previous amendment to this code. That would take us to 2017. But I'm anticipating, based on conversations with you, that we are going to be having several packages -- we're going to have a number of packages of implementation strategies coming to council as soon as the settlement is approved and as we work through it.

Severe: Yes, ma'am.

Fritz: So I would prefer to have it in the code for right now and we can take it out.

Severe: I'm not averse to that. I think that does make sense. Yeah, that is something that is workable and we're willing to take suggestions on how to best implement that. I appreciate your suggestion.

Saltzman: But the DOJ settlement, to my reading, is pretty straight unambiguous. 180 days is 180 days. So how is what you're proposing at all consistent with the DOJ settlement?

Severe: Well, so, our goal is to meet the 180 days. The second paragraph is an attempt to meet community concerns that we will somehow dismiss complaints if they go over 180 days.

Saltzman: No, I understand all that. I'm just saying, my reading of the DOJ language is pretty clear and unambiguous. So we're either -- we're trying to create wiggle room is what you're telling us.

Severe: I am not trying to create any wiggle room. I believe that we should meet the 180 days. The only purpose of that second paragraph is to provide a sense of comfort to the community that we will not get rid of officer misconduct cases because they go over 180 days. The goal is to meet the 180 days. The Department of Justice settlement agreement, that's a document between relatively sophisticated parties who are used to these types of situations and these types of negotiations. So, when you're having something in city code, I think -- I initially went for basically trying to have something that reflected the Department of Justice agreement simply. The comments I've heard from members of the community, I think they are valid community concerns, and I think that there is a way that we can meet both. And hopefully, in the interim, between this meeting and the next

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council hearing on this issue, that we can have some language that reflects that the 180 days is not wiggle room, if we kind of do sort of meet the 180 days that will be fine.

Saltzman: I realize that there is a lot of heartburn being caused to some people, the notion of getting something done with 180 days, and I think that it says clearly that's what we need to do in the DOJ settlement.

Severe: Absolutely.

Saltzman: So, because I know there is heartburn about having the CRC having 21 days, so, there is a lot of people who, I guess, a lot of critics of the bureau, of the city, when it comes to investigating the officers, who say, whatever happened to that investigation? Is it being done by BHR, IAD, or IPR? I think to counterbalance -- or maybe in support of getting there done in 180 days, is that other concern and frequent criticism we hear is, this investigation is taking forever. And I have lost track whatever happened to it, and the public loses sight of it in a matter of weeks. Anyway. So, that's just a comment.

Severe: I think that that's a great point. And I think one of the reasons why the 180 days is there is that, as the City enacted a lot of different oversight concerns in our oversight process, the cases grew and grew and grew, and with kind of a loss what the overall, what the goal was in doing oversight, and in providing timely accountability. So, the 180 days a way for us to meet that, and, you know, we'll be talking to your representatives and hopefully, yourselves, as well about how we can craft language that works with the DOJ agreement but at the same time will allay some community concerns.

Novick: Mr. Severe, I just want to clarify, did say the Department of Justice settlement sort of contemplate that it's possible that we have 180 days, and in that case, we're subject to that we have to submit a compliance plan or something?

Severe: Yes.

Novick: So even the settlement recognizes that that's a possibility.

Severe: Yes.

Novick: You are saying the concern you are addressing is that people are worried if it goes past 180 days then the complaint is dismissed. It is a statute limitations type thing.

Severe: Yes. Even though that's not the intention of the either DOJ agreement or what this proposed code is.

Novick: And I'm just expressing my personal opinion, I would actually would like to have something in the code that is not tied to the Department of Justice settlement because I would hate for 2018 to roll around and we have forgotten that to have we need to update the code and reflect the fact that the Department of Justice settlement no longer exists.

Fritz: It would be delightful if this topic is considered done by then and people were not watching for that.

Severe: Expansion of the CRC to 11 members, that's section 134 of the DOJ agreement, the City shall expand the membership of the CRC to 11 members, representative of the many and the diverse communities in Portland who are neutral, unbiased, and capable of making objective decisions. The quorum of CRC members necessary to act may remain at the existing level. We tried to enact that in code. In 32180, Citizen Review Committee, and the committee shall consist of 11 citizens, and five members shall constitute a quorum of committee, decisions shall be made by the majority of the members present and constituting a quorum. However, adoption or amendment rules of procedure or protocols requires an affirmative vote of six members.

Fish: Mr. Director, I appreciate the last sentence, but, can you give us your thinking as to why a quorum is less than a majority of the panel?

Severe: Well, you know, that's a good point. Because the CRC members will be serving on a rotating pool under the police review board, there is a concern that, let's say some members are absent, and then we're hearing a case that went to the police review board where the CRC member

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would have to excuse themselves and not hear that issue again. That, there would not be a quorum if it was like having a normal majority, so that's where that came from.

Fish: But let's be -- we need to be clear, though, if it's a five-member quorum, other than for adoption or amendment of rules, the decisions can be made by three votes. A majority of the five. And so three out of 11 can carry the day under this rule?

Hales: Right.

Fish: A quorum is five. So, as few as five people can be present. And then it's a majority those present, so we're saying that we're comfortable with three people serving as decision makers if the quorum is five.

Severe: You know, particular in cases of where sometimes, to the vagaries of people, busy professional lives, we have difficulty reaching a quorum. I think that this is an attempt to meet the issue of, if for whatever reason there are not enough -- there are not as many members of the CRC as normally there, that we still are able to conduct business. I think that that's what was intended.

Fish: I guess, maybe we can come back to this later, but it seems like we're investing a significant amount of authority to a very small number of people, and we're saying it's 11 citizens, but if it's as few as three it can drive the trains, that may not be ultimately what you intended.

Severe: Let's see, this is about, the CRC members serving on the police review board, that's 131a of the DOJ members. Currently, seven voting members of the PRB review use force incidents include two citizen members. When PRB reviews uses of force cases, one of the two citizen member slots shall be drawn from the Citizen Review Committee members. 32180b7, the brackets are inserted language, the committee members shall serve on the police review board when the board reviews use of force cases as defined in chapter 320. Community members shall serve on the police review board on a rotating basis for no more than two terms of three years. Discipline guideline, section 137, DOJ settlement agreement. The city shall develop and implement a guide to ensure that discipline for a sustained allegation of misconduct is based on the nature of the allegation, and defined consistent mitigating and aggravating factors, and to provide discipline that is reasonably predictable and consistent. 32140b3. The board shall make recommendations as to discipline, based on discipline guidelines. The guidelines shall be developed by the bureau in consultation with IPR. Investigative findings. This particular part deals with the chief providing a rationale to the chief police commissioner when his findings disagree with what the police review board has recommended. And this is based on community feedback, the Portland Police Bureau learning from the May 12 audit, and just the overall goals having a fair and consistent disciplinary system, and that particularly in the DOJ agreement, and the section eight kind of preamble section that the PPB and the City shall ensure that all investigating findings are supported by a preponderance of the evidence of and documented in writing. The reason why I believe this is important is that with the implementation of the discipline guidelines, there will be an objective consistent criteria. And if the chief, as, you know, one of the ultimate decision makers, decides to make a different decision than the Police Review Board, I think that's well within his authority to do that. But, as a city, where we have multiple fact-finders, the officer's commander, the police review board, the chief of police, and the police commissioner, where when you've looked at some of the arbitration decisions that have come down against the City, they've pointed to that, in particular, where they did not know where the City was coming from. And I think that this will provide that kind of crucial link in those cases where the police chief has a disagreement. And it could be valid, and the chief might have more information than the police review board had. But, I think that it's really important for us to document that, and for us to be -- and particularly for the police commissioner to have that in the file, and in a concise written manner.

Novick: Mr. Severe, when you say in the file, would that be public?

Severe: No, I -- you know, as with all disciplinary cases, they are confidential. If, let's say, the press made a public request for that, the District Attorney would have to make that determination if it was

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a case of significant public interest, then it might be made public. But the majority of the disciplinary cases do not meet that level so they are not public. And this is not something that is anticipated where the police commissioner would be releasing this. It would go from the police commissioner -- I'm sorry, from the police chief to the police commissioner.

Fritz: Before you move on from that, I am not seeing the public records section in 321090 in my documents of the code. So where is that?

Severe: I'm sorry?

Fritz: The title of this is 21 -- oh, it's 08, sorry. I was on the CRC -- okay. Sorry, keep going.

Severe: Okay. So, public reports. This is something, as I mentioned earlier, that was created with the creation of the Police Review Board. Based on community feedback, the members of the community really appreciate having the public reports. I think the police bureau has done a really good job in providing the Police Review Board public reports in a timely manner, and they have been pretty well written. But, there is a consistent desire for a more consistent format from case to case.

Fritz: Excuse me, I had a chance to look, and 090 is powers and duties of the CRC.

Severe: I'm sorry, that's 320. I'm sorry.

Fritz: I know you have gone on but --

Severe: It's important that we're all on the same page. Literally and figuratively. It's 32140. I apologize.

Fritz: I had another question on the CRC. And by the way, folks, I know you are waiting to testify, but I want go ahead to get the issues out so that you can comment and maybe some of concerns that I have read on email might be already taken care of. Back to the powers and duties of the committee, why do we not have in an amendment, in accordance with paragraph 135 of the settlement agreement, that the CRC may find the outcome of the administrative and investigation is unreasonable, if the CRC finds the findings are not supported by the evidence?

Severe: That's just a restatement of current city code.

Fritz: Where is that?

Severe: It's in the findings section of what is supported by the evidence is. It's in --

Fritz: Where in the code?

Severe: That is supported by the evidence. That is page three of chapter 321. So that would be S, so 321020 in the definition section S.

Fritz: That's actually a little different from the language in the settlement agreement. Supported by the evidence then goes back to the reasonable person rather than the supported by the evidence. Which I think is different from what's in the settlement agreement.

Severe: I mean, the DOJ settlement agreement was an attempt to restate what we do as a city. I would feel very hesitant to change what is actually written in code, like to have two conflicting portions of the city code. We have a definition section of what supported by the evidence means. So, that would mean that we're changing it --

Fritz: Evidently that's another point that which we need more discussion because I think the way it is written in the DOJ settlement doesn't really mean the same as in the code.

Severe: I think that was an attempt by people who are not familiar with our system to, you know, reflect what our system is, and I think sometimes you sometimes lose the nuance when you restate something. And supported by the evidence as listed in S has a particular meaning, and there is basically a body of precedent that people have been following in the 11 years of IPR and CRC history. I would be nervous about changing that definition to match something that a temporary agreement that was only attempting to restate what our standard is.

Fritz: Okay.

Severe: All right. So, the public report section of the police review board that is 320140, and it's page eight. So it's the back of 320. So it's page eight. And the public reports shall include

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allegations heard by the board, a factual summary from the case, summary of the board's discussion, record of the board's vote including recommended findings and disciplines, trainings and policy recommendations including whether the recommendations were followed by the chief, and the chief's proposed and final discipline for the involved officers.

Fish: Mr. Director, just a point of clarification. If there is a significant disagreement among the voting members, would the non-prevailing side have the opportunity to put a minority report in?

Severe: The way that --

Fish: Is that permitted or is that discretionary?

Severe: The way it works right now is that the facilitator writes the report. So, there isn't a majority report or a minority report. The way the Police Review Board works is that the recommendation is to the chief who is the final decision-maker. So the chief gets all that information. So let's say that it's a normal case, and there are five voting members, and two voted for sustained, two not to sustain, and one person just didn't know what to do. So, the two who voted to sustain, they would make discipline recommendations, and that would be reflected in the report, as well. So all the different votes would be reflected in the facilitator's report to the chief, and that's what ends up being in a modified version, the public reports.

Fish: So that would include then, a specific recital of the reasons why people voted against the recommended action.

Severe: You know, this would not require that. From what I have seen in the past, it's just a recital of the vote count. And sometimes, there is that longer recitation. But, you know, these are relatively brief reports. It does not go into extreme amount of detail.

Fish: I guess the point that I want to make, I don't want to preclude something being raised by someone who dissents from the prevailing vote that might inform future discussions about policy changes or procedural or substantive.

Severe: Yeah, okay.

Fish: And, and sometimes, as we know from Supreme Court decisions, it's the dissenting decision that often offers the most value in the future, and I would hope that there is a way of encouraging some explanation of dissenting votes, if it is -- if it raises substantive issue that the chief and the council would want to know about.

Severe: Yeah, thank you. So, for officer-involved shootings in custody deaths, this is coming from also the community feedback, and just from my experience in reviewing these cases in our offices, experience in reviewing these cases, the public reports are an opportunity to indicate members of the public on the level of investigation at every officer-involved shooting in custody death receives. There is the detective's investigation, the Internal Affairs investigating training analysis, and there's a lot that the Portland Police Bureau puts into every one of these officer-involved shootings. It does not take a complaint, so to speak, for a case to be opened in an officer-involved shooting in custody death. I don't think the public, as a whole, understands how much work that the City puts into these cases, and I think that the public reports are a good way to do that. Additionally, by the time the public reports are made public, which is two times a year, a lot of the information has been made public in different formats, and there isn't one place that kind of encapsulates the whole case. So I think the public reports would be a good place for that to happen. So, in cases of officer-involved shootings and in custody deaths, the public reports shall contain of the involved officers and witnesses, unless confidentiality or non-disclosure is required by law, a court order, administrative order, or collective bargaining agreement, or unless the police commissioner believes confidentiality is required or appropriate due to a collective bargaining agreement or by a pending a criminal or civil legal proceeding. So, this is in, you know, each one of these cases is different and there might be might be a very good reason why this should be made public. That would rest with the police commissioner as a person in charge of the Portland Police Bureau. And that is the end of my

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presentation. If there are any questions, or we can just let the members of the public who waited long enough to get up here.

Fish: I have a question of procedure. Are we going to have a -- are we going to have testimony from the police chief before we take public testimony?

Hales: Yes, we're going to hear from the panel, and then we're going to hear from the chief, from Captain Famous, and then we're going to take public testimony.

Fish: I'm just going to say, from my point of view, it's going to be helpful to have them frame whatever disagreements they have for us rather than ask you these questions prematurely. I would like to have -- it would be helpful for me to have that disagreement framed.

Hales: The auditor has a panel she wants to bring forward next, and then after that I will ask the chief and the captain to come up.

Griffin-Valade: Yes. Michael Alexander, Jan Friedman, and Kayse Jama, please.

Hales: Great, thank you. Good afternoon. Who is on first?

Michael Alexander: Good afternoon, my name is Michael Alexander, and I am the executive director of the Urban League of Portland. And I am here today to offer testimony on behalf of the Urban League in support the majority of the proposed reforms to police accountability recommended by the city auditor and the division of the Independent Police Review. The difficult soul-searching and introspection that this city and its police bureau have had to undergo during the course of the Department of Justice investigation pointed to the fact that citizens of Portland, whether they were from communities of color or unfortunate victims of mental or psychological limitations, deserve to know that there are robust and transparent oversight and accountability standards for the operation of the police bureau. We look to the city charter, and its agents, most notably the Portland Police Bureau, to serve as a shield from harm and not a conduit of it. It is for this reason that the Urban League fully endorses the recommendations, but most specifically, we support authorizing the Independent Police Review division to directly question police bureau employees and compel their testimony, and in authorizing Citizen Review Committee members to serve on police review boards in use of force cases. Our support of these recommendations is in no way meant to communicate a blanket indictment all those officers who wear the uniform of the Portland Police Bureau. I know too many of them who have entered this work with the highest commitment to serve the common good and who travel that path with integrity and general concern every day. I feel equally compelled to support these changes on their behalf so that outliers from their ranks who fail to carry out their responsibility with the level of professionalism and competence that they are entrusted to do are shown to be the exception rather than the rule. I would like to close by stating that in no way do these recommendations address the depth and breadth of concerns felt by many in our community and the city, and I am sure that you will hear clear illustrations of that in a few minutes. I am equally confident that they will also trigger resistance within certain elements of the police bureau as well. But I believe this is a journey that this city, this police bureau, and this council must take. And the longest journey always begins with the first step, and I encourage you to take that step today.

Hales: Thank you very much. Thank you. Good afternoon.

Jan Friedman: Good afternoon, Mayor and Commissioners, my name is Jan Friedman. I am a staff attorney, I'm not actually the director, but I am a staff attorney with Disability Rights Oregon. And we're the protection advocacy agency for people with disabilities in our state. We also have been part of advisory boards having to do with Portland Police Bureau since 1999 and are part of Albina Ministerial Alliance. As such, we welcome a professional police review board that conducts investigations that are truly independent and thorough. And in basic -- as you are aware, the U.S. Department of Justice found that as to the Portland Police Bureau, there was reasonable cause to believe that there is a pattern or a practice of unnecessary or excessive uses of force in certain encounters between police officers and persons with, or perceived to have, mental illness. So, real

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change is needed. We know that. We have seen the director present the U.S. DOJ findings but I think that we need to make changes that meet the DOJ findings and exceed that for our people with disabilities in our community. This is a good start. The basic principles behind what the auditor's office is proposing are very important. But, it is that, it's a start. And there needs to be additional changes for people with disabilities to be able to feel safe and for there to be that sort of trust in our community that we want to regain. We definitely support the IPR code change that allows IPR to conduct an independent investigation, that they can directly question police officers and compel their testimony without going through the Portland Police Bureau Internal Affairs division to do that. You saw the director explain what the current process is, and it doesn't make sense because it doesn't allow the Independent Police Review to actually do an investigation. If they don't have access to the police officer, they're not able to do their independent investigation, and we're not able to have the accountability of our police officers that we need. We also support the implementation of the discipline guide as a tool for Portland Police Bureau managers. It sounded like the guide was going to be developed by the bureau with IPR's help. It seems that IPR should take the lead in that guide, and the bureau should be helping out in terms of what discipline there would be. It could be something like the criminal sentencing guidelines where you look at the person's past history and at the severity of the misconduct, and you come up with something that's going to be about the same if you have the same facts or similar facts before you, instead of it being potentially more random or unfair or not consistent. Hopefully, that sort of guideline might also help the Portland Police Association when they are in arbitration to not drop discipline or lighten on discipline or change the discipline of the Portland police officers. If there was something that was consistent that was being used throughout for the Portland police officers, that would be very important. And we do support the 180 days to do the administrative investigation, evidence is likely to disappear or fade and as time goes on. The public doesn't have access to the misconduct in what's happening with that that hearing, but there should be something that allows like a good cause exception for if it would make it such that the person was not going to be disciplined or something different was going to happen, that there would be an exception to that 180 days.

Fish: And we have just, I don't mean to interrupt but we have a proposal for an exception, which essentially is, you write a letter if you go. So, what would be your good cause exception? How would you structure that?

Friedman: Well, basically, a person would have to present enough evidence to show that this is something that needs to take more time. They need to show why and give some information about why it's different than the typical case that can be completed within 180 days, and treat it in that way. Also if it's something that would defeat the purpose of police accountability, that obviously has to be taken into account. And basically, Disability Rights Oregon is in favor of these reforms. If the three additional IPR investigators can have some new authority to do their investigations so that they are independent and thorough, that's going to enhance the accountability of our police officers, enhance our police force, and enhance the relationship between the citizens of our community and the Portland Police Bureau.

Hales: Thanks. Good afternoon.

Kayse Jama: Good afternoon, Mayor Hales and members of the City Council. My name is Kayse Jama, for the record, I am the executive director for the Center for Intercultural Organizing, a statewide immigrant and refugee rights organization based in north Portland. First of all, I want to thank you for giving me the opportunity to speak to you today. I want to say a couple of comments about this proposal that's in front of you. This proposal in front of you is actually a good step for first steps toward true police reforms in Portland. But they don't go far enough to make the Portland Police Bureau truly accountable to the community. Although, CIO supports its -- today's ordinance, we have viewed this as the beginning of the discussion, not the end. Our first concern is the process. After a series of city-driven changes in 2010, an oversight work group was created, and made 41

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recommendations to the city. Only few of those have been put forward, including just one, today's code change. Second, the move to require the investigators to complete 180 days, it sounds intuitively good. I know we have a lively discussion in this area. But the proposal contains no provision for safety fall. If an investigation takes longer for some reason, there is a significant change that police policy as written will lead Internal Affairs simply washing their hands of a difficult or time-consuming investigations. Most notably of the change of today's package is one which will allow IPR staff to compel officers to the testimony without going into the PPB's Internal Affairs division. This is important change which we enthusiastically support. We ask in addition that IPR commit to using this power to investigate highly-profiled cases. We remain concerned that the IPR's oversight, and the Citizens Review Commission, lacks the ability to direct IPR or PPA Internal Affairs to continue the investigation. The change suggested by the community and the U.S. Department of Justice and their settlement with the city. Expanding the CRC to 11 members is an important step. But those members should be empowered to fulfill their duties. In addition, the city should work to ensure the CRC members is truly diverse. It's not now representative of our changing face of Portland. We are also challenged by the changes with the city that has not brought forward in this proposal. As many of our colleagues in Portland, Copwatch, and Albina Ministerial Alliance have noted, the reasonable person is under review which CRC issues are problematic and confusing. And it has prevented victims of the police misconduct from obtaining a just result. More of them should adopt a preponderance of evidence standard of the CRC to provide for more consistent appeals process and encourage true civilian oversight of our police bureau. In conclusion, as I said before, CIO supports the change in front of you. We are glad to see that the city takes the steps towards the real reform and accountability in Portland Police Bureau. At the same time, there is far more that we as a community can achieve. The recommendations which we outlined years ago are not included as part of this reform. We must do more, and we must do it now, truly to promote justice for all. Thank you very much.

Hales: Thank you very much. Questions for anyone on the panel? Thank you all. Appreciate it. Okay, let's give the chief and Captain Famous a chance to come up and respond to the auditor's proposal and answer any questions and then we'll open it up for public testimony after that.

Mike Reese, Chief, Portland Police Bureau: Thank you, Mayor and Commissioners. I appreciate the opportunity to provide my perspective on the proposed changes before today. And as you contemplate these changes, I believe it's important to have a brief overview of our current system, and I know that Constantin provided that, but, Captain Famous is here, and would like to take a few minutes just to talk about how our discipline process works right now so that you can have, as we talk about these changes, you have a really complete understanding of the different components of it.

Dave Famous, Portland Police Bureau: Good afternoon, Mayor, Commissioners, as the chief said I am Dave Famous, and I am the captain of the professional standards division, and I am in charge of internal affairs. We'll provide a brief overview of, I think, where we're at. And we'll provide some detail, and then I will give back over to the chief. So, first, this first slide, I think, we're looking back over ten-year period, if you will, of citizen complaints that have been received from 2000 through 2012. I offer what we're seeing there is a downward trend. A little spike there prior to my arrival, but, we see a downward trend in citizen complaints coming in. And the next slide you will see here is for force complaints received 2004-2012. Again, we see a significant downward trend in force complaints coming in. And the question becomes, what is a force complaint? All force incidents, we can see by the numbers, again, are showing a downward trend from the statistics that I have from 2008 --

Hales: These are cases in which force was used, whether there was a complaint or not.

Famous: Correct. All force incidents. Thank you, sir. At the bottom of the slide there, it includes the pointing of a firearm, takedowns, use of taser, use of hands and feet, the hobble, control holds,

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pepper spray, the less lethal beanbag shotgun, and then the baton. So, I think that we see a downward trend in the use force in all these categories. And as we move, what we would like to do is provide, if we can, a brief example of -- again, I think Director Severe touched on the complaint process. We would like to walk you through a sustained complaint example. It's just one allegation, it's the allegation, it's sustained, and it's going to lead to discipline. We're just going to walk you through that process. So as the director noted, the first stage in the process is the citizen files a complaint with IPR. IPR does the initial intake, and they have the opportunity at that time to either dismiss the complaint, or recommend it for mediation. And in this scenario, they are sending internal affairs for a formal administrative investigation in one allegation. Next one. Next slide. So, we have an IPR reviews -- I'm sorry I got ahead of myself. So, IPR sends the complaint to internal affairs, and internal affairs conduct the investigation. Prior to that investigation being complete, IPR will review and approval that investigation, prior to it being sent out for the commander or captain for findings. Once the case is at findings, in this scenario, the commander makes the determination of sustained. It's one allegation. That finding is then reviewed by that commander's assistant chief, and who can -- who agrees in this case, or could controvert, we are not really controverting sustained here, typically. So the assistant chief reviews the finding, after he or she has approved that, it goes to IPR and IA review the finding concurrently. It's a sustained violation, the commander is recommending discipline, so it's going to go to a police review board. And again, Director Severe touched on the fact that a police review board hears cases where proposed discipline is suspension, demotion, or termination. Hears all cases where the finding may be controverted. In other words, if a commander recommends it is exonerated, the IPR director or professional standards captain can disagree with that, can controvert that and send it to a board. The police review board also hears all cases of deadly force and custody death. And hears cases in which use of force results in hospitalization. The voting members that are on the police review board include typically one citizen, the IPR director, one peer, the peers -- or, the officer's assistant chief, and the officer's commander. That's typically five voting members. We also have quite a few advisory members and I think it's important to mention those folks in the room when the board convenes. We have a representative from the Bureau Human Resources, the city attorney's office, the captain of professional standards, the captain training division, and the review board coordinator, and the representative from the commissioner's office, and an additional branch chief who does not supervise that particular member. So, we have those voting members. So, the pr -- police review board, in this scenario, concurs. It's a sustained violation. They also concur that discipline with the discipline, say it's time off. So, at that point, and an independent facilitator who manages this event, will craft a letter to the chief of police documenting the police review board's recommendation, say in this case, it's sustained and there is discipline. And at that point, professional standards is advised because we write a letter that is directly to the complainant, explaining the commander -- how the commander made the decision. So in this scenario, it's sustained, so we acknowledge that, how that was made. We also acknowledge the likelihood of discipline, but we adhere to state law, which does not allow us the ability to talk about the specific discipline that was meted out and our determination with the city attorney's office. So we rely on state law. We let the complainant know it is sustained, there's discipline, and that's the end of that period. At that point, the chief writes his proposed finding and discipline letter to the member, which is reviewed by the city attorney.

Reese: And I also will add the Mayor, or the police commissioner, signs and reviews that. And the Mayor has a representative or will attend the police review board as well.

Famous: And so, the member has the opportunity for due process mitigation hearing. In this case, say the officer elects to have that. That due process mitigation hearing is with the chief of police. In the mitigation hearing, that includes the chief of police, the employee's commander, the employee's assistant chief, representative from BHR, professional standards, and a representative from the Mayor's office. And obviously, includes the union representative of the affected member. So the

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officer has a time to present his or her case to the chief. And once that's concluded, the chief crafts, with review with the city attorney, a final letter of discipline signed by the chief and the Mayor. So, that kind of gets us through just one allegation, it is sustained, and it is going to discipline. So, that moves us to the next slide.

Reese: You could see from what Dave talking was about, our discipline process very complex with a lot of oversight from IPR, independent citizen participation, and the PRB, as well as the Mayor's represented. And it is a complex and long process. And that will come into play as we get into the 180 days.

Fish: Can I ask you a question about the due process hearing? I'm familiar with that in a different context with the parks bureau, and it's an opportunity for the employee to provide some additional information, mitigation, and question the proposed punishment. Can the officer present evidence and witnesses at that proceeding?

Reese: They can provide us clarifying or mitigating information. They are not allowed to have witnesses present. Their union representative is there. The member can provide clarifying information about it, and part of the discipline process -- it's their first opportunity to speak to me and the Mayor or the Mayor's representative directly about the issues.

Fish: Typically do you get written submissions?

Reese: No. Typically, the member presents along with their union representative.

Fish: And if the officer is acknowledging some error in judgment or mistake but is -- it is also the opportunity to argue for a lesser sanction?

Reese: They will provide mitigating information, correct. And often, that is of a personal nature, or may go to why they were engaged in the misconduct.

Famous: So what we have here is our chart on the 180-daytime line. I think that what you could see just at first glance, at the chart, is that the bureau has developed what we believe is a sound structure to meet the 180-day requirement in most cases. But again, this is on paper. And this is assuming that everybody meets their time line along the way. And so, I'll kind of walk through from the top to the bottom, what this really means. The bureau initiated case, that's a case with no police review board. And the first one, there's -- say, the officer is exonerated, the assistant chief, the IPR director, and the captain of internal affairs all agree there is no, no -- and it's done. So that -- we show that track, exonerated, everybody agrees, a bureau initiated case, being able to be completed in 123 days. So when we move to bureau initiated case with a police review board, and includes the chief of police findings, again, it's the, the IA investigation includes the findings. We have the police review board, which we give 30 days for. We have the administrative process. Everybody is agreeing, nobody is controverting. This includes chief's finding. It's a serious case. Perhaps the PRB has made a recommendation but it takes that period for the chief of police to review. We show that coming in at 174 days. The next number three, provides us an example of an officer-involved shooting or in custody death administrative investigation. The investigation piece here, if you may, that includes internal affairs, includes the detective criminal investigation, and it includes a training division analysis in that time period. And in order for a commander to make -- or him or her to come to a finding on that issue, they need all those components. So the commander makes a finding, it goes to the police review board, there's administrative process, the chief's findings, say the finding is in policy, and that brings us to 177 days. So we're close there. Now, citizen-initiated case. That's again, now we're having the time frame where we have the IPR intake process. We have the IA investigation, findings, administrative. Again, the IA captain, the IPR director, and the assistant chief all agree, but here it's a citizen-initiated case. So, what the internal affairs does is crafts a letter to the citizen explaining how the commander came to their determination, their finding. And then IPR actually puts a cover letter on that. IPR has to approve the content of our letter. Once IPR approves that, the document is sent to the citizen. And the citizen has a 30 day -- that's CRC appeal window is 30 days so they have 30 days to decide whether they want to file an appeal. Say in this

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model, the 30-day window goes by, there is no appeal requested, and so we're done. We are looking at 181 days.

Fish: Can someone waive that appeal opportunity in writing earlier than 30 days?

Famous: You would I would have to ask the IPR director. Typically, I believe the process is that we have afford 30-day window. If someone were to contact IPR, that would be a question for the director. So the next example that we have is the citizen-initiated case with a citizen review board appeal. So we have the IPR intake, the IA investigation, findings, we have the 30-day appeal window, so they can file the appeal. Then we have the actual CRC appeal, and there's two components to that. Under the current code, there is the case file review hearing, which we allow 30 days if I'm not mistaken. And then 30 days for the actual appeal. So that's an extra 60 days there on that one, and we're moving that up now to 241 days.

Reese: These are, again, best case scenarios.

Famous: That's if everybody meets their timeline. So, then we move to a citizen-initiated case that includes a police review board and a CRC appeal window of 30 days. The appeal is not filed, the chief makes his findings, and that comes in at about 232 days if everybody is meeting their timelines. And then the last example we have is a citizen-initiated case with a police review board and a full CRC appeal. So we have all of the components, the IA investigation, the findings, the police review board, which would give 30 days for, the CRC appeal window is 30 days, and that CRC case file review and appeal hearing. So, on that model, you could see really under the current code, we're talking about 90 days for CRC if we are having an appeal, a full appeal. So that in and of itself is half of the 180 days. And that brings us to 278 days. On that note, there's been some discussion, and chief if you don't mind I will just kind of punch this in here right now. On January 1 of 2013, Chief Reese directed internal affairs to complete all administrative investigations within 180 days. And if that doesn't happen, he wants in writing an explanation why. And we have heard the discussion with the DOJ, is required. And so in the spirit of the DOJ agreement, I am doing that. I am currently doing that. So far, in 2013, I know cases are closing probably as I speak, administratively. But right now, I had the opportunity to review six administrative investigations that have closed in 2013. Two out of the six are officer-involved shootings. Four out of the six exceeded the 180 days. Interestingly enough, the average days for these six, including the ones that went outside, was 194 days. So I would offer up that we're making progress. There are reasons why, but in each of these cases, I have authored a memo directly to Chief Reese, explaining okay, this case went outside the 180 days, and here's why. I contacted the folks that own that piece of the investigation and here's what the response was and here's an action plan to do better in the future.

Reese: Again, as we enter into the settlement agreement with the Department of Justice, those memos will be forwarded to the Department of Justice, outlining specifically why in those cases we were outside the 180 days. And if I can just add to that, as part of that robust discussion, we had with the Department of Justice, we all realized that the 180 days was an aspirational goal, and there were reasons why -- good reasons why -- the police bureau and IPR would fall outside that. Sometimes there are cases where there are complications from criminal investigations. We don't want to proceed, the district attorney may ask us not to proceed immediately with an internal affairs process completed because it may complicate the criminal prosecution. We had that in the Parik Singh shooting where one of our officers was shot, the person that shot the officer, of course, was facing serious charges. The DA asked us not to proceed with certain aspects of the discipline process, you know, we review every officer-involved shooting, not to review that completely until they were sure that they had all the criminal pieces lined up.

Famous: I would briefly add to that, that the relationship between internal affairs and the Independent Police Review division and the detective division, as we move through these very complex and sensitive investigations, has been, I think, it has been very cooperative. We've worked, we have tried to make common sense decisions. DOJ has directed we conduct concurrent criminal

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and administrative investigations. So, we need to work -- what serves the city in the most productive way and a thorough and complete and unbiased way. And I think, over time, I have worked with three IPR directors. And I can say that all three, we may not have always agreed, but, internal affairs has appreciated the insight and the ability to help make our structures evolve over time to the best that we have the ability to do so. So, with that -- oh, and the last slide, it does show downward trend in internal affairs administrative cases. We can look back in 2002, where we have 86, and now in 2012, we're looking at 40. So, it is situational, but I think overall, and again, I cannot account for that one dip there, but overall I think that we see a downward trend in administrative investigations. And I think that mirrors what we have. Citizen complaints are down, use of force is down, so it's no surprise that the administrative investigations show a downward trend as well.

Reese: So, I think as you could see from the overview, there are a number of really significant areas of improvement that the police bureau and IPR have made. And when you look at those key performance measurements, we're doing good work. You can also see from the overview that our discipline process is very complicated and complex. And I want to also highlight that we have made numerous changes to the police review board and our discipline policies during the past few years. These changes are still underway. And I recommend giving the bureau time to adapt and incorporate these changes before making the additional revisions that are not part of the DOJ settlement. In regards to the proposed IPR and PRB changes, there are many areas of agreement between the police bureau, IPR, and the Department of Justice. These include adding Citizen Review Committee members to our PRB. I think that that's a positive step forward and will allow the CRC to see the, the really, the deliberate and thoughtful process that we undertake as part of the PRB. I also believe that outlining how the selection process of the CRC members is important, and we are in agreement with that. Strengthening investigators of excessive force and providing public reports on the outcomes of police review boards. And we've been doing that for quite a while now. I do have concerns about some of the recommended IPR and PRB changes, and the Mayor has asked me to refer to the specific language of the proposed ordinance as I go through this. So I will have been specific about the pages and the numbers that we're looking at. So, the definition on page three of the proposed changes, the definition of a member is being changed to include our non-sworn managers if they supervised sworn employees. This opens a new area of IPR authority without a specific identified issue. These are typically non-represented high level managers. Bringing them under the IPR umbrella will actually slow down investigations. As you have seen with members, we have very complex, complicated investigations into non-sworn performance issues, and provide those employees, again, these are non-represented employees, with employment rights that they do not currently have. Page 6 and 23, refer to, I think, one of the biggest issues for the police bureau, and that's compelling the testimony, giving IPR the ability to compel the testimony of the bureau employees. This will be viewed as a mandatory subject of bargaining, and I have concerns about how we implement that part of the -- this section of it and the unintended consequences of doing so. There are issues involving police civil rights that still need to be resolved. The bureau is not aware any problems with the current system where IPR is a part of the investigation and participates meaningfully in the questioning of bureau members. And Dave will speak specifically to that.

Famous: I think that number one, you know, authorizing the ability to compel is more restrictive than what it is outlined in the DOJ settlement agreement. The word compel is not in there, the recommendation to compel is not in there. Certainly I understand that the recommendation for a meaningful, independent investigation is in there, and I would offer up that IPR currently has the ability to do that. And actually, it has done that. I wasn't a part of the process in 2010 where they developed this situation where, where if IPR conducts an investigation, we need an IA liaison in the interview to -- if the IPR investigator wants to ask a question, they have to go through the IA liaison. I tried doing that in my head and I couldn't. I'm trying to imagine an interview being conducted in that manner. So, at the direction -- my direction -- the IA liaison provides the admonishment, the

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order to answer questions fully and truthfully. The fact that, say, the scenario could be the Director Constantine Severe is in charge in the investigation. And under the authority of Captain Famous, delegated the authority from the chief of police, I am ordering you to answer your questions fully and truthfully. Or he may be subject to discipline up to and including dismissal. So, that's the way that it works. The last investigation, in the independent investigation, that's exactly what happened. My IA investigator gave the admonishment, and for lack of a better term, got out of the way. And the IPR investigator asked the questions of those involved directly. And I think that that's a common sense way to conduct that investigation. That nuance from my investigator, and he did that at my direction. And if I'm outside of the code there, then -- it's just, I had concerns about that.

Fish: Can I address one question on that, chief, to you. The IPR director, at page 14 of the PowerPoint, said that he had vetted this issue with the city attorney's office, and they agreed there was not a mandatory subject of bargaining. In your testimony, you say it's most likely a mandatory subject of bargaining. So, not that I want a full discussion here of dueling legal opinions, but at some point, the council needs to know whether it is or isn't and what the implications are. I am concerned that apparently, we have got conflicting legal advice on what is a very important point. Because if we go down a path that is later determined to be a subject of mandatory subject of bargaining, it means that any action we take is subject to an ULP, and the action that the council wants to see implemented is thwarted. So I want to be clear this is not just a technical legal issue. This goes to the heart of whether we have the authority to mandate this or if we are required to bargain. But at this point, we have had a presentation this afternoon with dueling legal opinions, and Mayor, I don't quite know how to resolve that.

Hales: Well, you both --

Reese: Again, the officers have a bill of rights that's incorporated into the collective bargaining agreement. The admonishment that we give them, as Dave said -- they are acting under my authority, the investigators are ordering the officer to speak. It provides garrity protection to the officers and the employees' civil rights are protected but it allows us to get at the heart of the matter. And direct the employee to answer those questions.

Fish: I want to be clear I'm not arguing the policy question. We are going to have lots of testimony from people, and we're going to hear presumably both sides of that. I'm just arguing the threshold question about whether we can or can't mandate this. And I want to be clear about the scope of my authority because I don't want the public to be misled about whether we can and can't do something, so this is a threshold question of some significance.

Reese: And again, the important point that Dave mentioned is the current system is working very well. We have IPR able to conduct independent investigations and they're able to participate meaningfully in our investigations. And if they have questions, they get answered. On page 13, number b, it mentions the IPR director will provide, when they do an independent investigation, will provide the chief and IED commander with a report of the investigation, and the manager for preparation of the findings, and proposed discipline. This is probably a typo, but the language proposed discipline should be struck as our managers do not make discipline recommendations. Those actually come out of the police review board. So once the review board has made a sustained recommendation, then they decide on appropriate discipline.

Hales: I'm sorry, this is page 13?

Reese: Letter b. And it is probably a typo, I don't know. But again, the RU managers do not put forward proposed discipline as part of their recommended findings. On page 12b, and 15, section 4, this is a -- and Constantin didn't discuss it in his review of the proposed changes. But this edit fundamentally alters why IPR should be conducting independent investigations. The current language makes it clear that IPR needs it make a determination that the internal affairs division has not done an adequate job. This determination provides me and the police commissioner with important information. Critical information, in my mind, that points out a potential problem with

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our internal affairs division. If we are not able to conduct adequate investigations, I need to know that and the police commissioner needs to know it. And it allows for accountability both by the police bureau and IPR. And the current language also prevents the perception by our employees that the discipline process has become unfair. So, again, there has to be a determination made at the front end that internal affairs is not capable of conducting an investigation due to some perceived issue or inadequacy. This fundamentally alters how IPR conducting the independent investigation. On page, Dave jump in, if you have any, any --

Famous: Well, I would also add that there is no identified threshold. In other words, the IPR director has the complete authority to initiate an investigation, period. That's a shift. Scenario could be an officer-involved shooting. With administrative concurred and administrative criminal investigation. The IPR director would have the authority to initiate that administrative investigation when he or she determines it's necessary. Could be prior to 48 hours or any time, and there is no consequence here. I would offer up that the Department of Justice, I met with the officials from the Department of Justice and discussed administrative investigations, and discussed the current state of affairs and quality of investigations. And not one attorney, no one from the United States government, told me, or questioned the quality of internal affairs' investigations. It has evolved over time. I can tell you our world has really evolved from 2005, 2007 to where we are today, and I think that that's why. But, I think that we need to make sure that we have safeguards in place to protect investigative matters that are not only serious for the process, but for the community, as well.

Fritz: May I interrupt a moment. I appreciate this, and the in-depth details are definitely what I need to see, and I would like to see this in writing, and I am sure that you have it and you are going to submit it to us. Mayor, in light of the time, and the fact that we're going to get many more concerns from citizens, could we agree in principle, that we're probably going to continue this hearing. So, if you could give -- I would like to get a personal briefing from you on your concerns, in the interim before the next hearing. And maybe we could get to citizen testimony.

Hales: So, if you can, chief, please run through the remaining provisions that you are concerned about, and obviously, we want your follow-up with a written document.

Reese: And to add to what Dave said, when OIR reviewed our officer-involved shooting investigations, which are the most important investigations that we do, and they said that the Portland Police Bureau is the gold standard, that they are using our model with other agencies and recommending that. Page 24, section 3.21.230. Again, this is a big issue for IPR and for the police bureau and CRC, all administrative investigations shall be completed in 180 days. I see this is as a problem for us. Currently, our guidelines are outside that. And as you saw in the timeline, we are making progress towards this aspirational goal, but still, there is work to be done by IPR, and IAD, and CRC. This proposed language is inflexible, it does not take into account that discipline cases can be complicated by criminal matters and litigation that lengthen that time line. Putting this bright line into an ordinance may have an adverse impact on the city's position in arbitration and litigation. And provide labor with just cause arguments if we impose discipline when an investigation has gone over those 180 days. Specific to the PRB changes, and we are almost done. Page 7, again, this is an issue for the police bureau and for me personally. It says the chief shall provide a written explanation to the police commissioner including the reasons for the chief's finding of fact and the factors used in the disciplined determination. As you have heard from Dave, the due process piece includes the Mayor or the Mayor's representatives, so I am writing a letter to someone who has been there, and has independent representation. The employee, during these due process hearings, often provides personal mitigating information. It can be medical issues, it can be personal nature of the death of a child or spouse. And I think that we have a responsibility and a duty to keep that information confidential. I believe it will also have a joint impact on employees providing that information if they know that I will write it in a memorandum that may be public at a later date. And it may again, be used by the employee against the city in arbitration litigation, it will be

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discoverable, and be, if we discipline employees, out of that it may become part of the record. Page 8, section 1f. The chief's proposed and final discipline for the member, will become public. And again, I think, once you hear from BHR and the city attorney, clear guidance on this, but I believe that it violates our current collective bargaining agreements with PPA and PPCOA and city policies not to embarrass the employee as part of the discipline process. Page 8, section 1 and 2. The bureau shall include the names of involved officers and witnesses, to officer-involved shootings. Again, we do provide the names of officers who are involved in these encounters. In police reports we may put forward the names of witnesses, but it may have a chilling impact on witnesses coming forward knowing that the police bureau is going to, in a public document, put their names there. In closing, I want to say that we're all in agreement that we want a citizen complaint system that helps to build and maintain the community's trust in their police officers. We want a system that works for the bureau members, as well, so we do not end up in an adversarial process where disciplined decisions are perceived as unfair. And ultimately not sustained in arbitration. And the bureau agrees with many of the recommended changes, such as adding CRC members to the police review board, but respectfully disagrees with the changes that fundamentally alter the role of IPR in conducting the independent investigations, changes to the due process hearing, having IPR compel officer testimony, or putting into an ordinance timelines that are aspirational goals. Thank you very much.

Hales: Further questions for the chief, or Captain Famous now? We'll have a chance for further council dialogue individually and at the continued hearing.

Novick: Chief, I want to ask you about the issue of not writing down the reason for an alternate decision. I mean, how much -- I can understand that people want to say, here's a mitigating factor in my personal life, and you might want to act on that. But, this is a public process. And the idea that these decisions -- it's a process that's being conducted by the public. By the government. And the idea that people -- the decisions we made by virtue of, Greg says he's having a rough time, and the chief says, okay, we're going to let this go because you are having a rough time, and there is no written record of why that was the decision. I don't think that idea inspires public confidence. After all, in a criminal proceeding, a defendant can go off separately with the jury and the judge and say, here's why I'm having a rough time and there is no record that, and they get let off.

Reese: The Mayor and the police chief are responsible for the discipline for the police bureau. As you are for the bureaus that you supervise, and that is accountability. I believe it will have a chilling impact on the employees bringing information forward if they know that that could end up in a written document that is discoverable. It does put us at risk in arbitration. If we have the written documents come out in arbitration and litigation, there is a potential for us to lose in arbitration.

Fish: I don't want to go deep into this, but there are also federal and state laws which prohibit us from disclosing certain medical conditions and certain information that may be shared in mitigation but which otherwise is protected. And I'm not the lawyer on this or the expert, but, it would seem to me that you could work around that by talking about general categories information, without violating any privacy interests. But there might be a situation where someone wants to disclose something which is medically sensitive, or otherwise is covered, and in those case, Steve, in the public setting, there are protections so that people are not compelled to disclose a medical condition, or something else. And there would be situations where that information would be, would be embarrassing to the person if it was also a family member, or some diagnosis that they are not otherwise allowed to disclose.

Novick: But if the law would protect the disclosure in those cases anyway, what's wrong with requiring the explanation to be written down to sort of force the chief to go through the exercise of writing down. Instead of having it be informal and oral, just sort, we're going through the exercise writing down these are the reasons, and if the law says that's not discoverable by the public, then okay, it's not.

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Reese: Again, it's redundant. The Mayor is present with the Mayor or the Mayor's representative is present at the due process hearing. The Mayor and the chief of police both sign proposed discipline And final discipline letters, so I would be writing a momentum that no one is supposed to see to the Mayor, who has already been briefed or is present during the due process hearing and understands the information given.

Hales: So it's a question record, rather than --

Fritz: A future Mayor might want to look into that discipline, and if the players are different except for the officer, they want to know what happened.

Hales: Okay, right, because the case could happen in one term, and the review could happen in another, right.

Fritz: Or if the officer does something again in the future, and a future Mayor a future chief have no record of why the discipline was this or that.

Reese: We always have to stand by the four, on any discipline, what's in the discipline letter, we have to stand by that -- the four corners of that.

Fritz: Right. But in the ones that I have been involved in my bureaus, if there's a pattern of -- because you have progressive discipline, so you have to understand why the discipline was x'd the previous time before you can decide what the discipline is this time.

Reese: And that is part of the discipline letter in the police bureau.

Fritz: But that would be in the discipline letter because you have not, not -- been having a hard time in giving you less than the maximum.

Reese: In general categories, yes. So you are not going to --

Hales: Mitigating circumstances.

Reese: Right. But you would not divulge in the letter, we don't put confidential medical information, for example.

Hales: Ok. And I know that we want -- other questions for the moment for the chief and captain? Thank you.

Fish: We're almost at three hours and we have 22 people, so we'll have at least an hour or more testimony to follow. Could we take a five-minute compassion break?

Hales: We'll take a five-minute compassion break and then we'll go until 6:00. I know that you have to leave. And then we'll continue after that. Thank you.

At 4:47 p.m. Council recessed.

At 4:55 p.m. Council reconvened.

Hales: Okay, let's resume as soon as we have one more member in the room. And we've got our panel queued up, so that's good. I don't know if we're going to get everyone back before we start. Send out the guards. See if Karla can go play sergeant at arms. Okay, there we are. We have a quorum. Let's resume. Ms. Hardesty, I think you're on first.

JoAnn Hardesty: Yes, I am, thank you. Mayor and City Council members, for the record I am JoAnn Hardesty, and while I am a member of the Albina Ministerial Alliance Coalition for Justice and Police Reform I think I will leave it to our cultures to speak at the next meeting. So I will be speaking for myself. I wanted to take us back a little ways because as I sit and listened to the three hours that I've been here of testimony, I realize that many of you haven't been involved in this as long as I have. So I wanted to do a little bit of history. In 2000, I, along with many others, served on a committee at the request of then Mayor Vera Katz. It was a task group to recommend a system of the accountability for Portland Police who were violating the rights of community members. The task group worked for months, and a majority of the committee recommended a truly independent oversight process that would have subpoena power, and the ability to recommend discipline. As was the Mayor's office right, she chose to disregard those recommendations and requested that Gary

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Blackmer go back and great a system of accountability. That is what we have now, which is now known as the IPR. The Independent Police Review, except it's not independent, it doesn't review and the public has no confidence in it. So, you're being asked today to strengthen a system of accountability that public has yet had no opportunity to weigh in on. And most of you -- all of you, Commissioner Fritz, may remember that when the department of settlement agreement came in front of the city council, the public did not have any opportunity to weigh in. In fact, the day the city council voted on it, there was a new draft that got handed to the community that day. And so, we have departments and bureaus going off operating as if a settlement agreement is in place. What I understand is gonna happen is that sometime the next year we're going to go to the court, the court will determine whether Portland police officers are violating the rights of community members, then there will be a community fairness hearing. The community fairness hearing will finally give the community an opportunity to weigh in on the settlement agreement. And so, while I appreciate some of the changes that are being proposed, I want to remind us that we don't have a settlement agreement. It's not in place yet. And we're trying to change a system that the Department of Justice called byzantine and a self-defeating system. If you make the changes that are being recommended today, you only are putting bows on system that does not work for the community that it's supposed to work for. I think that the only thing that we can do, the thing we must do, is to actually get the public involved. When a director comes out and says, these are my recommended changes, and we have a conversation and they don't take any of the recommendations, they just say, no these are the proposed changes I have. I think that's not appropriate. I know I am almost out time but I want to remind you that a recent IPR meeting, Chief Reese came in uniform to talk about how great and wonderful an officer was -- who a community member, Mr. McCorvey, had filed a complaint against. Mr. McCorvey's experience is normal for an IPR process. They refused to take a complaint about racial profiling, yet the police officer said to him, is she your -- are you her pimp? Is this a crack pipe? You live in public housing, so this must be so. So, even a system that we have now refused to address that this is clearly a racial profiling situation. And when the chief -- when the police chief comes to a community review meeting in uniform to lull the police officer, Tackett, about what a great officer he is, and then he brings the criminal background of the community member who is complaining against Tackett, that is appalling. And it is appalling that he would use his power and his position to try to intimidate community members against filing complaints against the police. There is a good reason why the complaints are down. They're down because no one in the community believes that IPR or IAD or the police can effectively investigate the police. I'm done. [applause]

Fish: JoAnn, I have to ask you a question on that. We saw that chart and it showed a decline.

Hardesty: Yes.

Fish: And that was -- and we weren't given -- we were given one explanation for that. You just said categorically that's because people don't have confidence and trust in the system.

Hardesty: That is absolutely true.

Fish: And how do we verify that? I appreciate that you have contact with people, conversations. But for us, that's still at the level of anecdotal. How do we quantify that more rigorously?

Hardesty: You should talk to people. There is a gentleman here that will testify, at least one or two people who have gone through the IPR system. And you have a city employee, Jeri Williams, who said that she was going to come and testify. When her time comes today, and who has a real life experience, I think that rather than believing what IPR says in their beautiful reports and what the police say in their beautiful reports, is we should be -- you should be, as Commissioners, talking to people who have had experiences trying to hold the police accountable. I've been doing it for a decade, and I can tell you that not much has changed, except that we have less and less confidence today that the changes we make are really going to hold police accountable.

Hales: Thank you.

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Dan Handelman: Mr. Mayor, I know the hour is late but I wondered if I might have five minutes because of my background on this issue.

Hales: That's reasonable.

Handelman: Mayor Hales, Commissioners Fish, Fritz, Novick, and Saltzman, I am Dan Handelman with Portland Copwatch and we urge you not to vote on these proposed changes of the IPR and the police review board. While many of the proposed ideas are good first steps, they do not go far enough to ensure oversight of the police. The DOJ agreement is being used to push the changes but is considered a ceiling rather than a floor. And the changes only add power to the IPR professional staff while delaying changes that would strengthen the CRC, particularly 136 of the DOJ agreement that allows the CRC to direct more investigation. IPR similarly pushed through changes in 2010 with no public input which led to the formation of the oversight group you heard about, and that group's 41 recommendations, which have not been implemented at this time. Our greatest concern is this 180-day timeline. We are glad to see that the director is proposing a change. We had some proposed language around that, too, that would say IPR has to report to the appropriate authority. Because that could be the DOJ, the COCL, the police commissioner, or the auditor, weekly, why the case is taking longer than 180 days until it is complete. That language is in our testimony. Furthermore, including CRC appeals in the 180-day timeline ignores the protocols that include 30 days for a complainant to file the appeal as well as many as four hearings that might need to be held in that time frame. And the other significant stakeholder recommended change is language intended to allow IPR to compel PPB employees to testify direct to them without going through internal affairs. It remains to be seen whether that provision can be implemented without changing two paragraphs in the PPA contract. Again, you have those in -- at least the references -- in my testimony. We don't want to see the provision, which is so important to make the IPR be actually independent after all these years, and used as infrequently as some provisions. The current law designates City Council the final arbiter in the appeals cases but only one appeal has ever been heard at council. Since 2001, IPR has only ever invoked its right to conduct an independent investigation one time, that was early this year in a case involving Captain Kruger and a female subordinate, but no community members. Meanwhile, many provisions, mostly from a stakeholder report, are absent. We wrote about the CRC's reasonable person standard revealed to you previously -- and it's a two differential standard -- should be changed to preponderance of the evidence. Such a change will still leave the CRC's proposed findings and recommendation with two safeguards, for the City Council decision and the chief's decision. It's disappointing that because the DOJ agreement locks in the limiting and confusing definition, we may be stuck with a standard for five more years. We do not see the provision -- previously, didn't see the provision the director promised to make requiring the bureau to tell IPR before they drop the investigation, but the fact that they had to bring it to you as an amendment at the last minute that we couldn't see -- and I called the auditor's office at 12:30 to ask if there were any amendments -- shows that this is not ready to be voted on. We need more time to have a comprehensive plan that has community buy-in. There is also no provision to a person who wants to challenge the findings of a shooting or death in custody investigation to appeal to the CRC. While the DOJ agreement goes so far as to exclude the rights to such an appeal, and the City holds that such a person could sue. Even though that A, that takes a lot of resources and B, at best causes the city to pay out money but not to discipline the officer. Only this administrative process can lead to that conclusion. The ordinance does provide for CRC members to rotate onto the Police Review Board hearings as required by DOJ. They will be rotating on as a second community member in use of force cases, but not on those cases with proposed sustained findings that lead to discipline. This is not necessarily a terrible idea, but it's not going to take all the steps necessary to integrate our oversight system. Especially since, due to confidentiality, CRC won't be able to report back on what they hear, regardless of what kind of PRB they attend. The PRB will also remain closed to the public, the media, and even the person affected by the incident in question. We do

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support most of the changes being proposed, but they should not be implemented as written, nor implemented without addressing other longstanding community concerns. We support, in most cases, with reservations noted, requiring the chief to explain when his discipline differs from the recommendation of the police review board. We agree that explanation should be made public. Increasing the CRC to 11 members from nine, although there was some confusion about the quorum, again, creating discipline guides. Investigating all uses of force with this subjective caveat they may not investigate if there is a clear convincing evidence not to. This gives the IPR an out that's similar to the current ability to dismiss cases if they feel that they are going to be unable to prove misconduct. Creating a template for the Police Review Board reports which only includes about half the items that we recommended to IPR, we would like to see more lists on the list, we appreciate the proposed public nature of the shootings and death reports. We provided a list of other ideas that have been floating around, including the stakeholder report ideas. As you could see, there is far more work to be done to create a truly effective and trusted oversight system in Portland. Let's stop taking the half steps and take the time to make the IPR the best that it can be.

Hales: Thank you very much. [applause]

Debbie Aiona: I'm Debbie Aiona, I'm representing the League of Women Voters of Portland. The League generally supports the proposed IPR code amendments. They reflect a number of the settlement agreement provisions related to the oversight system. However, the effort would have benefited from more community and CRC involvement. The League recommends that this process be slowed down so that the public's voice can be heard. In 2010, when significant modifications to the system were proposed with little public participation and a stakeholder committee was formed to explore the community supported improvements. The League was part of the committee that made 41 recommendations. Only a few were implemented to date. The stakeholder committee, some of whom are here today, should be asked to revisit the recommendations and advise City Council on which to add to the code at this time. The League's priority changes are included in a written memo submitted earlier in the week. The proposed code changes include a requirement that administrative investigations be completed within 180 days. The League has concerns about the impact this will have on the appeals process. Complainants need time to decide whether or not they want to appeal. The CRC is required to read the case file in city offices during the work day. They convene on separate occasions for a case file review and an appeal hearing. Sometimes, the conference hearing at a City Council hearing are needed. 21 days is not enough. Furthermore, we need more clarity on how the union contract affects IPR's ability to compel officer testimony. In the event IPR is able to compel officer testimony, we hope it will use its authority to conduct independent investigations of serious cases such as use force, shootings, death and in custody and illegal searches. With its expanded investigative team, the IPR should now investigate such cases of public import, as a stakeholder committee recommended. The oversight provided by CRC through the appeals process builds confidence in our system. There are several steps that should be taken to expand its authority. The right to request additional investigation as stated in the settlement agreement should be added to the code. CRC also needs the authority to reformulate or add allegations and to challenge IPR dismissals such as the racial profiling allegation in Mr. McCorvey's case. Again, the stakeholder committee should be reconvened to examine these and other issues, and recommend additional improvements to the IPR ordinance. A couple other things. In our observation, even though some appeals processes have gone on for months, the appellant, even though it doesn't go their way and the CRC agrees with the police bureau findings, have expressed great gratitude and satisfaction with the fact that the CRC took the time to thoroughly look at their case. And I just want to respond to Commissioner Fish's question about how do we know why people are not filing complaints. And we've suggested in CRC work groups that the IPR think about contracting with some sort of a research firm to take a sampling of all the people who have had contact with the police in the last

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year. And the IPR actually used to do satisfaction surveys of people who had used the system to find out how they felt about their experience and we would like to see that happen again. Thanks a lot.

Novick: Can I ask a question of this panel? First, of all, I can't resist mentioning that I've talked to any number of police officers who are convinced that crime is not down but it's just people won't report it because the police force can't respond. So I guess, nothing bad ever diminishes, people just stop reporting it. On the subject of the chief's explanation of discipline differing from the recommendation of the Police Review Board. You just heard the discussion where the chief was saying well that would be duplicative, and the explanation would contain information that cannot be made public. The question is, even if it is not made public, do you think it would be valuable to have the chief write down an explanation, and for the police commissioner to view it just because I think that, sometimes writing things down and having to read them makes you sort of focus. And also because in that case, the police commissioner in future cases would be able to look back at the kind of mitigating circumstances he or she considered in the past, and at least have some internal consistency on what's considered appropriate mitigation.

Hardesty: Commissioner, I would just say that, that's our problem right now with the employee relations board. If there is no record that actually lays out clearly why you have taken each step, we end up being overturned in the appeal. It makes perfect sense and it's perfectly logical that if you are deviating from whatever the norm would be in discipline, that there would be something in writing that would explain why that is.

Novick: And I'm saying that even if the information is not made public, do you think that it would be internally helpful to the city if there was at least some written record that the Mayor could look at and the Mayor could look at in the future cases?

Handelman: I think that JoAnn just affirmed that. She's saying that you would have the piece of paper there, and when the arbitrator comes and says, what's going on, then it wouldn't necessarily be public but part of the court record or, you know, the employment relations record. But I would urge you to think about what Commissioner Fish was saying about putting in categories, where there could be a public record that says due to health related issues or personal family matters that we won't discuss here, that's why we changed this finding because you are not violating the privacy, and the community knows what happened. So, I think that's an excellent proposal.

Aiona: And the League would agree with that too. And, you know, putting things in the aggregate, is a summary, just so like at the end of the year you could see how many cases ended up, you know, as the discipline differed and what the reasons were. That would be helpful to the public, without violating the confidentiality.

Hales: Good question, thank you very much. Next three, please. Good evening.

Kristen Chambers: Good evening. My name is Kristen Chambers, and I am here on behalf of the National Lawyers Guild. The Lawyers Guild has been working for over ten years to improve police oversight in Portland. Most recently, we have been involved in the case brought by the DOJ against the city. We are representing the AMA coalition for police reform and we have enhanced amicus status in that case. We also coordinate with the law student chapter of the NLG to advocate for individuals who are going through the IPR complaint process. In general, we support the proposals made today for changes to the ordinance. And in particular, we are in favor of the power to compel officer testimony, we believe that's very important and crucial to an independent investigation. We share the same concerns with our community partners about the 180-day timeline, about it not being very feasible in both respects for the CRC to do an adequate investigation and for the NLG to provide adequate advocacy for the complainants. We also believe that these proposals do not go far enough, and we have five additional recommendations that we would like you to consider. Number one, allow the CRC to consider new evidence in reaching its decision. The CRC cannot make a well-reasoned decision if it can't consider all the evidence in front of it. Right now, if new evidence comes about they have to send it back. This unnecessarily delays the review process and undermines

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their authority. Number two, the CRC should employ a preponderance of the evidence standard of review. The current reasonable person standard is confusing and inadequate. Whereas the preponderance standard is practical, understandable, and it's used by many other police oversight entities. Number three, the CRC should have the power to direct further investigation or direct investigation of allegations that were not investigated initially. And this is best illustrated by an example that's in the first letter that I attached to our testimony today, which is a recent case in which the IPR declined to investigate a disparate treatment allegation, despite the CRC's request it do so. Number four, the CRC and IPR should have independent council. We believe that having the city attorney have a role with the CRC, IPR, and in defending police officers against police misconduct allegations, threatens the credibility our police oversight system. And number five, the CRC should have the power to hear appeals of PRB findings and in custody deaths and officer related deaths. Right now these are reviewed by the Police Review Board at closed meetings. The second letter attached to our testimony today talks about an example of a complainant who appealed an officer related death to the CRC. And that was denied by IPR. We believe deaths are the most serious incidents where there could be potential police misconduct and for that reason we feel that they need the highest degree of oversight. Thank you.

Hales: Thank you.

Becky Straus: Good afternoon. Mayor Hales and Commissioners, Becky Straus here on behalf of the ACLU of Oregon. Thank you for the opportunity today to provide comments in support of the positive steps forward for the system of police oversight that we have here in Portland. I do want to add my thanks to IPR Director Severe for his leadership on this work, bringing forward the proposal, and I think that a lot of the discussion today really demonstrates a good show of faith on the part of IPR and really with your approval on the part of the city, to take very seriously the DOJ agreement. And I would want to associate our comments with that of Dan Handelman with Copwatch, the DOJ agreement absolutely is the floor. But these are things we can and should be doing now, to put these changes in to the city code. In regard to the proposal before you today, I just want to make a note that these changes are small improvements, but unfortunately fall short of the comprehensive overhaul that our police accountability structure deserves. While the changes before you should lead to a more transparent system, and we hope that they will, we will only get what we put in. And at this point, what we're putting in is piecemeal change within a structure that even the Department of Justice has said is self-defeating. And we have heard that quote echoed many, many times over recent months. All that said, the ACLU very much does support the changes that are before today. They will not result in systemic reform but they will facilitate meaningful improvements to the existing structure, and so we support that work. A couple of the specific things that I wanted to be sure to mention have mostly been mentioned today, and discussed, so I am not going to really spend any time on them. But, wanted to flag something that the chief mentioned in regard to the compelling testimony issue. The chief made mention of unintended consequences. I think he said, and I believe that he was referencing garrity and the issue of those kind of competing civil liberty interests when you have compelled testimony in that context. It's my understanding of the garrity rule that only compelled statements made in the face of a reasonable prospect of criminal prosecution are entitled to garrity protection. And so I think while we should be mindful in these administrative investigations of misconduct, that that is out there. I think, I believe that most often garrity would not be implicated, so we support the change of the IPR ability to compel testimony. And the second thing that I wanted to mention, Disability Rights Oregon mentioned the discipline matrix. That's something that we and our stakeholder allies have been talking about for a very long time, we think it's a great idea. We have some -- I will remind you of great reading material that stakeholders put together on September 27 of 2012. We did very comprehensive recommendations to DOJ at that point in regard to what the settlement should look like. In part of that document, there are some details about what we think a discipline matrix looks like and some things that should be

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included in there. Of course there are several things left on the table, including what Kristen mentioned in regard to the standard review. I hope that when we come back and do further changes more specific to the CRC section of the process that we'll look at changing the standard of review as we've talked about several times over the years. So thank you very much. And appreciate your time.

Hales: Thank you.

Fish: Mayor, may I just follow up on one question? Is it garrity or garraty?

Straus: Garrity.

Fish: So, if you cannot compel someone -- if you can't force someone to, in effect, waive their fifth amendment rights against self-incrimination, is it your understanding that if were to go with this idea of being able to compel testimony, that the ultimate check is the right of the officer to assert that defense, and refuse to answer the question if he or she reasonably believed that he or she might be subject to criminal prosecution? What's the check on someone being forced to give up a constitutional right?

Straus: I think that -- the short answer is, I don't know. And it's very complicated so I don't feel comfortable making an assertive statement about it. I think we've always looked at this as a confusing tension because you have the rights of the defendant in this case, and then you have the interest in the public to understand what happened in the incident. And those things the public needs to know quickly and they need to know clearly what's going on, but the accused, the officer in this instance, has the right to that protection. I think that some things that are employed to work around that are bifurcating the information that's available to certain parties at certain times, but I think that I would probably defer to the district attorney's office -- almost even on a case by case basis in terms of what's appropriate at what times.

Fish: I'm just sitting here being reminded of the time that the United States Senate compelled Oliver North to give testimony. And it resulted in his conviction being overturned. And so, this is a very important question of the balance because if you don't get it right, then it can result in a constitutional deprivation. And I know you are not arguing -- I know, you of all people would want us to get that line right. I guess it's something, Mayor, that I would like to know more about in terms of how we balance those rights under the current system because I'm not even clear as I sit here, how an officer would know reasonably at this stage of the proceeding, whether they are subject to criminal prosecution or not. There may be additional information that comes out. It's subject to discretion of the DA or some other prosecutor, so I don't know how you evaluate that. And I don't think that we want to create a moot court situation every time someone is compelled and argue for weeks over people's rights because we're at the same time trying to stick to a pretty aggressive time line. So, this is something that I would like to know more about probably from the city attorney's office.

Straus: If I could, Mayor Hales and Commissioner Fish, respond briefly with a couple of thoughts. The first thing I would say, is as we have seen even in the area of officer-involved shootings, the instances criminal prosecution are extremely rare. I don't have that number, but, I think that plays into the analysis about, as you at council are balancing those civil liberty interests, the ultimate sacrifice or kind of the consequence for the compelled testimony is a sort de facto immunity for the officer.

Fish: That's what I was thinking, and so, should that be made -- who should make that judgment?

Straus: And I think, Commissioner Fish, in some ways I believe in some ways it's a policy decision for the council to be thinking about. We haven't settled as the ACLU on this discussion, but oftentimes we are inclined to go towards the public interest in having the information to compelling the officer's testimony, simply because on balance these are such high stakes investigations that the risk, should I say, of that officer getting immunity in some sort of hypothetical criminal investigation that we see very rarely is outweighed.

Fish: Thank you.

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Fritz: May I, just before the next testifier, ask Kristen and Becky and then looking back to Jan and Dan and Debbie and others who have testified on behalf of organizations. Would you be willing to participate in a stakeholder group -- advisory group if the Mayor was to convene one again?

Chambers: Yes.

Straus: Yes.

Hales: Thank you.

Sally Joughin: Sally Joughin. Good afternoon. Or almost evening.

Fish: Thanks for hanging in there. You have been here a long time.

Joughin: In 2010, I represented the organization Oregon Action as a member of the stakeholder committee. It was tasked with making positive recommendations for improvement to Portland police oversight and policies, as you know. I spent hours educating myself and attending the meetings and even attended extra subcommittee meetings to help clarify language of our proposals for the larger group to discuss and approve. The 41 recommendations we ended up with were carefully thought out. Our goal was to create better policies and processes. But after the disappointment almost all of the stakeholder recommendations being ignored, I decided to spend my time on other city and state issues. So, you might think that I'm no longer qualified to testify on police matters. However, I definitely have not forgotten the main message, that Portland needs strong, independent, review boards that is community-driven and not dependent on the police bureau to investigate -- to conduct investigations. Several years before I moved to the city, I was already concerned about Portland police. In 2002, my son, daughter-in-law, and three of my grand children, one an infant, were pepper sprayed by a Portland police officer during a peaceful demonstration. The City of Portland was subsequently sued by them and several other protesters. But nothing happened to the officer who inappropriately sprayed them. I love my new city and I don't want anyone to be unjustly treated by a police officer who is ill-trained or has wrong attitudes or is following a flawed policy. And especially if a death is the result. If injustice does occur, and someone wants to challenge it, the investigative process must come from the community. Although the IPR is supposed to be able to initiate and conduct investigations, I am concerned about whether they will indeed use their authority and investigate allegations thoroughly. I don't think City Council should approve changes that only partially accomplish goals without doing everything needed to improve the system. Otherwise, you will think that problems have been solved when they actually haven't been. Thank you.

Hales: Thank you. Thanks very much.

Briana Swiff: Good evening Commissioners and Mayor. I'm Briana Swiff, I am a law student at Lewis & Clark. I'm with the NLG Portland -- NLG student chapter, and I helped represent two citizens and their complaints to the CRC committee. I wanted to talk about some issues that are more nuanced and that haven't really been brought up from the position of the complainants when they go through the process. And some lack of information that they get when they do it. For instance, in the first case that I helped with earlier this year, a woman, an African American woman, 4 foot 10, was stopped. We didn't actually find out until the CRC meeting itself that they were actually looking for a Hispanic man that was 5 foot 7. So, the information that she got in her police finding said, the suspect was similar to you in appearance only. I don't think that information itself is enough to give people the amount of information that they need to decide if they want to go through an appeal. So, I think that, in addition to some of these considerations, we need to think about what type of information we want to include in the findings so that people can have a meaningful opportunity to decide if they want to go through with the appeal at all. Also, in the case of Floyd McCorvey here, we didn't get information about discrepancies in testimony until the CRC meeting itself again. So, this lack of information and lack of meaningful opportunity to debate whether you want to actually go through this process is not really being considered. So that's, basically, all I had to say in 20 seconds. And we also agree with the preponderance of the evidence standard and the

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idea of an independent attorney there. Because a lot of times these cases turn on legal principles, consent to search, exceeding the search. And sometimes the CRC members aren't fully aware what those entail, and I think that it would be really good, and instill a lot more confidence in the system if we had an independent attorney there. Thank you.

Hales: Thanks very much.

Floyd McCorvey, Jr.: Good afternoon. My name is Floyd McCorvey, and I am a resident of northwest Portland, and I'm a CDL truck driver and I presently do work for the United States government. The day in question, the officer stopped me when I was talking to young lady -- she wasn't a young lady, but she was a nice lady. And when I crossed the street and she kept going, it behooved me that the officer would consider me, a 62-year-old, 300-pound man, a pimp. I don't even look the role of a pimp. The lady was dressed in a business suit. She had a bag on her arm, her hair was neatly -- and anyway, you could see that she wasn't a whore. Now, Officer Tackett comes up to me, as I got down the way. And his car was headed up a one-street, 19th avenue, which goes south, they came down a one-way street going north, because there was no traffic. He stopped me, he said, who was that woman? I said, I just had a conversation with her. No, she's your whore, you know who she is. I mean, the way he went about it was not procedure. He discriminated against me, he profiled me, and when he searched me, he found my medical marijuana pipe. The reason that I have a medical marijuana pipe because I have prostate cancer. I didn't want any Vicodin or no narcotics in my system because I had to adhere to the rules of the transportation board. Anyway, he considered, because I had the pipe, that I was a crack head. And he told me yeah, that's what happens, when you are in the low income housing, you understand, we pay your rent. I don't want to see you up here no more, you better not come up here no more, you're not going to be pimping other people's mothers and daughters. I'm taken aback. Because no officer ever spoke to me like that. I have no qualms with the Portland police department. Only qualm that I have is with these two officers. Tackett is the main one, he was doing all the talking with his hand on his gun, implicating that, you know, he's a bad guy. And had no effect on me but this is what he was doing. Officer Green was the trainee. Now, if this is the way Officer Tackett is going to train Officer Green to be a Portland police officer, this will not suffice. Chief Reese, he was accusing me of being a criminal. It was 1996, 1999, or anyway, it was 16 years ago, and he's going to tell everyone that I have a criminal record. These were adverse incidents that came our way that I had to deal with. As Ms. Briana was saying, we never had a chance to refute or discuss what he brought up. He just decided to deem me a criminal to the Willamette Weekly, and everybody else he knew. As she said about this young lady named Lisa, another officer done the same thing to her, blindsided her, talking about her past. Why can't we talk about exactly what happened here and now as CRC has done? CRC has extended me -- they went out of their way, they begged IRP, the Independent Review Board, the Portland police department, and IA to overturn this, but they didn't want to deal with racial profiling. For some reason, people do not want to hear about racial profiling. But, it's happening. Everyone makes a mistake. I don't care how many accommodations and that he has, he's still a human being. And they don't look at us as human beings. We are looked at as statistics. Mr. Saltzman said something about how did we address this. I am a member of the community. And I am on the Care Oregon membership advisory council. They just sent me down to Annapolis in April. I was down there, and I also go to Salem as a lightweight lobbyist to express what's going on, how to help people who need help. Mayor, I can't see in no way how that officer could have it within him to talk to me in the way that talked to me and think that that was okay. Now, Lieutenant Fort said he deemed okay for that area. People that live there don't invite the people that come in there and do their dirt. So it's not acceptable. I am a human being, every human being is due respect and dignity at all costs, okay? No one is exempt. And I have given up eight years of my life to volunteer in the northwest area, to help people when I'm not working. Portland ministries, northwest Portland ministries, I was the only African American there. They didn't look at me as

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being African American, they looked at me with respect for the way that I carried myself, and after a while they hired me to help people who needed help. So, it's just that one officer that I have a quarrel with. I don't think the Portland police department is bad at all, I think that they should make their stops, but, it wasn't procedural.

Hales: Thank you.

Fritz: Thanks so much for coming in and staying to testify.

Michael Meo: Hi, can I stand?

Hales: You sure can.

Meo: Ok. I am here because --

Hales: Your name, though.

Meo: Michael Meo, and I am secretary of the Pacific Green Party Cascadia chapter here in the city. I am here because about six times a year, somebody, some poor civilian, dies in the custody of this city's police. And that's not terrible. I used to live in Oakland. In Oakland, you didn't hear about six people dying in police custody a year, you saw it on television. They still do it. Every now and again in Oakland, some cop kills somebody in public, and you get a rerun on TV all the time. I am much happier living in Portland, only six people a year killed in police custody, approximately. Over the course over the last 20 or 30 years, the crime rate has gone down all over the country, hasn't it. And gosh, there seems to be less crime here in Portland, which everyone as they say, you know, failure is an orphan but success has a thousand fathers. So here, that declining crime rate sure has all these paternal claims on it. But, the fact is that it's still around six -- we didn't fire Frashour. We did not fire the guy -- the guys -- who killed James Chase. We have not got accountability. It does not matter how many protocols and trainings you put in if you have no accountability. And that's why I am here as a member of the public to tell you I don't really care what -- how you chop a human hair into 16 pieces about the DOJ results. The fact is, you don't have a system with accountability now. And you are the city fathers, or the city council persons. You have the responsibility for putting in a system with police accountability. Thank you.

Hales: Thank you.

Moore-Love: The next three.

Hales: Not all of them are here. Go ahead, Mr. Walsh.

Joe Walsh: My name is Joe Walsh, I represent individuals for justice. You will never get control over your police department as long as the police department is involved in the independent investigations. You have to take IA completely out of the system. Do I think that's going to happen? No. However, it should be a goal. It may take a few years, it may take 10 years, but that should be the goal. That the group of people that investigate a police action, especially when someone dies, should have nothing to do with the police. They should look at it very objectively. As long as the IA is involved, as long as the Chief of the Police is involved, as long as the commanders are involved, we're going to have this problem over and over again. I mean, I may not see it. But some of you will. You'll be here and you bear the fruit of these decisions. You're not ready to make a decision yet. You need to go back and do some more work. You heard from the ACLU, you heard from the Lawyers Guild, you heard from Dan. Take their advice. Back off. Sit down and say, okay, look, we had this organization that the Department of Justice has told us is screwed up. Use whatever terminology you want, but basically it's screwed up. How do we fix it? And the only way you are going to fix it is get an organization outside of the police department that tells you what to do. And I'm not smart enough to tell what you to do with this police department. I would tell you if I thought I was right. But it is complicated. But as long as you have the Chief of Police making any of the final decisions, you are wasting your time and breath trying to reform it, trying to make it accountable. And just one added question. I used to be IBEW chief union steward at long beach national naval shipyard, which was a federal sector. Now, when they investigated a federal worker, there was two lines that happened. One was the administrative, one was criminal. You had to keep

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them separate. It's called the Weingarten decision. And when you say to an employee you must answer the questions that's under the administration part of it, not the criminal. He can invoke his Miranda rights under the criminal. He can also invoke his Miranda rights under the administration. However, if he does or she does, they can be fired. And I can get you that information if you want. It's called the Weingarten decision. And you are a lawyer, Novick, so I'm sure that you can find it. It's a very simple process that you have to keep the two investigations completely separate. So it's possible to do it if you want to do it.

Hales: Thank you. Good evening.

Katie Braun: Good evening, I'm Katie Braun and I've waited almost four hours to speak to you all today for three minutes.

Hales: Thank you for your patience.

Braun: Even the director, Constantin, has left. He is no longer here today. He did say earlier today there was a scathing report by the Department of Justice, and I've had personal experience with Independent Police Review, which even the director was calling Mary-Beth still the director, and now Constantin is the director. There's big problems in the Independent Police Review, I agree, and it needs to be independent. It also needs a stakeholders committee oversight, and a lot more research and a lot more done. So I came to this building, City Hall, on September 5th to volunteer to be interviewed to be a member of the Independent Police Review because of my bad experience with the Independent Police Review. I wanted to be on the committee to try to help change things. I am a block watch captain and I get emails from Teri Poppino. Teri Poppino is the police crime prevention coordinator for the east precinct. I got her email to go to this building at 5:30 on September 5th to be interviewed. They had canceled that meeting, the Independent Police Review, on September 5th, held no interview for the Independent Police Review. There's a reason I wanted to be on the Independent Police Review. As I told City Council before, on December 5th. My ex-boyfriend came through my dog door and I called 9-1-1. I had every faith in the police department that he would be arrested for breaking into my house, coming in my dog door and he, in fact, told in the police report that he came in my dog door. I am a block watch captain. I support crime prevention throughout the east precinct that I live four blocks away from. The sergeant that came to my house did nothing for a guy that broke in my dog door and admitted it to the sergeant on my 9-1-1 call. So I walked over to east precinct, four blocks away. It was a Sunday and it was closed. So I took a shower, I calmed down, I was, quote, hysterical after a guy broke in and beat me up that I used to date. I go down to the main precinct and they say, fill out an Independent Police Review form and leave. And if you don't leave, you will be arrested from the main precinct. I said, just please let me talk to anybody besides Sergeant Dave Golliday. He was not helpful at my house on my 9-1-1 call. It is Sunday. I am at the main precinct and I would like to talk to another officer to find out what is going on with the guy coming in through my dog door. So six months with the Independent Police Review, and I get nowhere. I try to appeal the decision that went nowhere. It took way over 180 days. I got no changes or no feedback. Five people have quit the Independent Police Review in this process this year and we have a new director. And on top of that, the east precinct has a new commander. So the change in this city is so great that I really recommend the City Council to take your time, do a stakeholders committee, let everybody that's testified, 22 people, be involved and make this city better not only in the citizens' eyes that have lost complete respect for Chief Reese, who doesn't think inappropriate touching another female officer's thighs is sexual. We really need better oversight and we really need time to make that better oversight effective. And it's up to y'all to do it. And I appreciate your time. And once again, a scathing Department of Justice report was very well-written compared to what I would write about what I have experienced with the Portland Police and the Independent Police Review. I hope to change it. I am not giving up. I really will stay until 6:00 and later so that we can effectively fix the very broken system. And I think that there is a lot of community support if we just get, yes, a bigger committee on the Independent Police Review. And

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actually make it independent of the police. And, yes, written reports, so there's accountability down line. Dave Golliday, one more time, he was fired in Chicago, he's been demoted here, he's been re-promoted here. And I could read you Willamette Weekly articles about him. I could read you Oregonian articles about him. If Commissioner Nick Fish wants to know why there is lack of respect for the Independent Police Review and the police department, read the newspapers. Talk to your citizens. There is a huge problem with the Portland Independent Police Review and the police department. And why our director is not here right now and it's not even 6:00 yet -- it really worries me.

Hales: Thank you. Thanks. We have a couple more people, I think.

Moore-Love: Yes, we do.

Hales: Is that all you have signed up? Thank you. Go ahead, Mr. Turner.

Daryl Turner: Thank you. Good afternoon. Mayor, Commissioners, thank you for being here and thank you for allowing us to be here. I'm Daryl Turner, the President of the Portland Police Association. And there are three key points I would like to address regarding IPR's proposed expansion of its powers of disciplinary investigations. The first concerns are mandatory subjects of bargaining. The second concerns process. And the third concerns is whether IPR code changes make sense for the Portland Police Bureau. First, IPR's proposed code changes trigger a number of collective bargaining issues that must be addressed before the City can implement the code changes. The mandatory subjects of bargaining include but are not limited to discipline, job security, and minimum fairness. Our collective bargaining agreement also contains a number of provisions regarding the discipline process. IPR's proposed changes will also impact those contract rights. Second, in the past, the city has implemented new practices and procedures without first coming to an agreement with the PPA over mandatory subjects of bargaining. The City's approach has consistently resulted in unnecessary litigation and disagreement. Process is important. In its ordinance submission, IPR notes that it met with over 20 community groups regarding its code changes. Yet IPR would not meet with the PPA to have an in-depth discussion over IPR's role in the discipline process. Time and time again, the PPA reached out to IPR to discuss these issues, and IPR has declined our invitations. Collective bargaining is a process of working together towards an agreement where both parties' interests are addressed. Until bargaining has taken place, these IPR code changes should not and legally cannot be implemented. This leads me to the third point. City Council should think long and hard whether these proposed IPR code changes are good policy for the Portland Police Bureau. As Chief Reese has pointed out, there are a number of cons in the proposed IPR code changes which in my view far outweigh the pros. Currently, IPR has a very visible role in the disciplinary process. It has an unprecedented level of involvement and access in the Portland Police Bureau's affairs. IPR's proposed code changes would upset this delicate balance by empowering IPR to essentially take over police bureau duties and obligations in the discipline process. The bureau's current and terminal affairs division staff who investigate alleged officer misconduct are highly qualified, highly trained investigators with decades of experience in law enforcement and prior service as investigators. Currently, when civilian IPR staff wishes to question an officer, they appear alongside internal affairs investigators in one interview. This streamlined process is efficient and it prevents delay in an already long, winding discipline process. Under IPR's proposed code changes, IPR would hold the unilateral right to conduct another investigation on top of the bureau's own internal affairs investigation. A number of questions remain unanswered from this model. Why does IPR want to hold its own investigations? Why are we adding yet another layer to the already overly-complex discipline process? How will the police bureau's use of IPR's investigation in the discipline process? Won't this additional investigation further delay the discipline process? If IPR believes the police bureau hasn't adequately considered IPR's investigation, what will happen? Discipline of employees is a core function of the chief of police and the police bureau. Isn't this a step towards civilianizing the investigative process and taking

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discipline out of the police bureau's hands? In conclusion, there are many more questions than answers with IPR's proposed code changes. I do not believe these code changes are a good policy for the police bureau and its discipline process. Even if you disagree with me about the policy point, we should agree to respect the collective bargaining rights of 900 men and women who serve and protect citizens of Portland and their communities, making it one of the safest and most livable cities in the nation. Thank you.

Hales: Thanks. You may be planning to do this but if you could get us copies of that, I'd appreciate it.

Turner: Okay, I will do that. Also, I will get you some ERB case rulings where in 1995 the fire bureau had a ruling in their favor on the discipline process and it ruled in their favor that any change in the process is a mandatory subject of bargaining.

Hales: Thank you.

Byron Parmon: Mr. Mayor, members of council, thank you for your time. In the spirit of this late hour, I'll keep my comments brief. As a --

Hales: Put your name in the record, Bryon.

Parmon: I'm sorry, I'm Bryan Parmon, President of the Police Commanding Officers Association. Like the PPA, obviously, we share the same concerns as they relate to mandatory subjects of bargaining. The members of the PPCOA believe in timely and thorough investigations that treat all of our members fairly. The PPCOA is committed to working collaboratively with the City to make effective and meaningful change in our discipline process, but we fundamentally believe that some of the changes that are proposed -- those mandate discussions at the bargaining table. I think what -- all the testimony that's been heard by council today, you've heard from the police bureau, you have heard from the community, you've heard from the labor associations. Everyone is encouraging this council to take their time and move deliberately and thoughtfully through this process of change and I encourage to you do so. Thank you very much.

Hales: Thank you very much. Good afternoon.

David Denecke: Good evening, I'm David Denecke. I'm a volunteer on the Citizens Review committee. I'm speaking here on behalf the Citizens Review Committee. I have been on the review committee for two years and before that I was on the police discipline board for about six years. So I have been in this process for quite a while. There are two issues that I'm really here to address tonight. One, I think has already been addressed but I don't want to beat it up any more but this 21-day rule. We need to look at that carefully, because although we will do our best to hear appeals and dispose of them within that period of time, there are going to be circumstances where we can't do it. So there has to be some outlet, I believe, for us to take more time if circumstances require. And that happens with the administrative appeal advisor, if we don't have one handy, if witnesses can't attend, if officers involved can't attend, or the RU managers cannot attend, which has happened at times. So, we can't always stay within the 21 days. And I think you already understand that from the discussion we've -- I've heard here today. The other issue, and the one which is of particular concern to us, is the standard of review. The CRC is the only public forum for these disciplinary proceedings. And I feel, just from watching this process over the years, that the public is much more well-informed, they are empowered, they want accountability, and they expect a process where the citizen review process is, in fact, independent from the police process. And currently, under the ordinance which is 3.21020 sub s, that this is the provision which you heard earlier, supported by the evidence, that a decision is supported by the evidence when a reasonable person could make the finding in light of the evidence provided. If the CRC is governed by this standard of review that we have to affirm if the RU manager could have found whatever their finding was in light of the evidence, we feel that we are not truly independent. We should be calling balls and strikes, so to speak. We should not be deciding whether or not the umpire could have called it a strike or could have called it a ball. So we feel that we should be able to provide our own independent review of the

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decision that has been made. We're not the final arbiters of this process. The Chief makes the ultimate decision and then eventually the City Council if it comes to that. So we feel that the whole process will be better off and the public's expectation will be met if we have truly a preponderance of the evidence standard which we are able to apply.

Fish: Mr. Denecke, I know it's late, but can I just follow up on that? Your comment?

Denecke: Sure.

Fish: The last time we had a big discussion about this, that was a point of contention. And I seem to recall someone saying that if we made this change, it would be like going from an independent appellate court to an independent trial court. And that your function would change as a result. Do you agree that characterization?

Denecke: Well, I think in fact, we are the trial court. I mean, we're calling it an appeal but we are hearing new evidence, we are listening to witnesses, we are seeing evidence which sometimes has not even been seen by IA. And so we are having to make decisions about credibility. The process is not really more akin to an appellate court, I don't think.

Fish: So you disagree with those who say--

Denecke: I would disagree that.

Fish: It changes fundamentally the function of the body?

Denecke: I don't think it would change the function of the body. I think the function already is that but the standard review is less -- is more constricted than it should be.

Fish: Okay. Thank you.

Hales: Thanks. Thanks for serving in that tough volunteer job, too. Thank you all. Okay, we have a couple more people.

Moore-Love: The last three who signed up.

Denecke: By the way, I forgot to introduce Rochelle. She is my cohort.

Hales: Rochelle, why don't you go first and we will give Jeri the last word.

Rochelle Silver: Okay. Thank you for being here. I appreciate everybody staying late tonight. My name is Rochelle Silver and I am a member of the Citizen Review Committee and have been so for nearly five years now. What I would like to do is basically talk a little bit about the IPR proposal and mostly about the comments that Mr. Denecke made. I'd like to echo and support those comments. I think it's been made clear today that the issue around collective bargaining and whether or not IPR can compel testimony, officer testimony, is unclear. But once that matter gets settled, if IPR can do that, I believe that that would make a better, fairer, more just, workable system for the city in terms of police accountability. Also I can't say more strongly that I believe the 21-day appeal will not be workable, will not be fair. Not to volunteers like myself, although I could complain about that, but I could quit, you know? But to the citizens, to the people who are appealing. How is it that they are supposed to get a letter with the findings, make a decision, oh, I am going to appeal that, learn about the appeal process, have an appeal process advisor appointed to them, have a person from the National Lawyers Guild meet with them and strategize and then for us to have a case file review and an appeal all in 21 days? It's not possible. And there needs to be some looking at that, I believe. I also strongly believe that -- and ask for your consideration in changing our standard of review. As you've heard from David and from other people who have testified, the way the appeal standard is now, we are not looking at what happened between the officer, officers, and the person appealing the case. What we are doing is looking at whether the fact finder from the Portland Police Bureau is a reasonable person. And I just don't think that's what you want in a public accountability situation. Thank you very much.

Hales: Thank you. Thanks for serving. Ms. Williams, good afternoon.

Jeri Williams: Hello, Mayor and council members. Good to see you. I am on day 137.

Hales: Put your name in the record.

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Jeri Williams, Office of Neighborhood Involvement: My name is Jeri Williams. I work for the City of Portland. I am off the clock right now, I'm not working on the taxpayers' dime right now. I am a former community organizer, still community organizer for the last 20 years here in Portland. Working primarily with communities of color for those 20 years and immigrant refugee communities. On July 9th, when I was coming out of my boss's office, I noticed my son sitting at my desk. He was covered with bruises on his face, on his head, et cetera. He said he was picked up by the police and beaten up by the police. My initial response, which I didn't follow, was I wanted to take him up to your office and show you him. I was so angry. But instead, I went to IPR and filed a complaint, and they took pictures of his injuries. As a part of that, when he was punched in the mouth, he spit blood out of his mouth and the police officer actually charged him with harassment for spitting on him. The stories, of course, are very different. But the issue is, the first police report said that he was not injured, and it was clear he was. And so, 137 days later, as his mother, I'm still sitting there going, what's going on? The process itself -- and you know I'm all into process, it's what I do, it's my job -- it could be better. You go into a process where you don't know anything and everything seems secret. And despite the fact that I have a relationship with the City, and I appreciate the Mayor reaching out to me, and I appreciate Mike Reese reaching out to me, and I worked with one of your employees for a while who is now no longer here. I filed for a police report and I gave the woman the \$10 at the police bureau. And then she said, I can't give you the report. And I'm like, why? Well, an attorney, I checked in with already said they may say it's an ongoing investigation. This is a tiny thing but then why did she keep my \$10, you know? Why didn't she give it back? And so I eventually got a police report but what I learned from that experience was that the minute you go to IPR and file, of course, they have to talk to the police force. And because there were four officers there and only one officer had written the report, the other three were required to write a report as well. So I don't know where those reports are. I have never been -- the person who has been involved has -- the people who have been most directly affected are not involved in the process. As his mom -- my son is 5 foot 8 and he weighs 105 pounds. He suffers from severe depression and Post-Traumatic Stress Disorder. His case did make it to internal affairs. Most of my friends are saying it's because of who you are. Me, myself. Whether that's true or not, when the interviewer called him, the interviewer interrogated him, not understanding my son's mental health issue -- and this is my biggest concern. The police have picked up my son and I am grateful for the police for so many things. But I have had a few issues over the years. The fact is, they have picked him up when he's tried to commit suicide. And he's tried for three times over the last two years. And so I'm grateful for them when they've been able to help him. But if he had these mental health issues, how did he end up on the floor of a cell and wake up where he didn't know how he even got there, why wasn't he -- why didn't he get medical attention when he had all of these issues? These are the questions I have never had answered in the 137 days. Nobody can answer them because there's a process going on. And I am his mom. Yes, I'm city employee. But I'm the mom of a child who I've had to take care of his whole life. And I know they don't get it. I know they don't understand. Several times throughout this process I have been told, you have to make him do it, he can't advocate for -- you can't advocate for him. And I am like, he can't advocate for himself. What am I supposed to do? I work here. I have to believe in this process. I am going through this process even though I have no hope, no faith, that this process is going to work for me any more than it's worked for anybody else. But you still have to go through this process. And so it's been incredibly hard. And I am here, I am sitting in here today and I hear everybody's different views on it what but what I am hearing from the police is no, it's not working. What I'm hearing from many people is, no, it's not working. Myself and my colleague who passed away this year, Afifa Ahmed Shafi, did an equity training for the CRC last year. It was almost all white male lawyers on the CRC. Where is the equity in that? Where is the diversity in that? Where are the other lenses to look at these issues? When you only have a select group of people, and then Commissioner Fritz and I looked at the

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application last year and said, this is not a welcoming application. No one would apply to be on this committee with this application. And so it's not working. I have faith that we can fix it. I have faith that we can turn things around. And I have taken too much of your time but thank you so much.

Hales: Thank you.

Fritz: Thank you, Jeri.

Hales: Thanks, Jeri. I believe that's all the public testimony we have.

Moore-Love: Yes, that's all we have.

Hales: We are going to continue this hearing. I am going to also consult with the auditor in the meantime as to whether or not we are going to have any further advisory panel appointed to assist in further inquiry into this ordinance. But I appreciate you bringing it forward. And we'll schedule a subsequent hearing at a subsequent date.

Fritz: Do we need to continue it to a date certain?

Hales: I don't believe we need to continue to it a date certain.

Moore-Love: We're gonna put it on the November 6th.

Hales: I would prefer at this point not to continue it to a date certain. I would prefer to continue it without naming a date certain if that requires that we table it, we can do that.

Moore-Love: Just to be continued then without a date?

Hales: Does that please the Council?

Fish: I don't have a strong feeling on that, although having at least a control date gives us something to shoot for. If we don't have a date, how would we get back -- what would be the mechanism for getting it back on the calendar again?

Fritz: File it again.

Moore-Love: If we are putting on the same document the auditor or director would let me know what date to put it back on and we would file the same document.

Hales: LaVonne, do you have a suggestion? Mine would be to give us some time for further discussion outside of formal council sessions and perhaps impanel a committee. I would like to discuss that with you and maybe report back to the council in two weeks? Could we do that?
[inaudible]

Hales: So, let's continue the item for two weeks. It will not be another public hearing at that point if we are going to -- if we are going to have an additional public hearing --

Fish: It might be one small problem for that, Mayor, since you are gone Friday to Monday. So it would be coming back on our bump and you would have a day. Because you are back -- you're gone all next week plus this Friday and a Monday.

Hales: My sense this is going to need more than two weeks.

Fritz: Right.

Fish: Well then let's pick it up in two weeks.

Hales: Why don't we for now continue this for one month. And have it scheduled on the council calendar for one month from today. And then we can revisit that question depending on progress or not. Okay? Does that make sense?

Fritz: Yeah.

Moore-Love: One month would be the day before Thanksgiving.

Hales: Let's not do that. Let's make it the week after that.

Moore-Love: Okay.

Fish: Can we make it the day before Christmas?

Hales: Please not. [laughter]

Moore-Love: December 4th is the Wednesday.

Hales: Let's continue to December 4th, and we are adjourned.

Fritz: Thank you very much.

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At 6:08 p.m. Council adjourned.