

MEMORANDUM

TO: Public Safety Committee

FROM: Mary Costigan
Associate Corporation Counsel

DATE: April 8, 2009

RE: **Minutes of the Public Safety Committee Meeting held on
March 24, 2009**

Councilor Skolnik, Chair of the Public Safety Committee, convened the meeting at 5:30 p.m. with Councilors Waxman and Donoghue present.

1. Approval of Minutes of February 25, 2009 Public Safety Meeting

The Committee voted unanimously to approve the minutes of the February 25th, 2009.

The Committee then took action on the following items:

2. Skateboarding on Exchange Street

Councilor Skolnik explained that the City Council issued a moratorium on skateboarding on Exchange Street after several issues were raised about the effect the activity was having on the business environment, as well as the potential for personal injury and damage to cars. He stated that because the moratorium expired at the end of 2008, the issue is back before the committee to decide on a more permanent solution. He invited Jan Beitzer of Portland's Downtown District to share her thoughts on the subject.

Ms. Beitzer reminded the Committee that the Public Services Department was tasked with finding solutions for the skateboarding issue. She noted that Mike Bobinsky and his staff had been working hard on the item, and had come up with two engineering solutions: 1. a rumble strip in various locations along Exchange Street, and 2. extending the cobblestones on Milk Street across Exchange Street. She said that the District didn't have an issue with skateboards used as transportation. She stated that the problem was when Exchange Street was used as skate park, which created a noise issue for residences and businesses due to the friction of the wheels and the profanity of the skaters. She also noted that many cars were damaged by skateboarders. She said she understood that the City was facing a tight budget this year, and was in hopes that this project was on the top of the priority list.

Councilor Skolnik asked if the PDD wanted the Committee to recommend reestablishing the moratorium.

Ms. Beitzer said the District wanted the City to make the engineering changes to Exchange Street that it said it would, but barring that commitment that the changes would be done by mid-May, the District would ask for another moratorium. She noted that the District had originally asked the Council to put the entire Yellow Zone under the moratorium, but when the Council reworked the skateboarding ordinance and enacted the ban, the District accepted the smaller area, since Exchange Street is where 80% of the problem is. She asked the Committee to reconsider including Middle Street from Temple to Exchange if a further moratorium is imposed, as now not only skateboarders but BMX bikers are using the median to perform stunts.

Councilor Skolnik asked if there had been a time of day component in the expired moratorium.

Mary Costigan of the Corporation Counsel's office stated the moratorium was not based on specific times of day. Councilor Donoghue added that he didn't remember discussing the time of day, either. He mentioned that the item went to the Council last year with a vote of 1-2. He further stated that he still wasn't in favour of banning skateboards on Exchange Street unless they were banned as a mode of transportation throughout the City.

Councilor Waxman asked what determines a vehicle for purposes of traveling on a road.

Mary Costigan replied it was a combination of state law and city ordinances. She added that she had tried to address the difference between riding for transportation and performing stunts on a skateboard in a proposed ordinance, but the Council rejected it in favour of the moratorium.

Councilor Waxman asked Mike Bobinsky, Director of Public Services, about his ideas about rumble strips and cobblestones on Exchange Street.

Mike Bobinsky said he had had discussions with Jan Beitzer of the PDD and within his own staff, and said there were a couple of ideas to do with extending cobblestones into the right of way of Exchange Street to slow down someone traveling at a high rate of speed. One was creating a mixed-materials crosswalk at Milk Street. He said he'd want to review more specific ideas with the Public Safety Committee as well as the Historic Preservation Committee to be sure it fits with the area. He mentioned that funding would be an issue depending on the materials used. He said they'd be able to do the work during this construction season once a plan was made that was agreeable to everyone.

Councilor Waxman asked if there were other municipalities that had dealt with similar issues and come up with their own solutions.

Mike Bobinsky suggested that Jan Beitzer may have some materials from other towns, he wasn't sure if towns had dealt with the specific materials issue he was looking at. He said he thought that the proposed skate park may also alleviate some of these pressures as well.

Councilor Donoghue asked if brick sidewalks may be a solution to slow people down. He also asked if creating rumble strips affects the ability of the pavement to withstand wear and tear.

Mike Bobinsky answered that there were brick sidewalks in the Old Port area, and he would look into that as a possible solution on Exchange Street. He said he hadn't heard that rumble strips affect the quality of pavement, but he did mention that noise was an issue with rumble strips.

Councilor Skolnik asked if rumble strips would stop skateboarders, or would it make skateboarding just that much more difficult.

Mike Bobinsky said he didn't think it would stop all boarding, but it would interrupt the speed boarders pick up on the way down Exchange. He said he thought it was similar to other traffic calming strategies in that it was trying to control behaviour. He suggested that enforcement was also a key component to preventing this behaviour.

Councilor Donoghue asked if the speed limit on Exchange Street was 25 mph. Mike Bobinsky answered yes.

Councilor Skolnik asked if Captain Vern Malloch of the Portland Police Department had any thoughts on this item.

Captain Malloch said they had good voluntary compliance once the ban went into place.

Councilor Skolnik said a motion wasn't needed, but asked Public Services for the funding information for the engineering solution. He added that the Committee could also take a look at reinstating the moratorium at that meeting.

3. Inspections and Enforcement Policy

Councilor Skolnik introduced the item, explaining that recent events forced the sudden eviction of tenants from a dangerous building by the City. He said the Committee had asked the various departments involved to come up with a more streamlined method of communication among City departments, tenants and landlords.

Penny St. Louis Littell, Director of Planning and Urban Development, noted that the Fire Department, the Planning Department and the Legal Department worked together to balance the landlord's interests with the tenants' interest in coming up with fair notice of deficiencies. She said that, although rare, there will still be instances where the City

must post a property against occupancy immediately due to extreme life safety issues. She stated that there are usually one or two cases per year that would fall under the auspices of the new policy that the various departments have come up with. She explained the timeline, saying that they were drawn up with the ultimate goal of winning a case in court, thereby protecting residential and commercial tenants of a building.

Councilor Donoghue asked when the first letter would be sent to the tenants in this process.

Penny Littell said that tenants were informed when a yellow sticker was affixed to the building. She stated that the yellow sticker indicates what the general issue is with the building, such as fire, electrical, plumbing, etc., as well as the phone numbers for the fire department and inspections department so tenants can find out the specifics of the issue.

Councilor Donoghue asked how long it was between the inspection unearthing the deficiencies and the posting of the yellow sticker on a building.

Penny Littell answered that it was 28 days when the sticker was attached to the building. By the end of 38 days, staff had the hope that the tenants would contact the landlord to ask for information about the sticker.

Councilor Donoghue asked if building violations were enough to void a lease and allow a tenant to move out without penalty. Penny Littell answered that it depended on the terms of the lease, which was out of the City's hands.

Councilor Donoghue stated that he wanted to make the yellow sticker more of an education for tenants and not depend on the curiosity of a few tenants.

Councilor Skolnik asked Gary Wood, Corporation Counsel, to talk about whether state law allows a tenant of an unsafe building to break their lease without penalty. Gary Wood said that if a tenant is under a lease they may not stop paying rent. As far as tenancy at will is concerned, there are some protections for tenants. He strongly suggested that individual tenants should consult counsel before leaving a building or withholding rent.

Councilor Donoghue asked what the process the City followed in evicting tenants from 10 Exchange Street.

Gary Wood answered that the City pulled Pine Tree Legal into the mix to represent the tenants when it became clear that the City was going to have to go to court for an eviction order. He added that the City originally required a fire watch while giving the tenants some time to find a different place to live, because the infractions were so severe. He said that the City's Department of Health and Human Services was involved in creating a list of available units to assist displaced tenants. He said he thought the primary responsibility of the City was to put tenants on notice of unsafe conditions.

Councilor Donoghue asked about the Lead Abatement Program, and how the City determines who qualifies for temporary lodging while the lead is being removed from a building.

Penny Littell answered that there are vouchers for short-term lodging while the house is sealed off. She said that generally families are put up in hotels. She noted that there were several differences between the lead abatement program and the situation of posting an unsafe building.

Councilor Skolnik said he'd like to have tenants receive a notice as soon as a violation is observed which includes information on where to obtain free or reduced price legal services.

Fire Chief Fred Lamontagne explained that the stickers represented more of a failure to communicate rather than an impending crisis. A yellow sticker may not bring a lawsuit, if it does at all, for years down the road.

Councilor Donoghue appreciated the clarification and asked if the tenants could receive a notice with the same information.

Councilor Skolnik said he thought the placards should be placed on the building sooner than the current timeline allows. He suggested affixing the yellow sticker after 23 days instead of 28.

Councilor Waxman said she thought that creating a flyer to be distributed to the tenants at the same time that the yellow placard was affixed to explain what the system meant, and perhaps having a page on the website, may alleviate some of the communications issues.

Penny Littell explained some of the legal issues with noticing tenants, including the possibility to serve unknown tenants with any 80K complaint that may arise. She reiterated that the City's responsibility is communication with the landowner. She also mentioned that referring citizens to lawyers can become problematic.

Councilor Skolnik asked if any letter sent to a property owner could have a more clear distinction of which department to contact. He also asked if there was a time limit on the submission of a plan of action by a landowner. Gary Wood responded that the time limit was up to the Committee. Chief Lamontagne added that the complexity of a plan as well as the volume of plans received would also impact the time frame. He suggested that the City acknowledge the plan of action as opposed to accepting it as part of the time frame.

Councilor Skolnik suggested that instead of using the word "litigation" in the letter to the tenants, the City could use "enforcement action." He also suggested that the City not apologise for the inconvenience to the tenants. He opened the floor for public comment.

Robert Hains, Holm Avenue, explained how properties fall into non-compliance: 1. normal wear and tear; 2. tenant abuses; and 3. the fact that codes are often changed, thus putting properties into non-compliance even though nothing has changed about them. He noted that very few landlords purposely put their properties into non-compliance. He stated he thought that the notices were a good idea, but added that there was no functional way to give written notice to tenants. He explained some of issues that tenants can cause over which landlords have no control.

Councilor Skolnik closed public comment on this item. He then requested that item 5 on the agenda be taken out of order.

4. Calls for Service

Councilor Skolnik explained that the item was before the Committee because of software issues and the way services calls are categorized in the computer system. He asked Captain Vern Malloch to speak about the technical parameters of the system and how it affects the operations side.

Captain Malloch introduced Andy Dziegielewski, one of the supervisors in dispatch and also a trainer in dispatch services. He said that the computer system they use is HTE, which is user-defined. The Police Department can essentially design the system to do what they want it to do. He explained some of the screen shots he brought with him, noting that only the dispatcher or the call taker puts information into the computer.

Councilor Skolnik noted in relation to the screen narrative printout that he felt there was pertinent information missing with regards to whether the person involved had been drinking in the establishment the fight took place in front of.

Captain Malloch stated that the purpose of the dispatch reports was to get officers where they needed to be.

Councilor Skolnik asked if some sort of field could be added indicating whether the address is where the incident is taking place, or whether it's just a reference point to get officers to an incident.

Captain Malloch responded that he didn't think that was a position the police department wanted to get into for practical reasons, due to the volume of calls placed and the frequency of calls, specifically in the Old Port at closing time. Additionally, it would require a vendor interface to make a change like Councilor Skolnik was requesting, which costs roughly \$50,000 and takes time to work the bugs out. He noted that bar owners, when before the Council for a license renewal, always claim that calls to their establishment originated somewhere else. He said that the police department does track crime by area, and when it came to analysis the call for service in question would show up with the other

data, which the police department presents to the Council in license renewal hearings.

Councilor Skolnik asked about calls coming from within an establishment reflecting on that establishment when license renewal time rolled around.

Captain Malloch said there was no set call limit above which the police department would try to pull an establishment's license. He said that he has often assured owners and managers of establishments that he would rather remove someone from a bar that's creating a nuisance than have a medical emergency call involving serious personal injury.

Councilor Skolnik asked if Captain Malloch could come back before the Committee with solid funding information about creating another category.

Councilor Waxman suggested using the codes already available to the police department before pricing out a costly software change.

Captain Malloch said that making a major change to the software would yield inaccurate data when he ran queries on the system. He agreed that the department would first look at the codes already existing on the system.

Councilor Waxman asked if monthly queries were done on individual restaurants and bars.

Captain Malloch said citywide queries were done on a monthly basis by the day, evening and midnight shifts to show which neighborhoods needed more of a police presence.

Councilor Skolnik asked if Captain Malloch could bring back funding numbers for adding the additional category to the software system. Capt. Malloch answered that he would. Councilor Skolnik then invited Jan Beitzer to speak.

Jan Beitzer, of Portland's Downtown District, said that regarding the issue of people not calling in problem situations from restaurants and bars, calls for service initiated from bars were not counted against them unless the police department can prove negligence on the part of the bar. She also noted that there was other data in addition to calls for service that the Committee and the Council can use.

Councilor Donoghue gave his support to the system as it is.

5. Amendments to Sidewalk Materials

Councilor Skolnik asked Mike Bobinsky to explain to the Committee the amendments to sidewalk materials he had been working on.

Mike Bobinsky, Director of Public Services, introduced Kathy Earley, Engineering Services Manager. He explained that residents had raised the issue due to concerns about slippery surface that brick creates and the steep grade of the sidewalk on Greenleaf Street. He said that the current policy does not provide for alternatives to brick sidewalks on the peninsula, but the concern has been raised by residents in other areas of the peninsula. He said that the staff has suggested the alternative of brushed concrete, which would provide added traction, on the peninsula and "pine hall pavers," which also has a textured surface, in the Historic District. He said that staff had concerns about the currently used brick on grades that are more than 8%, and listed several streets on peninsula that have a greater grade. He pointed out the changes to the policy that he'd like to implement, and mentioned that once the Committee approves the changes he will bring the amended policy to the Council.

Councilor Donoghue asked if the department could point out streets that were more than a 10% grade.

Kathy Earley said they didn't have specific grade information, but the grade estimates were based on things like aerial photography and personal experience.

Councilor Donoghue noted that he didn't want to include entire streets.

Mike Bobinsky noted that the policy would be implemented only in cases of pre-planned rehabilitation of streets.

Councilor Waxman asked if there was an appeal process for a neighborhood that wants a different sidewalk material.

Mike Bobinsky answered that there was some flexibility built in for the Director of Public Services to choose a different material.

Councilor Donoghue made a motion to accept the staff recommendations except regarding the grade policy, to be changed to 10%.

Steve Hirshon, 18 Hanover Street, stated that he had been advocating this change for years and was pleased that the changes were going to go through.

Motion passes, 3-0.

Councilor Donoghue made the motion to adjourn, which passed unanimously.