



Legislation Details (With Text)

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committee meeting verbatim minutes

Pittsburgh, PA March 20, 2002

**COMMITTEE ON FINANCE & BUDGET**

The Committee met.

**Present:** Ms. Burns, Ms. Carlisle, Mr. Cohen, Mr. Ferlo, Mr. Hertzberg,  
Mr. Motznik, Mr. O'Connor, Mr. Peduto, Mr. Ricciardi, Mr. Udin, Chair

**BUSINESS FROM COUNCIL**

**ROLL CALL**

Nine (9) members present.

The Chair:

Good morning.

We have several bills that will be discussed in the day colleagues that promise to be extended debate. I just want to urge everyone to try to be succinct in their comments and to be constructive in offering proposals rather than just to talk on about what we do not agree with; however so eloquently we may be. Constructive alternatives is what helps and moves us forward.

With that sermon, we will begin with the Committee on Finance and the Budget. Bills No.

0143 and 0144 are related bills although not companion.

**BILL NO. 0143:**

An Ordinance supplementing The Pittsburgh Code, Title II, Fiscal, Article IX, Property Taxes, Chapter 263, Real Property Tax and Exemption by adding a Section entitled "Assessment Appeal Refunds."

**BILL NO. 0144:**

An Ordinance amending the Pittsburgh Code, Title II, Fiscal, Article IX, Property Taxes, Chapter 263, Real Property Tax and Exemption, Section 263.02 entitled "Payment Options, Discount and Delinquency Penalty" by eliminating the .5% per month penalty.

The Chair:

Is there a motion?

Mr. Hertzberg:

Motion for discussion.

The Chair:

Second?

Mr. Motznik:

Second.

The Chair:

Councilman Hertzberg.

Mr. Hertzberg:

Let me talk about 144 first because I think we can take something today that will take care of 144 unless there is disagreement here on Council; but I am getting the feeling that there is no support for Bill No. 0144 which is the bill that would eliminate the penalty or five percent per month payment on delinquent real estate taxes.

I have received a communication from the Finance Director indicating that the Finance Department doesn't believe this is necessary particularly since we are - we now have in play this pay your two installments and then not your third one and wait and see and you will not be penalized if you do that.

So we have that provision in place and I think everyone on Council has rightfully pointed that out.

Although you may help some truly needy people by lowering the interest and penalty you are also going to help some just down and out deadbeat scoff law types that just never pay and are always delinquent and you are going to encourage those kinds to be delinquent so I don't see any support for this thing here although it is intended to help with the reassessment that is going on. It doesn't appear that there is any support for it and I would be willing to table it unless there is any different thoughts by any Councilmember.

The Chair:

Any signs of life?

Mr. Ricciardi:

Second the table.

The Chair:

Was that a motion Mr. Hertzberg?

Mr. Hertzberg:

Motion to table.

The Chair:

Second?

Mr. Ricciardi:

Second.

The Chair:

All in favor?

Aye.

Opposed?

Bill No. 0144 is tabled.

Bill No. 0143 remains on the table.

Any discussion?

Mr. Hertzberg:

Yes.

Bill No. 0143 is the provision that says when we give someone a refund after they have been successful in a tax appeal, the refund would include interest at one percent below the interest rate that we are receiving on that money through our General Fund.

I ultimately personally would like to see this held for another week because we are still trying to get the school board's feelings on this. They may go along with this, they may not. We don't know for sure; but I think part of the School Board's dilemma is they want to know whether there is much support for this provision on City Council. I am going to hold it either way, but I would kind of like to get a feel for whether there is support for this.

I think there are probably a couple of different numbers that are floating around as to what this would cost the City. I am sure that would be important to everybody. Our Budget Office feels that if we take this and we confine it to just the year 2002 property taxes and what it will cost us in the year 2002 it is really not a very large number. It could be as low as \$75,000 because we are only talking about paying interest on 2002 property taxes and only those appeals that are heard in the year 2002 on the 2002 taxes and we are also at a point in time where the interest rates are actually very low and we are only talking about probably a few months of interest when we do pay it. So the cost wouldn't be very high in this and as I have pointed out before, it seems only fair to me. We shouldn't have had the money in our General Fund. It really belongs to the taxpayers since they were over assessed. We earned interest on it and it only seems fair to me that the taxpayer with the refund should get a little interest on it.

I intend to hold this today; but if I could get some response as to where people are so we could then in turn give the school board an idea of where we are so they can make a decision.

The Chair:

So you will take those responses during the week between now and next week.

Mr. Hertzberg:

Yes.

The Chair:

Thank you.

Second to hold?

Mr. Ricciardi:

Second.

The Chair:

All in favor?

Aye.

Opposed?

It is held for one week.

Bills No. 238, 273 and 287 are all related to the Living Wage proposals. What I intend to do is read all three bills and have discussion on all three and if there is no objection.

The way I think we should handle this debate is the Mayor's Bill essentially trumps any amendments to the Living Wage Bill. If there are five votes or more for the Mayor's Bill then the amendments to the Living Wage Bill become irrelevant. So after we read them what I would like to do is discuss and vote on the Mayor's Bill. If the Mayor's Bill fails, then we will discuss and vote on any amendments that anyone wants to put forward. But if the Mayor's Bill passes, then I think we ought to not entertain any amendments.

Mr. Ferlo:

Point of order.

The Chair:

Let me read them and then we can entertain your point of order.

Mr. Ferlo:

Point of procedure, Mr. Chair.

I do want to voice an objection. I think we need to decide --

The Chair:

You can voice the objection after I read them.

Mr. Ferlo:

Well I am voicing my objection now because you are taking --

The Chair:

Well there are no bills on the table and I will call you first after I get them on the table.

Mr. Ferlo:

Okay.

**BILL NO. 0238:**

Resolution directing and authorizing the Mayor, the Director of Finance, the City Controller and the Paymaster to retroactively pay all city employees (part and full-time) a Living Wage as per Council's Final Budget.

**BILL NO. 0273:**

An Ordinance amending the Pittsburgh Code, Title I--Administrative, Chapter 161.33--Contracts, Pittsburgh Living Wage, by adding a new subsection (f) exempting the Animal Rescue League from the provisions of the Living Wage Ordinance.

**BILL NO. 0287:**

An Ordinance amending Ordinance No. 13 of 2001 enacted June 8, 2001, creating a Living Wage requirement for City employees and employers who receive City contracts or other forms of assistance (the "Living Wage Ordinance").

The Chair:

That is the Mayor's Bill which essentially asks us to delay implementation until the County passes a Living Wage ordinance.

Motion.

Mr. Ferlo:

My motion is for point of procedure.

The Chair:

For discussion.

Mr. Ferlo:

For discussion, Mr. Chairman.

The Chair:

Let me get the bills on the table.

Is there a motion to approve for discussion?

Mr. Ferlo:

So moved.

Mr. Motznik:

Second.

The Chair:

Thank you.

We will first discuss procedure and then we will go to the body of the bills.

Councilman Ferlo.

Mr. Ferlo:

Yes.

My only procedure is that usually when the Chair reads the bills they usually are companion bills. I just want to state my objection to it. On Bill No. 238, I think we should discuss and vote on separate and distinct from the other discussion on the essence of the Living Wage and whether or not it would continue via the Mayor's Bill which is introduced now today and or Mr. O'Connor's Bill.

The other is a budgetary vote by the majority we took relative to the annual operating budget and what pay should be associated with various job positions. It is not an integral part of the Living Wage Ordinance per say and stands alone separate and distinct from whatever actions we take on the Living Wage and I just thought as a courtesy we should try to resolve that right now and then move on the essence of the bill as you eloquently stated.

The Chair:

If that is the preference of the body we can do that.

Does anyone have a preference?

Mr. Ferlo:

Just to move to discuss 238 then I mean --

The Chair:

Aren't they are all three on the table. The floor is open for discussion on Bill No. 0238.

Mr. Ferlo:

Well my specific concern and motion is that we separately discuss and vote on good, bad or indifferently the commitment that we made as part of the annual budget of 2002 regarding the livelihoods of 160 City employees where we unanimously approved a commitment to increase a wage pursuant to the Living Wage and I think we should decide that - resolve that issue right now and then move on to the more important discussion - not more important but equally important discussion on the actual ordinance.

The Chair:

Mr. Ricciardi.

Mr. Ricciardi:

Thank you very much. First of all, obviously along with I believe all of my colleagues and the Administration, I support 238. Let me first say that I was very disappointed that a group of people, nearly 200, were not being paid what was properly budgeted for in the budget. That is there was an amendment made to the budget at the end of the year, supported by all members of City Council, that we decided that "x" number of people should get paid a Living Wage.

It is interesting, yes that it was a Living Wage, but also it was a budgetary matter.

What I am saying is it is not part of legislation the way I saw it. I saw it as a budgetary matter. Matter of fact no different than a number of people both in the Controller's Office throughout the City and I believe possibly even in the Mayor's Office who have received some bumps in salaries. It is my understanding that this is supported by the Mayor.

I think what occurred was that maybe their luke warm support or their concern regarding the Living Wage Ordinance they thought they could tie this part into their Living Wage Bill that they proposed.

So I think it is separate and distinct. I think we should move off of this. It is supported by the Administration. I don't even want the Administration - I mean if someone wants to bring them up that is fine. I don't even want the Administration up at the table for this particular bill. It would just be an insult to us. We budgeted for these. These people should get paid and it should be retroactive. Thank you.

The Chair:

Any other discussion on Bill No. 238.

Roll call vote.

The Clerk:

Ms. Burns:	Aye.
Ms. Carlisle:	Aye.
Mr. Ferlo:	Aye.
Mr. Hertzberg:	Aye.
Mr. Motznik:	Aye.
Mr. O'Connor:	Aye.
Mr. Peduto:	Aye.
Mr. Ricciardi:	Aye.

Mr. Udin, Chair: Aye.

Aye's (nine). No's (none).

Affirmative recommendation.

Mr. Ferlo:

Another point of procedure.

I know you are trying to be patient with me. I think we should just get to the heart of the matter on the Living Wage and not get into providing specific exemptions. As the Chairman rightfully point out, if there is division in the house and the majority has changed it's mind, then lets just get to that and not deal with --

The Chair:

We do that with Bill No. 0287.

Mr. Ferlo:

Exactly. Thank you.

The Chair:

It is on the floor for discussion.

Mr. Ferlo:

Do you want me to open up?

The Chair:

Councilman Ferlo.

Mr. Ferlo:

In interest of the fact that the Chairman has to run a difficult meeting today because we have several major controversial bills today. And I will respect the Chair's wishes; but more importantly I think there has been a lot of public debate and discussion and obviously the Administration, the Mayor's Office in particular, has come out full force in opposition now to full implementation as would be the case effective April 1st of the Living Wage Ordinance. I am not trivializing their opposition. They have legitimate concerns that they feel strongly about in terms of the bill's impact either non-profits groups that are funded directly by the City or others that may benefit from procurement and services of the City.

However legitimate the Administration feels and how eloquently they can be at the table, which I am sure they will arise to the occasion shortly and I do see a lot of familiar faces out in the

audience from the non-profit world being whipped up into concern. The concerns are legitimate. I will be the first to concede that this has a burden and a financial impact on some of our favorite non-profit organizations in the City funded by the City Council as well as others in the private sector community that would take on a specific burden, and it is a burden, whenever you are talking about paying employees more money or supplanting their livelihoods with additional resources there are financial impacts.

I had thought that not only based on the study that we did with the Keystone Research Group as well as the preponderance of information that was presented at one or more public hearings in the past, notwithstanding the opposition all be it quiet or invisible opposition from groups like the Chamber and or the lack of presence of various non-profits during this whole six month let alone a year of public debate, maybe they were asleep, maybe they don't understand what we were talking about, whatever the reason is there was not a presence and part of our discussion did not entertain maybe to the full extent criticisms that some of these non-profit groups had. I am not criticizing them. I would wish that they pay attention that City Council is an important part of the body of government locally, not just his Honor the Mayor or the County or the City Controller that when we act we can impact and we have effect, good or bad. So in the future I would ask that groups be cognizant of the many articles and editorials and presence of issues that are at this table for public debate. We had countless public hearings. There was a lot of debate, discourse and discussion and information presented. Full steam ahead and I will fast forward and I will try to be brief.

I think this Council needs to stand behind the elements of Living Wage. I continue to be concerned about those who preach family values but give little value to families. There is a financial impact. We are not rug cutting and pace setting here. There are hundreds of other communities across the Country that as a matter of public policy based on the appropriation, the expenditure of public dollars, have decided as a matter of public policy that we want to raise the livelihood and the well being of working families in the City of Pittsburgh and beyond who benefit from the expenditure of public dollars. We do that in many ways.

What the Living Wage Ordinance actually does is create a little bit more of a level playing field. We think nothing of antying up millions of dollars for a corporate development. I could - time does not permit me to talk about how much tax increment financing and development through the Pittsburgh Development Fund and the URA add in all the different groups that we have funded.

We think nothing of bending over backwards to help the business community and in my 14 years on this City Council, together with everybody around the table, we have consistently supported a growth agenda in this City. We have consistently said we are going to take precious City revenues and tax dollars because we want to anti up and drive an economic engine in the City, whether it be for the economic survival, the major corporations, office construction, stadia construction, Plan B commitments, educational, medical institutions that we have antied (?) up with. You name it we have been nothing but supporters of a development agenda.

With that has come the allocation of dollars. We didn't say we are going to cut taxes to our City residents. We didn't say we are going to start cleaning the catch basins around this City or employ some more people to deal with the livability of our City. We said that we are at a point where we need economic survival. We need to anti up and be a player in the

development and we had a Mayor that was an activist in terms of that respect. God bless him. But somewhere in that whole sphere of a level playing field should be our compassion and concern for what the quality of life is for the working residents that we represent. The body and spirit of the Living Wage Ordinance expresses that commitment and I think it does it in a very reasonable and prudent way. It doesn't dictate that all business effect in the City of Pittsburgh, all non-profits have to do anything. It just says to the extent that you cross the line and enter into contract and engage with City government we want a quit quo pro. We think nothing of a quit quo pro when it is veiling out McClatchey for a stadia park or the Rooneys for a new football field or the Penguin request that is up and coming. We think nothing when the seventh wealthiest bank in this County, Pittsburgh National, asks us to anti up and help build a financial services building downtown. The list is endless. I will stop there.

My only point is I think this Council should not only morally but as a matter of prudent public policy stand committed and behind the commitments expressed in the Living Wage Ordinance. There were discussions yesterday with some of my colleagues about the idea of phasing it in, that is certainly open for discussion. I will just close with this point. I am a little bit upset at the Administration just in terms of process. I am not upset at the Mayor and the Administration for being against the bill for the reasons stated. That is their right. They have the responsibility to get out there and articulate why they criticized this bill as a policy. I think they rightfully and legitimately have criticized the bill just in terms of the lack of County government also expressing itself with public policy. If you remember when I pushed this I did state very clearly, and I will admit on the record once again, that we were rushing to prove something because we thought an emanate was forthcoming by the County government. That didn't happen for lots of different reasons and I will be the first to say that that did not happen and maybe it is legitimate to revisit this issue.

But I would just ask that we once again visit the elements of the policy in the ordinance. I know obviously there are some colleagues who legitimately have disagreed but not with the bill and that is disappointing to me; but I think the process is a little bit upsetting because my last conversation with the Administration through Mr. Ricciardi indirectly since Council President O'Connor left that seat was that they were providing some verbiage to redraft the ordinance based on either a compromise or some new look at the implementation of the bill. That never came back to us.

That was the basis in which I was hoping to put together a meeting of proponents and opponents to revisit this whole issue. It is getting late. April 1 is upon us and at this point they have chosen to just basically kill the bill which obviously I disagree with and I am disappointed in. I don't think the action whether it be majority support for the Administration's bill today is the final chapter on this bill because I would once again want to come back and revisit this issue all or in part of the ordinance that is present.

The Chair:

Thank you.

Other discussion?

Councilman Motznik.

Mr. Motznik:

I would like to state on Bill No. 287, the Mayor's Bill, I am in full support of holding off the Living Wage until the County enacts a Living Wage. I have a fear that making a Living Wage in the City only would make us an island and chase people away from the City. I supported the Living Wage when it came in front of us and when we sent it over to the County hoping that they would see and follow our leadership and that didn't happen. It was a tragedy when it didn't happen, but it didn't happen. I believe passing the Living Wage now the way it is without the County being on board actually causes more harm than good to the City. It is unfortunate and hopefully the County some day will regroup and pass the Living Wage where we can do the same.

At the time when we had the discussions here at the table I am sure most of my colleagues were lobbied by many different groups - union representatives, people that wanted to go for the Living Wage wanted us to support the Living Wage and those people that lobbied me, union representatives that saw that the County did not support and pass a Living Wage then realized the same thing that the Mayor now realizes that if the County doesn't go along with the Living Wage it is probably not a good idea for the City until it is a regional thing.

I have received phone calls from the same people that lobbied us to pass a Living Wage first hoping that the County would, now those same people are calling me asking me to support the Mayor's Bill because they realize that we can't do it alone. I am not supporting the Mayor's Bill because the Mayor is twisting my arm or I answer to the unions or people who were lobbying me. I sit down and listen to all sides and I realize that the right thing to do here is to wait until the County enacts a Living Wage so that we don't create more harm to the City than good. Thank you.

The Chair:

Other discussion?

Ms. Burns.

Ms. Burns:

Sure, this is the difficulty I have and why I am going to support and vote for the Mayor's Bill. One is I think it is a significant problem that the County did not do this. In fact that was one of the reasons that a bill of this complexity was passed by this body because we were encouraged to do so because we wanted to be timely for the discussion at the County level. We do business as three taxing body, it involves the school district as well and it will trickle on down to the summer lunch program and the City employees who make those lunches for kids. This is not about the big time players and deals alone in this City.

I did an amendment and if I am discouraged about anything it is the lack of discussion and thoroughness because had the County approved this, I still would have had concerns about the bill that we approved. There are many issues that were raised and unanswered about how it affects neighborhood-based development. You can exempt retail but that is not exactly all that happens in our neighborhood.

The effect on minority and women owned businesses, there were many issues raised, we

were supposed to form a committee, we needed to talk about those things, we needed to either raise thresholds, exempt people, do something but this is not simplistic and I think that if people understood fully what the level of involvement of a policy approved in such a rush fashion creates at a neighborhood level, they might have second considerations and they certainly would want some ability.

We can't go through just exempt thing Animal Rescue League and maybe the library and then some other review board saying well here are these special considerations. We ought not to put in place such a complicated piece of legislation without full knowledge of how it does trickle down to where we consider blight and distressed communities in our neighborhood and my experience has been and there is no threshold in this bill for neighborhood based development.

Now if it - Jimmy don't shake your head - there is no threshold.

The Chair:

If you could just speak your peace.

Ms. Burns:

So if there is a threshold I would be happy to have someone point it out to me. It basically says if you are doing business with the City which could include the fact that you would have a piece of property in the land reserve which is abandoned real estate foreclosed on by the City or it could be simply someone applying for a LERDA application. This is so much more complex than we would like to think and it is too easy to say that it is just about the big projects, it is just about the big corporate people in our City. In order to really do this, this will go in many different ways that I don't think we have even thought of and anticipated. If you exempt retail and you have an abandoned building or a large industrial building next to - in a neighborhood and you expect someone to do that building for spec and then think they are going to put a for lease sign up and expect to have a discussion about the wages paid by perspective tenants when you can't hardly get anyone to come to your neighborhood in the first place, those people won't do those buildings and that is my concern.

So although I value very much paying people a decent wage and I am happy to say that we are going to lead by example by paying our employees a living wage, I think that we have not thought through this complicated piece of legislation. All of the information that I received from the URA and from others tell me that there are some problems, what is the conceptual format of this bill and the proponents for the Living Wage has simply said this is a good thing to do and I don't disagree with that. I just think the Devil is always in the detail and I am not satisfied from my years of experience in doing neighborhood based development. I spend time scrapping for money for my district to fill gaps about everything that people aspire to improve in their neighborhoods and I am not going to have something without full knowledge and disclosure to them and to all of us as to how this trickles down to those projects. I don't think construction is much of an issue because if I could find a tradesman who would work for \$9.00 I could find a lot of work for them; but it is really in those subsequent tenants, it is in other kinds of subsidies that I am not clear about how this really affects a body of work that I equally

value and so without that discussion, without that debate, without real answers of that level of impact, I am not comfortable with or without the County. I think the County just makes us one more of an island and if assessment has taught us anything besides the mess and the pain that it has caused individuals is that now we hear the rhetoric I am not going to be in Allegheny County. Before we used to hear just well we are not going to be in the City of Pittsburgh because you impose all of these regulations and all of these things and that is none of your business and you know be happy I am here doing business type of things. Now we get it that they are going to come right outside the County borders.

And so these kinds of issues are regional, they are national, and I think as democrats most of would like to see the Living Minimum Wage raised. We would like to see a stronger economy because that forces all private people to pay more money to keep those valued employees. If anybody thinks that training an employee is inexpensive and that you don't want to retain them they have not been in business because you have a lot at stake when you have those people there. So the market place in many cases drives this and I think that we would be open to, at least I would be open to, larger scale developments in this City and understanding more fully what he return for those kind of large public investments are. Giving somebody a piece of delinquent real estate as part of a package for a neighborhood based project to trigger something that no one expected or anticipated is really not where I am coming from and I don't think that we have had the answers to my personal satisfaction and people rely on those of us who do this to make sure we didn't do something that comes back in the end and produces something that I would have a hard time explaining.

The Chair:

Thank you.

Other discussion?

Let me express my views if there is no other discussion.

First of all I think we are in this terrible predicament to a large degree because the County has abdicated their responsibility to step forward for working families and poor families in this community. To say that we are going to not implement the Living Wage until the County is another way of saying we are not going to implement it until Hell freezes over. It is unfortunate also that the task force that we created I thought in January to discuss implementation issues never met and never dealt with the issues that at the time were presented as the issues as to why there was objection to the Living Wage Ordinance but it really wasn't implementation issues, it was issues of principle obviously.

The whole Country is emerging from a recession at least according to Mr. Greenspan but working families and poor families have been a depression throughout this recession and they are doing badly. They are missing meals, they are missing rent, they are missing medicine, they are missing sending their kids to school properly clothed and I don't hear from the opponents of the Living Wage Bill. Any proposals to address the issues of raising the standards of the Living Wage and the standards of living are working families. I don't hear it. All I hear is objections to the Living Wage itself, the Living Wage Ordinance.

People have threatened to cut back services. If proving services comes at the cost of healthy

families, then cut back services. If not attracting new businesses comes at the cost of having reasonably paid families, then let those businesses go to Cleveland with their sub par wages. I don't believe that is a healthy economic policy to attract businesses that are not paying adequate wages. People really don't - if people are well paid then we can afford to cut back services. We don't need more services when families are taken care of. We need fewer services so they should be cutting back services.

I am in support - if the Mayor's Bill was not to pass, I certainly have amendments that I would be prepared to present; but if the Mayor's Bill does pass then I will not be presenting those amendments. I intend to be voting against the Bill to hold off the Living Wage and its support of the Living Wage Bill.

Mr. Hertzberg.

Mr. Hertzberg:

I feel the same way. I am not going to be voting for the wait forever legislation that is in front of us now which is what it is. We don't know when, if or ever the County will do this and I think somebody at some point in time has to step forward and be the leader and if the County won't do it, we will do it. Somebody has to take the leadership on this issue and certainly there is going to be an impact. I don't feel there will be an impact on any small operations.

They are excluded and I think we went through last year the piece of legislation, dissected it, went through it with all of the different impacts, made appropriate amendments so that the impacts of it might not be felt by the small operations or others; but there will be impacts and to those that feel that the impact is too severe maybe you shouldn't do business with the City of Pittsburgh because that is the only way you get tied into this legislation if you are out there as a private entity and your customers are all private customers that don't include the City of Pittsburgh, this bill will not impact you at all. It is only those who choose to do business with the City of Pittsburgh and it is their choice to do business with the City of Pittsburgh and then they would be impacted if they meet the other requirements; but it is their choice to do that business with the City of Pittsburgh.

Again, I also I know there has been discussion about possible phase ins on this and other amendments to do it and I would supportive of looking at those provided we get this provision defeated.

The Chair:

Thank you.

Mr. Peduto and then Mr. O'Connor.

Mr. Peduto:

Mr. Chair, Living Wage itself is a term. The actual issues that are before us is how we decided to phrase this term. Many cities that we count as the cities which have a Living Wage have what we just approved with our last vote. They have a wage that is set for the City employees and those cities consider themselves having a Living Wage. We have prevailing wage which covers our construction

contracts and allows for a certain wage to have to be paid for construction contracts as well. In many ways we have what other cities consider when they say they are a Living Wage city. The code or the terms that we have placed upon our conditions of creating a Living Wage in this City I cannot support and I can't support it for a few reasons.

One of the most important to me though is the sense of our fractured status of government in this County. We have 130 municipalities in this County but yet only one is being asked to create a Living Wage. Why isn't anyone going to Mt. Lebanon? Why isn't anyone going to Sewickley? Why are they going to one of the poorest communities in this County and asking the taxpayers of that community to carry the ball for this entire County?

We built the center, PNC Center. It is employing over 1,500 people many of whom are young college graduates who have apartments in Mt. Lebanon. Why do the poor people of Pittsburgh have to pay them a minimum wage? I am confused about this. The financial impact of this, I haven't seen anything that says how much this will end up costing the City of Pittsburgh. I can't support something when I don't know what the final cost is going to be. The office space condition that once something is built out that we have to then have a Living Wage placed on every person who works within that office.

I have a corridor that we share and we share and it is the Center Baum corridor. It is the back door to everywhere in the East End. It has the potential to become the front door, to become a great urban center. There are big old offices there. They are going to need help to convert them, to do an adaptive reuse, to be able to convert them and maybe to create the bio-engineering that the universities are talking about. Placing a condition then on the people that will be working in those buildings that they have to be paid a certain wage or else it doesn't happen is going to make it very difficult for me to make that sell and very easy for places like McCandless to take those jobs away. So for all of these reasons and the one thing that you have done is you have compelled this Council to come up with ways to help the poor people in the City.

I have a proposal and I will look at the financial impacts and I would appreciate your working with me on this as Finance Chair and that is what other progressive cities in this Country have done. What they have done is they have created a local earned income tax credit so that a certain percentage of \$10,000 is deducted directly off of your taxes. So if you earned \$15,000 in the City, you only pay taxes on \$5,000; but if you earned \$2,000,000 it is barely negligible. This proposal has been done in Montgomery County and other areas. Again I would want to see an impact statement of how high of a level we can do it and we will take on the burden for doing so. The other thing that it does is that until we have a regional revenue source in this region, it provides it directly to working Pittsburghers and not to people living all throughout the entire Western Pennsylvania region.

So if you want to be progressive about a way to help Pittsburgh's working poor, look towards a local earned income tax credit instead of taking an issue which is a philosophically great issue and putting it on the backs of one of the poorest communities in this County. Thank you.

The Chair:

Thank you.

I will look forward to working with you on that.

Councilman O'Connor.

Mr. O'Connor:

I think this is one of the worst bills the way it has been handled the last year since my ten years in Council. From the start last May Jim Roddey, Tom Murphy were all carrying the banner for this thing and everybody was all for it. As we saw it, it crumbled with the County. For whatever reason it came down to one vote. Second part even though I was one of the officials, I was all for it a year ago, since then there are a lot of issues that I am concerned about and I can't support either one right now and I am trying to tell you why.

The main reason and it is one of the protests, we agreed that there were a lot of issues, the Living Wage people agreed to sit down with one representative from the Mayor's Office and one from Living Wage and work out what can and can't work here. I know that they wanted to, the Chamber wanted, the Mayor's Office, whoever was over there, wouldn't even sit and talk about it so right away they are just - I guess they are against any compromise, but some of the Living Wage people - in fact one of the spokesman here had in one of the papers I wouldn't - if they were for it I would be against it no matter what it is - I question some of their credibility. I am questioning the credibility whether this was an honest intent that we all thought that when you are going to take the big government money that you are going to create good jobs. Not like a Lazarus where we put all of this millions in it and they only create minimum wage jobs. That was my intention so I thought we would overcome that. I have talked to the banks, the major banks in the City, they are saying they are not exactly against it but they don't believe they can even bid on our contracts the way it is set. They don't know if they can monitor it. I know these are details nobody wants to hear about so I can't support anything that is going to send our banking deposits to Cleveland, our healthcare that hasn't even come up whether our healthcare - our six providers that are there now whether they can bid or not bid. I think that has to be excluded for now or worked out. That is what we had three months to do and no one did it and again the non-profits. That was never the intention. I don't think any of intention was to hurt our non-profits so I see this as a disaster and all we have to do is - one thing we could either post pone it and try to make it right with or without the County. You can't be an island by yourself. There are some things we can do without the County, some we can't. What happens if we do a TIF and the school board approves it, the County doesn't or does and we approve it, now who is going to be - is this going to apply to them if the City and the County aren't involved with the - I mean the school board and the County if they are giving money and we are do they have to follow those guidelines or not - is it going to kill all of the TIFs because don't forget 50% of the TIF money comes from the school board. So these are questions that I am not going to put a charade on and vote either way. Until something more credible comes in front of me, I just think you have to delay it another three or six months and make it work or I am abstaining.

Mr. Ferlo:

No you are not going to abstain.

Mr. O'Connor:

I am going to abstain.

The Chair:

Thank you.

Mr. O'Connor:

Or give me a better bill.

The Chair:

Closing comment and then we will call the roll.

Mr. Ferlo:

Yes, I am a little bit disappointed at the twilight of this vote which appears maybe the majority will vote to rescind that some either legitimately or unfortunately are engaging in what I would characterize is disinformation about the elements of the bill and what actually the bill purports to do legally. We and - I will give some of my colleagues the benefit of the doubt on that; but again I don't understand why any colleague views this bill as being so complex and so difficult but the same element of complexity is never given to the millions of dollars that we have appropriated of poor people funds in the City to the creation of employment centers, job creation and development on the theory that it will trickle down and help City residents which to be honest with you it hasn't. Eighty percent plus of the employment created at much of our employment downtown in the tax increment financing are folks who do not live in the City of Pittsburgh but yet the working class and poor that you talk about that are paying the freight have created and sustained that development and growth. So that is the equation that I would ask that we at least look at and further evaluate as we go forward with our economic development program.

I think the vote that we are about to take and the majority it seems represents to me a very misguided economic and public policy debacle. I think it is a shame that we will not stand up and this is not a bill about poor people. This is a bill about the quality and wages and benefits of the working folks out in these communities that we were elected to represent. We are talking about families that work at the Carnegie and if the Carnegie is here I think they should be ashamed to be here with sitting on their endowment for art work and at the same time doesn't want to pay a working family member at the Carnegie a decent living wage.

I think it is a shame and a tragedy that an institution whether it be the Carnegie or others that might be in the audience that want people to go to work everyday and basically be eligible for food stamps and medical assistance. To me that is a tragedy. And I would hope that whether it be the Carnegie or others that are in this audience and I am all for animals. I treat animals with love and respect and dignity and I hope everybody does, but I would also like the same element of love and respect and dignity to be ascribed to the working families that we represent and I think it is unfortunate that they are being used now and pitted against the elements of Living Wage which I think is a terrible tragedy because no one treats animals better than the working folks that are out in the audience that are listening to this debate today.

So again in closing, I want to revisit the issue notwithstanding whatever happens on this vote

and it is not going to go away. I want to reintroduce any type of compromise legislation so regardless of the vote today we will live to fight another day and we are not going to go away and I resent any abstention here today even if it is my good colleague here Mr. O'Connor. I think that is unfortunate. We should stand up and be counted. If you don't like the bill then vote no and just be against it and I can respect that, not any abstention and I will continue to work with my colleagues including our Council President Mr. Ricciardi who I thought had some creative ideas on how to implement this policy so we can take a stand and move forward.

The Chair:

I think that reasonable people can disagree and I don't think that is a litmus test on anybody's morality. It is a very difficult vote for us all and I think we should just proceed with the vote. Everybody should vote the way they choose to vote. If people want to abstain they should abstain. That is their right.

Will the Clerk please call the roll.

Mr. O'Connor:

Could I - either I will abstain or I will start questioning everybody in the audience to see how it is going to work. I can start with the Carnegie and ask them to come up and see why you are not against it. I can bring the Living Wage people up. We can start this what should have been done in the last three months. We can start amending. I would like the banking community to come up and tell me why they can't handle this. Whether I believe most of their employees are making it. So if you ready to do that or lets amend it or lets hold it and do it right and that is something that we can live with.

The Chair:

Thank you.

We are voting on 287, which is the Mayor's Bill to hold the implementation until the County passes a Living Wage Bill.

Will the Clerk please call the roll.

The Clerk:

Ms. Burns: Aye.

Ms. Carlisle: Aye.

Mr. Ferlo: No.

Mr. Hertzberg: No.

Mr. Motznik: Aye.

Mr. O'Connor: No.

Mr. Peduto: Aye.

Mr. Ricciardi: Aye.

Mr. Udin, Chair: No.

Aye's (five). No's (four).

Affirmative recommendation.

The Chair:

We go to Bill No. 273. The -

Bill has been read. It is sponsored by Council O'Connor regarding the Animal Rescue League.

Is there a motion?

Mr. O'Connor:

Motion to table.

The Chair:

Second?

Mr. Ferlo:

Second.

The Chair:

All in favor?

Aye.

Opposed?

Motion is tabled.

**BILL NO. 0266:**

Resolution providing for the issuance of a warrant in the sum of \$12,500.00 to Lynn Bottles and Gerry Bottles c/o Craig L. Fishman, Esquire, Tarasi Law Firm, P.C., 512 Third Avenue, Pittsburgh, PA 15219, in full and final settlement of an action filed at GD 97-8536 and arising out of a fall from a

swing in the Winter's playground area of the City of Pittsburgh on or about June 7, 1995.

Mr. Ferlo:

So moved, Mr. Chairman.

The Chair:

Is there a second?

Mr. Motznik:

Second.

The Chair:

I would like to call the Public Works to the table please.

Can I request that all of the caucuses go out into the hallway. We still have a Council meeting going on.

We will just take 10 seconds while we clear the Council Chambers.

Thank you.

This Bill colleagues we discussed to some degree in Executive Session this morning arises from a fall of an 11 girl who sustained considerable injury and it appears that the fall occurred as a result of the City's not having the swing set adequately secured. What I think that we ought to pay the judgment; but I would not want to pay the judgment without correcting the kind of conditions that allow this fall to occur and what I am concerned about is the safety check procedure and documentation that we have that assures that playgrounds are regularly checked and that we can track the checking of the safety of the playgrounds, who checked it, when they checked it and keep those records on file.

Could you please tell us what the current policy is relative to the safety checks of playground equipment?

Mr. Gable:

Well there really isn't a policy.

If I could go back prior to the playground renovation program. We did use forms. On a monthly basis our foreman inspected each and every site for a number of potential hazards and identified that they checked those. If there repairs necessary they made a notation of that, how they rectified it and the date that they did it and they signed off on all of that. That was done on a monthly basis.

Again, as the playground renovation program was going on, we have stopped those forms. That doesn't mean we have stopped our inspection or oversight on these, but we don't have any real

formal documentation of that other than our foreman system and to extract that information right now from that system is kind of complicated and really wouldn't give us the information we need to see. So we are going to reinstitute those forms that we used prior to the playground program and have our foreman go back to inspecting them once a month and signing off on those, doing the same things they did back then.

The Chair:

What training do foreman have that qualifies them to do safety checks of playground equipment.

Mr. Gable:

Well actually they don't. What we are going to do in May, May 15 - 17, I was able to talk to the NRPA to have the playground, National Playground Safety Inspection Course, brought here to Pittsburgh and all of our foreman, myself and two administrators in Public Works will be going through that course so that we can become certified inspectors.

The Chair:

This May?

Mr. Gable:

That is correct, this May.

The Chair:

Councilman Ferlo.

Mr. Ferlo:

Yes.

Personally my comments are not directed at Mr. Gable here who I know is not only hard working but a great manager and really does a job above and beyond the call of duty. But I think many people are frustrated about our playground situation even those that are the beneficiaries of new playgrounds that we have built in tune of excess of \$4,000,000. There are radical signs of disrepair and broken equipment unfortunately even in some of our newest playgrounds.

One of the things I tried to do is start a park ranger program to recruit parents and others to adopt various playgrounds throughout my council district about 60 people signed up. I would ask that we please consider, but since it was a Jim Ferlo idea the Mayor and the Administration didn't like it, but I would suggest that we strongly go back and look at the model because we have individuals who are at these parks on a daily basis, including parents and we should get them involved in some kind of early warning reporting system and however we need to do that with signage or appropriating some resources of whatever, but we have playgrounds - we don't hold people accountable. I have stopped at parks to basically engage

parents who are sitting there like bumps on a log watching kids twist around the playground swing 50 times or ride bikes. I stop parents and kids who are pulling up the \$100,000 aggregate material that we have known as this playground safety bounce stuff - whatever it is called. I mean we have to get out there again and start demanding some accountability from the users of these playgrounds. I had a COP officer in Lawrenceville at a church meeting regarding playgrounds. I am trying to build a new playground for Duncan Field.

Now what happens, half of them comes out and they are finally excited the City is doing something, that is about the last park I have to do in my Council District. The other half are coming out and saying don't even waste your money, don't spent it, it is going to get wrecked and I have a COP officer there who says well I don't want to issue a citation because the parent was going to get made at me and I looked at that officer like hey buddy I don't have a gun and I don't have a badge and you are telling me that you are afraid to give somebody a citation.

Well, give me your damn citation book and I will write the citations. I mean I was in - the whole room was balled over in -- but the point is we have folks - the COP officers should be at or near these playgrounds. They should witness the destruction of our playgrounds. They should hold parents accountable. We should take back control of our playgrounds because I will be honest with you and I don't think it is just my district, you know there is a heavy wear and tear and destruction on some of these playgrounds. It is not clear to me that we even have enough money budgeted in Public Works to buy the updated materials for a lot of these new playgrounds that we have built and maybe you want to address that.

Mr. Gable:

I would like to speak to that.

Mr. Ferlo:

We have had broken benches and swings at Lesley now for at least two years. Again, I am not criticizing Mike; but it is not clear to me that we have even budgeted the maintenance that we need to do in terms of replacing the bad elements of the playground destruction.

Mr. Gable:

Well one of the things and last year and early this year we had each foreman go around with each of the playground representatives to the playgrounds to find out the deficiencies, the problems that you had identified and I have accepted a number of estimates about - probably about 50 playgrounds right now for parts. It could be just a simple swings and chain to the sods that are burnt, but we are addressing those.

Mr. Ferlo:

Just so you are clear in what you are saying, you are saying that right now you have identified 50 playgrounds that have some - I would say that anything that is broken is serious. If there is a clamp on a swing or a twisted swing or the tire is about to break, I mean that is a serious thing that will lead to us engaging a risk management to have to pay this poor family.

Mr. Gable:

Right.

Mr. Ferlo:

And let's be clear, there are a lot of family members - I know people in Highland Park that have had children that have been hurt at play areas and they have not sued. There are a lot of folks out there that just take their pain and go home. They don't engage an attorney. So there are a lot more activity out there where kids are being hurt that are fortunately or unfortunately where we don't have to be sued. But I just think we need a better program and more early warning engagement when it comes to the playground safety. I think that everybody that is on the list they should be trained. If they are going to the place to clean it, they should have a notation mark immediately telling somebody, including yourself, what if the swing is broken or the bench is torn up or the tarp is torn up.

Mr. Gable:

Well actually what we want our employees is to be proactive. Part of my program -

Mr. Ferlo:

I am saying proactive.

Mr. Gable:

I have a playground program that speaks to the employees when they go to the playground to have equipment with them so if that swing needs chained or changed or the chain is bad or S hooks to change it, not to come back to the foreman and tell him there is a problem. I want them to be proactive and fix it at the stop.

Mr. Ferlo:

Right, thank you.

Mr. Gable:

But you know the problems that we are encountering I don't think are the swings or anything like that. You know it is the kids burning holes in the slides and the tunnels, things of that nature. Those are the kinds of things that -

The Chair:

But they are things that we can do.

Mr. Ferlo:

This is where the COP officer should be out - the COP officer - do you know what the best thing the COPs can do is get the heck out of their uniforms. Put them in plain clothes, put them in the drinking areas of Lawrenceville where I am having headaches, put them in Highland Park where kids are destroying play equipment, put them in plain clothes and arrest parents, cite them. Tell these knuckle head parents who are sitting in these little playground parks don't let your kid destroy the darn park, it costs us \$160,000. I am sorry about stroking out about this, but I am really - I go by these parks, they are littered, parents are sitting there like a bunch of knuckle heads, they don't engage their kids in any responsibility and the adjoining property owners are on my tail because they want some of these playgrounds to be gone. I feel bad that we have spent all of this time and money to try to create something beautiful, to create an amenity for the residential neighborhood only to have it seen torn about and I think it is a shame.

The Chair:

Mr. Peduto - I wanted to ask Mr. Motznik if you could work with Mr. Gable and the department to come up with a policy, a written policy, of periodic safety checks and documentation of those safety checks along with the provisions that Mr. Ferlo was talking about in terms of prevention as well as other measures that Mr. Gable has discussed.

Mr. Motznik:

I agree with that and I will work with Mike and I was a foreman at Parks six or seven years ago where we, as foreman, I think I had 20 tot lots that were under me and once a month we went out there with a checklist, a safety checklist, to make sure that the park was safe, the tot lot was safe and we had tools with us. If there was a screw loose or a chain loose we would fix it then or if it was still unsafe we would remove it. Part of the problem and I am not picking on Mr. Gable or Public Works, sometimes the problem is right here at the table because we don't fund Public Works adequately enough to make sure that there is enough people in place to take care of all of this work that we keep throwing on that department. So I will be happy to work with Mike. Mike has been around a long time and knows what needs to be done and I look forward to that Mike.

The Chair:

Thank you.

Mr. Gable:

Thank you.

The Chair:

All in favor?

Aye.

Opposed?

Bill passes.

Thank you Mike.

Mr. Ferlo:

Could I make one suggestion?

The Chair:

Yes Mr. Ferlo.

Mr. Ferlo:

Could we put some signage - I know signage we are all sick of signage, but if we could have some phone number, what the key contact phone number is at each playground as to what parents or individuals from the community need to call in order to report playground damage.

The Chair:

Good idea.

Mr. Ferlo:

If we could just put some key number. I don't know if it is your number 2488, but whatever key number.

Mr. Gable:

I get enough calls already. Certainly we can put that on the sign. There are playground rule signs and we can certainly add that number to the bottom of that sign.

Mr. Ferlo:

Thank you, Mike.

The Chair:

Thank you.

Mr. Ferlo:

Keep up the good work.

The Chair:

Bills No. 267, 268, 269, 275 and 276 are all neighborhood needs bills. I will read them

together and we will vote on them all at once.

**BILL NO. 0267:**

Resolution further amending and supplementing Resolution No. 229 effective April 19, 2000, entitled "Providing for an Agreement or Agreements, or use of existing Agreements and/or a Contract or Contracts, or use of existing Contracts, and for the purchase of materials, supplies, equipment, and/or services for various projects in connection with the Neighborhood Needs Program in Council District 5; and providing for the payment of the costs thereof," by reducing the encumbrance of "Enhancements of Pedestrian Crossings" by \$980.00. Total cost is not to exceed \$773,168.

**BILL NO. 0268:**

Resolution further amending and supplementing Resolution No. 180, effective April 5, 2000, entitled "Providing for an Agreement or Agreements, or use of existing Agreements and/or a Contract or Contracts, or use of existing Contracts, and for the purchase of materials, supplies, equipment, and/or services for various projects in connection with the Neighborhood Needs Program in Council District 3; and providing for the payment of the costs thereof," by deleting the line item "Infrastructure Painting" \$25,000 and reducing the line item "Projects-Allentown/Beltzhoover/ Knoxville" by \$28,250, and by adding \$18,000 to "Amanda Street Steps", and adding \$10,000 to "Refurish Quarry Field-Reseed for Football and Soccer only" and by creating new line items "Allentown Business Association- Grandview Park Cameras" \$5,000, "McKinley Park Little League Field Improvements" \$5,000 and "Curb and Sidewalk Repairs-Oakland" \$5,250. Total cost of all projects is not to exceed \$960,000.

**BILL NO. 0269:**

Resolution further amending Resolution No. 231, effective April 19, 2000, entitled "Providing for an Agreement or Agreements, or use of existing Agreements and/or a Contract or Contracts, or use of existing Contracts, and for the purchase of materials, supplies, equipment, and/or services for various projects in connection with the Neighborhood Needs Program in Council District 8; and providing for the payment of the costs thereof," by deleting the line item "Liberty Avenue Corridor Electronic Sign" \$25,000 and adding a new line item "Liberty Avenue Corridor Decorative Lights" \$25,000. Total cost not to exceed \$907,429.

**BILL NO. 0275:**

Resolution amending and supplementing Resolution No. 861, effective January 1, 2000, as amended, entitled: "Adopting and approving the 2000 Capital Budget and the 2000 Community Development Block Grant Program; and approving the 2000 through 2005 Capital Improvement Program, by adjusting various line items in conformance with City Council's 2000 Capital Budget amendments." By creating a new line item, Liberty Avenue Corridor Decorative Lights, \$25,000.00. Council District 8.

**BILL NO. 0276:**

Resolution amending and supplementing Resolution No. 861, effective January 1, 2000, as amended, entitled: "Adopting and approving the 2000 Capital Budget and the 2000 Community Development Block Grant Program; and approving the 2000 through 2005 Capital Improvement

Program, by adjusting various line items in conformance with City Council's 2000 Capital Budget amendments." By making various changes.

The Chair:

Is there a motion on all bills?

Mr. Peduto:

So moved.

Ms. Carlisle:

Second.

The Chair:

Any discussion?

All in favor?

Aye.

Opposed?

All of the neighborhood needs bills pass.

Thank you.

We go to Bills No. 270 and 271 companion bills.

**BILL NO. 0270:**

Resolution authorizing and directing the Mayor to issue and the City Controller to countersign a warrant in the amount of Eight Thousand, One Hundred and Eighty-four Dollars and Eighty-five Cents (\$8,184.85) to the Commonwealth of Pennsylvania representing the initial payment required for unclaimed funds for the year 1994 pursuant to the provisions of Deposition of Abandoned and Unclaimed Property Act, Act of August 9, 1971 P.L. 74.

**BILL NO. 0271:**

Resolution authorizing and directing the Mayor to issue and the City Controller to countersign a warrant in the amount of Twenty-four Thousand, Six Hundred and One Dollar and Seventy-seven Cents (\$24,601.77) to the Commonwealth of Pennsylvania representing the final payment required for unclaimed funds for the year 1993 pursuant to the provisions of Deposition of Abandoned and Unclaimed Property Act, Act of August 9, 1971 P.L. 74.

The Chair:

Is there a motion?

Mr. O'Connor:

Motion to approve.

The Chair:

Second?

Mr. Motznik:

Second.

The Chair:

Any discussion?

All in favor?

Aye.

Opposed?

Bills pass.

We go the invoices, is there a motion on the invoices?

Mr. Ricciardi:

So moved.

The Chair:

Second?

Any discussion?

All in favor?

Aye.

Opposed?

The invoices pass.

**THE FOLLOWING INVOICES WERE APPROVED BY THE FINANCE COMMITTEE MARCH 20, 2002:**

**CITY CLERK/CITY COUNCIL**

Ayoob, Thomas H. III, Esquire-professional services (Burns, Dist. 1)	90.00
Brighton Heights Citizen Federation-professional services (Burns, Dist. 1)	125.00
Ferlo, Jim-out of pocket reimbursement (Ferlo, Dist. 7)	324.79
Sukernek, Connie-professional services (O'Connor, Dist. 5)	1,000.00
J M H Engraving-name plates	28.43
Fred P. Kenderson Photography-professional photography services	234.00
Carrick Athletic Association-professional services (Motznik, Dist. 4)	75.00
O'Malley, Peter-professional services (Peduto, Dist. 8)	200.50
Big Day Entertainment-professional photography services	135.00
Akyea, Bridget-professional transcription services (City Clerk)	195.20
Janusz, Gerald-professional services (Ferlo Dist 7)	1,000.00
Janusz, Gerald-professional services (Ferlo Dist 7)	1,000.00
Janusz, Gerald-professional services (Ferlo Dist 7)	1,000.00
Lawrenceville Citizen's Council-community project (Ferlo Dist7)	500.00

**CPRB**

Akyea, Bridget-stenotype reporter services	445.00
Cole Information Services-A Division of Experian-directory	408.95
Dr. Louis Mayo-reimbursement as guest speaker at CPRB meeting	756.00
Dr. Sam Walker-reimbursement as guest speaker at CPRB meeting	708.38

**CITY PLANNING**

Golomb, Susan-reimbursement	53.83
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**CONTROLLER'S OFFICE**

CTR Systems-time clock repair	111.12
Tyler Mountain Spring Water-six months rental	129.00

**ENGINEERING & CONSTRUCTION**

Siess, William-reimbursement for digital camera bag	19.99
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**GENERAL SERVICES**

MCI-PA Emissions Program-emissions transmission service	148.00
Scott Electric-glass globe for light fixture	5.00

**LAW**

Aspen Publishers, Inc.-legal publication	154.42
Cavaliere, Leaette-deposition	383.40
Delvecchio, William A., DMD.PC-copies of medical records	20.57
Department of General Services-copy of video tape	10.00
Humphries, Thomas G.-arbitration fee	1,237.50
Labor Relations Information Systems-legal publication	150.00
MG&H Stenotype Reporters-court reporter	374.70
Pennsylvania Bar Institute-CLE program	149.00
West Group Payment Center-on-line legal research	869.25
West Group Payment Center-legal publications	688.50
OMI	
Clark, Joan L.-transcription of case interviews	434.00

**MAYOR**

Southwestern Pennsylvania Corporation-SPC membership	16,660.50
Turtle Creek Sportswear-jackets for Greater Hazelwood Athletic Assoc.	1,000.00
CIS	
Laser Pros International-printer parts	932.02
Stephens, Dave-reimbursement	25.00
Stephenson, Tajuana-reimbursement for training	60.00

**PARKS**

Durrett, Traceann-performance at Hazlett Theatre	500.00
Vincent Lighting Systems-lighting equipment for Hazlett Theatre	336.50

**PERSONNEL**

NCS Pearson Inc.-ribbons for NCS scanner	46.00
SHRM (Society for Human Resource Mgmt)-membership	160.00
JTPA	
Daily News Publishing Company-advertising for the WIB	65.25
Tribune Review Publishing Company-public notice for the WIB	98.04

**PUBLIC SAFETY**

**POLICE**

Canon Hill Veterinary Clinic-vet services, MPU	422.95
The Center for Victims of Violent Crime-training seminar	100.00
Markl Supply-intoxilyzer parts, SDD	900.00

**PUBLIC WORKS**

Allegheny County Health Department-health permit	300.00
Cat Clinic & Hospital-spay and neuter program	930.00
Penn Animal Hospital-spay & neuter program	750.00
Penn Animal Hospital-spay & neuter program	780.00
Vezzetti, Dale-employee reimbursement	26.21
Wheeler's Paints-marine polyurathane	96.01

The Chair:

It takes us to the Committee on Planning, Zoning and Land Use. Ms. Burns is the Chair.

**BILL NO. 0274:**

An Ordinance amending the Pittsburgh Code of Ordinances, Title Nine, Zoning, Article V by amending certain provisions of the Code as they pertain to definitions related to shelters, religious institutions, and community centers in the Use Table and the Use Standards for a community centers, religious institutions, and educational facilities.

The Chair:

Is there a motion?

Ms. Burns:

Yes, motion to refer to the Planning Commission for report and recommendation and to set a public hearing.

The Chair:

Second?

Mr. Ricciardi:

Second.

The Chair:

All in favor?

Aye.

Opposed?

It is referred.

Thank you.

We go to the Committee on Housing, Economic Development and Promotion. The Chairman is Mr. Ferlo.

**BILL NO. 0272:**

Resolution providing for an agreement to enter into a contract with an individual attorney or law firm to provide legal representation as the Solicitor of the Commission on Human Relations, cost not to exceed \$20,000.00

The Chair:

Is there a motion?

Mr. Ferlo:

Motion to approve.

The Chair:

Second? Any discussion?

Mr. Motznik:

Second for discussion.

The Chair:

Councilman Motznik.

Mr. Motznik:

We - I don't know who you would like to bring to the table on this. I would like to ask exactly --

The Chair:

I think I saw the Director here.

Mr. Motznik:

Is there a Director here?

The Chair:

Yes.

Mr. Motznik:

Just to brief us on what this is Director please.

The Chair:

Charles Morrison.

Mr. Morrison:

Yes. Good morning.

The Chair:

Good morning.

Welcome.

Mr. Morrison:

The - this legislation provides the authorization for the commission to contract with the a yet to be identified law firm or individual attorney. Members of Council may recall that Burt R. Brown served as the Solicitor for the commission for many, many years. Solicitor Brown passed away in the spring of last year. We did, and Council did approve, the authorization for an interim contract with the associate of Burt R. Brown, Kevin Trower.

Mr. Trower has acted as our interim Solicitor so that we had continuity in the case processing that was before us. We are now situated to put out an RFP and the commission has a

committee that will review the response to the RFP and will hopefully identify an individual, a qualified individual or law firm to provide legal counsel to the commission. This person sits with the panel members during course of public hearings conducted by the commission and assists the commission in writing the opinions, findings of facts and orders. They also provide legal representation to the commission where the commission is identified as a party in any litigation outside of ordinary labor relations matters which Council is provided by the City of Pittsburgh Solicitor's Office in that regard. So this is someone who is a vital part of our organization. The \$20,000 budgeted is in our budget and the provision for a Solicitor is contained in the City Charter so we would ask that you kindly and favorably look upon this legislation.

The Chair:

Thank you.

Any other discussion?

Mr. Ferlo:

Historically this amount has actually never achieved what the work was. I mean most law firms, including Burt Brown's law firm, gave far in excess of this appropriation.

Mr. Morrison:

Pro bono work a lot. We look for individuals who are dedicated to the Civil Rights work that we perform and we have been fortunate that there are a lot of people in this community who believe in bringing about equality in the work place and the house market and the provision of services so we have been fortunate over the years to have Burt Brown and we look forward to the years that follow and hopefully we will have someone who maybe has half of the commitment that he had to this good fine work.

The Chair:

Are you satisfied?

Mr. Motznik:

Yes sir.

The Chair:

Any other discussion?

All in favor?

Aye.

Opposed?

Bill passes.

Mr. Morrison:

Thank you all.

The Chair:

Thank you.

We go to the Committee on General Services. Mr. Peduto is the Chair.  
Bills No. 277 and 295 are related although not companion. We will read them both and then discussion them.

**BILL NO. 0277:**

Resolution providing for the establishment of a Lease Agreement(s) and/or Sub-lease Agreement(s) with The Pittsburgh Children's Museum for a City facility known as the Buhl Planetarium Building and associated property located at Allegheny Square on Federal Street for an annual rental fee of One Dollar (\$1.00) per year for a twenty-nine (29) year and eleven (11) month period.

**BILL NO. 0295:**

Petition from the residents of the City of Pittsburgh requesting a public hearing before City Council relative to Council Bill No. 277 - Lease Agreement of the Buhl Planetarium to the Pittsburgh Children's Museum.

The Chair:

Is there a motion on the two bills?

Mr. Peduto:

Yes, Mr. Chair.

A motion to hold for one week for a Public Hearing.

The Chair:

Wait. Is this a hold for one week or a Public Hearing?

Mr. Peduto:

A Public Hearing is scheduled for next Tuesday.

The Chair:

Oh it is already scheduled?

Mr. Peduto:

At 2:00 p.m.

The Chair:

So we will hold until the Public Hearing.

Mr. Peduto:

Yes.

The Chair:

Both bills?

Mr. Peduto:

Both bills.

Mr. Motznik:

Point of order. How is that already scheduled before this came to the table. Have we received signatures for that Public Hearing, that is why?

Mr. Peduto:

We did. Late yesterday.

Mr. Motznik:

Okay. Thank you.

The Chair:

All right - yes Mr. Ferlo.

Mr. Ferlo:

Could we please receive a copy of whatever the contract and or lease agreement is? Is that ready at this point?

The Clerk:

I have received a copy.

Mr. Ferlo:

Okay, this Councilmember have we received this Council or the Clerk received a copy? Let me ask another way.

The Chair:

Will the Clerk please make copies?

Mr. Ferlo:

Has the Public, the Council, the Clerk, Ferlo and everybody else received a copy of the lease? Thank you.

The Chair:

So we are referring Bill No. 295 for Public Hearing and holding 277 until after the Public Hearing when both bills will come back to Council.

Mr. Ferlo:

Okay, can I just ask for one follow up?

The Chair:

Sure.

Mr. Ferlo:

There is an issue not only morally but legally about the disposition of art work and other material in and exterior to the facility, what is the - do we have something in writing from the Administration as to what is the stewardship or the manner in which they will deal with that and can we get that in writing from the Administration?

The Chair:

Mr. Peduto, do you?

Ms. Burns:

It is an addendum to the lease. It is marked as an asset list that was prepared by General Services and there is a basic provision in there that any disposition of it is mutually agreed upon by the lease holder as well as the City.

The Chair:

So it is spelled out in the lease, the issue of who has custody and care for all of the art work and the --

Ms. Burns:

And the process.

Mr. Ferlo:

Well I would like a legal opinion explicitly on that. Unless I am mistaken there are issues involving the indentures of this property and its assets to the City and I don't know if it is in orphan's court but I want to be clear on what - who actually owns and who is the legal steward.

The Chair:

We will solicit a legal opinion on it.

Ms. Burns:

Sure.

Mr. Ferlo:

Okay, thank you.

Ms. Burns:

I don't think there is any question about who owns it and General Services was provided the responsibility to provide the asset list. The asset list is an addendum to this lease and there is a process for either the retaining of it or the disposition of it.

Mr. Ferlo:

I just want to know in later on are there any covenant issues that we need to be addressing regarding orphan's court on the will or wishes of whoever donated what to the Buhl. I have experienced this in other agreements even like Denny Street tot lot.

Ms. Burns:

Does that add value to the discussion? Come on.

Mr. Ferlo:

Thank you.

The Chair:

Any other discussion?

All in favor?

Aye.

Opposed?

The Bill is referred to Public Hearing and held.

The Committee on Public Safety Services. Mr. O'Connor is the Chair.

**BILL NO. 0278:**

Resolution authorizing the Office of the Mayor and the Director of Public Safety to retain the services of a qualified, independent consultant to conduct a review of police procedures relating to the incident at 7200 Hermitage Street on February 20, 2002.

The Chair:

Is there a motion?

Mr. O'Connor:

Motion to approve for discussion.

The Chair:

Second?

Mr. Ricciardi:

Second.

The Chair:

Councilman O'Connor.

Mr. O'Connor:

I would welcome the Chief, Assistant Chief and with your permission I would like Officer Gratten and Schwartzwalter, who is the Public Safety Committee Chair, if they could come in front of Council.

Again this bill came to light about two weeks ago. In light of that incident and actually I can amend it to say after the discussions we could amend it to include a couple other incidents, but I want to make it clear I have agreed to bring this forward only with the presumption is this is a safety issue. I know myself and I believe all of my colleagues have the utmost respect for everyone who wears our uniform starting with the Chief on down. I think you have done an excellent job and if we were going to talk about this one incident alone, for myself and everyone involved, thinks that our police did not only do an excellent job, the outcome unfortunately for our two officers was not - they were wounded but the key is I think the restrain they used - did not do any harm to this individual way before hand. I

think you showed utmost restraint in trying to negotiate this person down.

What the request is and again our police officers, I can't compliment you enough for the hard work you do. The purpose of this is to look as a safety issue and how do we make sure that we are not only having the best training for our officers, the best equipment and if there was a communication break down in this or other cases, how do we amend it. We are not here to point fingers, we are here to make sure, we are here to support the Chief and the officers so that if there are any issues that may be, that were right or wrong, how do we address them and how do we assure that if tomorrow if this happens again that those two officers wouldn't be shot or again every day you live is a different day so I don't know that you can get a manual and say you did something right or wrong. You are in the line of fire and again I can't say the most for what you do for all of us.

The purpose of this - the request is to look at an outside experts, a National Task of Officers Association which is - if there is someone better we can look at them, but they have been recommended. If they would come in and assist you on this investigation and also I see yesterday you spoke with the DA to be part of it. So that is the purpose of the legislation.

I will open it for comments, whether you want to start Chief or --

Chief McNeilly:

It doesn't matter to me. If the Union wants to go first or if you want to hear from us first.

The Chair:

Go ahead Chief.

Chief McNeilly:

Okay. First I need to explain the changes that have occurred in the Bureau over the last six years since I have been Chief. We did a couple of things. One with all incidents like this any time there is a critical incident where somebody is nearly killed or killed, we have asked somebody from another agency to come in and assist us with those investigations. That is the criminal investigation itself.

In addition to that, we are looking at something totally different that parallels that is we have our own internal review that we have created within the last six years. The internal review is designed for us to look at each incident to see if there needs to be any changes in policy, training or in personnel issues that we need to address. So when we talk about this investigation I think it is important to keep in mind that we are looking at two different things.

The County in the past has assisted us with supervision of shooting incidents or other critical incidents. They notified us recently that they couldn't do it anymore on advice of their law department. So I did make arrangements with the DA's Office and they will supervise all future critical incidents. The City Ordinance requires we pull in somebody from outside the department to supervise whenever there is a shooting; but we have done that more than just shootings because we

wanted to include other critical incidents. Say for example car accidents or even there was an incident where two police officers were chasing a man a few years ago and he jumped off the bus way and fell to his death. We wanted to include incidents like that. Anytime anybody dies or our police officers are seriously injured or killed in the line of duty, we want to make sure we have that independent oversight as far as the investigation goes.

But also we need to look at it internally to see and learn from things that have happened to see if there are changes that need to happen in the future.

Mr. O'Connor:

So your internal group, you have three officers, but our law in the City that we passed in 1998 I think requires you to - that is only on shooting incidents.

Chief McNeilly:

That is only on shooting incidents.

Mr. O'Connor:

So this is a shooting incident.

Chief McNeilly:

And we have expanded that though like I said; but in addition to also pulling somebody unsupervised the investigation itself, which will be the DA's Office in the future we also an internal investigation. So we are talking of two different investigations that are ongoing. One is internal and it is administrative and one is the criminal or the investigation of the shooting itself. So we are only looking at internally we are looking at our policies, our training needs and we have done this, we have successfully done this over the last five years in numerous cases. I would venture to say maybe 12 to 15 incidents.

Mr. O'Connor:

Since this incident there has been two or three other cases involving I guess more or less SWAT and I will let Mr. Gratten address those or why they feel a need for more investigation or training.

Chief McNeilly:

Well if I could I could read this.

I just wanted to explain the two different types of investigations but I did prepare something to read today.

Mr. O'Connor:

How long is it?

Chief McNeilly:

It is three pages. It won't take me more than ten minutes.

Mr. O'Connor:

No I don't --

Chief McNeilly:

It is important that I say what is in here.

The Hermitage stand off with the police needs to be studied due to the injuries sustained to two officers and one actor. We have an established process to review such incidents. We have had the Critical Incident Review Board conduct such inquiries for the past five years.

The results and findings of our investigations have been useful in addressing various issues ranging from policy to training to personnel issues. The FOP has never mentioned any problems resulting from any of the prior incidents that they have recently discussed. If there was an issue with an incident that occurred two years ago, they should have brought it to our attention before now. A two year time lapse raising my suspicions as to the underlying agenda.

The Hermitage incident is operational in nature and not contractual. The FOP should be meeting with us through the proper established channels which includes discussions with the Deputy Chief, me and or the Public Safety Director.

Allowing the FOP to directly approach Council concerning the operational issues is setting for precedent and a contract negotiation here. If there is an independent review, no independent review should take place until the conclusion of the criminal prosecution including exhaustion of the appeal process. The outside agency and any materials collected by that agency would absolutely and justifiably be subpoenaed for testimony or production at the criminal trial and the Bureau's primary responsibility is protect the integrity of the criminal investigation and prosecution.

To release these materials or permit an outside agency to collect additional materials or witnesses statements would potentially jeopardize the criminal prosecution. To agree to such outside reviews sets a dangerous precedent. We have a Critical Incident Review Process which is specifically designed to handle this type of review. To permit outside review suggests a lack of confidence in our established Critical Incident Process and suggests that every time anyone disagrees with the handling of a police situation we will hire a company to critique it. The Critical Incident Review Process is already underway.

Also there are litigation issues that must be considered. While the defendant wasn't killed he was shot and will likely file suit against both the City and every officer present during the incident. Furthermore do we even know whether the outside agency is qualified to conduct such a review. Do we know who works for the agency, what is their agenda, why was the NTOA even chosen.

The NTOA is comprised primarily of rank and file officers. We do know tat certain Pittsburgh

police officers made arrangements for them to investigate. These same officers are members of the NTOA and have friends in the NTOA. By hiring the NTOA we very well may hire rank and file officers who are friends of those asking for the investigation. In fact, I am concerned that we may even be hiring our own officers who are off duty to investigate the incident and those officers have limited management experience with these incidents and overall no management expertise.

It concerns me greatly that Officer Schwartzwalter, who the FOP considers as their expert, who made the arrangements for the NTOA to conduct the investigation is both a member of the NTOA and currently has a lawsuit filed against the City of Pittsburgh and higher ranking members of the Bureau of Police. I see a great deal of conflict of interest with the NTOA conducting any investigation.

I spoke with Captain Sid Hill of the Los Angeles County Sheriff's Office in regard to NTOA doing these investigations. He is the ranking member in charge of the L.A. Sheriff's Department SWAT Unit. He also is a member of the NTOA. He explains that there are mixed feelings in respect to NTOA even doing these types of investigations. He related that the NTOA was formed in 1983 and expanded in the 1990's with the foundation of promoting the advancement in exchange of tactical information. He feels that the NTOA should not be involved in conducting investigations but rather solely in the training of SWAT. He further explained that due to his rising through the ranks of a large urban department that he has seen a distinct difference in the tactical and strategic management of SWAT. Only officers who have his experience have the ability to consult with police agencies in regards to SWAT operations. Even he explains that they should not be doing these investigations.

The Chair:

Who was that from?

Chief McNeilly:

That was - his name is Sid Hill. He is a captain with the L.A. Sheriff's Department.

In addition I spoke with Captain Mike Hillon of the Los Angeles Police Department. He is the ranking member of their SWAT unit. He also expressed that the NTOA should not be doing investigations into tactical incidents. Obviously there is great disagreement within the organization itself that they should not be allowed in these investigations.

I have spoken with other police chiefs including Gil Curlatowsky of the Seattle Washington Police Department in regard to NTOA investigations. I learned that the investigations were not complete that were done in Seattle. Since many officers and command rank officers refused to speak to those in the NTOA. They did so because the NTOA could not guarantee them as no outside agency can that the officers would be protected from criminal or civil action results.

I see great problems with hiring the NTOA which include preserving the integrity of the criminal investigation, lack of appropriate management labor resolution, building conflict of interest, inability of an outside agency to perform a complete investigation and the establishment of a precedent to hire an outside agency to -- the Critical Incident Review Board process. I believe there is a better way to conduct an investigation which will while including outside expertise along with our own officers involvement, officers who are members of the FOP in doing it at a much better price.

We have SWAT members with the FBI, the State Police and the Allegheny County Police. I would propose having one of those agencies act as a consultant and or be part of the Critical Incident Review Board. This can provide independent review of the internal aspects of the Hermitage Street incident. It can be done at no cost to the City of Pittsburgh. I would suggest that instead of spending \$21,000 for something that we can get at no cost, that we use that money to purchase a new patrol car.

In addition to the outside consultants, I would suggest the inclusion of another member of the FOP who is not currently involved in litigation against the City of Pittsburgh and ranking members of the Bureau of Police. Sergeant Anthony Losh who has experience in SWAT and supervision of SWAT has volunteered to further consult with the Critical Incident Review Board to ensure that our board has input from the experts and from a concerned member of the FOP.

It is unfortunate these issues were not brought directly to us to resolve. Because it wasn't it indicates there is some hidden agenda on someone's part. Normal labor management relations call for regular meetings to discuss issues such as this. It is disappointing to learn of complaints through the media after a press conference or through elected officials discussions with Council. I believe it is more constructive to encourage labor management cooperation through continued dialogue. I believe that we should encourage labor to work with management to avoid making decisions that haven't been well thought out. In addition it may save time and effort on the part of all concerned.

Thank you for the opportunity to address you on this issue.

The Chair:

Do we have copies of that statement?

Chief McNeilly:

I can make copies.

The Chair:

All right thank you.

Mr. O'Connor:

Chief you mentioned and I will let Mr. Gratten respond to that and have the floor to have his say - you mentioned possible who other professional outside agencies, you said the FBI?

Chief McNeilly:

The FBI, the State Police and the Allegheny County Police.

Mr. O'Connor:

Well the Allegheny has refused.

Chief McNeilly:

No, no. That is on the criminal part of the investigation. That is not saying that they would not work with us to do the internal investigation that we would do into the tactical incident. That is why I said we are talking about two totally different ball games here. One is the criminal part of it and one is our own internal investigation. That is the part that we will look at tactics, we will - that is precisely what we don't want to do is have a discussion in public about what police tactics are and what police tactics we should employ. In fact the NTOA criticized the Seattle police because they did just that. They took their after action report and they put it on the internet for everybody to read and the NTOA even criticized them for doing that because they said now everybody can look to see what your tactics are. My concern is that if the NTOA does this investigation their report will go to whoever pays for it and all the members and it could end up the same way, being a matter of public disclosure.

Mr. O'Connor:

You did mention and I have met with you privately about possible litigation and we could expand this if we go further to include a couple of other things and I think they will mention; but I asked your Law Department, our Law Department, if an Executive Session was more appropriate when you start discussing these things and certainly no one wants to help this guy, however he got out of prison and shot our officers, we are not looking to help this person at all, but our Law Department said we could not meet in Executive Session to discuss whatever issues - because I believe there are some personnel issues here involved too so we want to be careful certainly not to do anything to harm you, the police force or to feed this person's possible lawsuit which you say is ridiculous but that is how it goes any more.

The other thing I want to make it clear, I know everyone on Council is supporting our police officers as commanders and we have no intention to pointing fingers at one or any of those officers. That is some of the other things that the fine line were here in this discussion. I am willing to take it forward but again and I believe the FOP has agreed to that that we are not here trying to point fingers at any officers. If there were mistakes made, how do we correct them. That is the only reason I think Mr. Ricciardi and I agreed to put this things forward.

Mr. Gratten do you want to --

Mr. Gratten:

Yes. First and foremost, we are not looking to point fingers at anyone. Second we have had communication through the Chief and we have gotten no response as far as trying to sit down. Before we contacted the Mayor and we contacted Mr. Ricciardi and yourself we also sent a letter to the Chief. We have gotten responses back and forth from different entities from December on. In the news release we talk about February 18, 2000 then during July of 2000, December 14, 2001, January 8, 2002, January 11, 2002 and February 20, 2002. The only things we are looking for is an independent study with the experts, with the total professionals and the Chief also mentions in his letter which we received the 14<sup>th</sup> and he sent out the 11<sup>th</sup> that he was taught by the National Tactical Officers Association and that there is no problem and that he also passed the training on to command staff members. Again, we are not looking to point fingers or hurt anybody. We are looking for a fair an independent investigation or review. Now again a review is going to come back to you. The review is going to come back to the Mayor. You know we would be more than happy to work with anybody; but again there is a pattern here. I am not talking about anything that happened two years

ago. As of December. Now Brother Schwartzwalter can talk on certain issues and he is here to talk to about it. It is that simple. Believe me there is no underlining fact here. There is no problem here. You know the FOP did support his lawsuit along with some other officers and that is understandable and things were brought to the floor but there is no political agendas here. There is none. It is that simple. We are asking for this and you know what we are entitled to it. You remember we are not only asking for the officers but we are also asking for the citizens of Pittsburgh. Okay.

When they are out in a critical incident when you might have an inner and an outer perimeter because there are children there, there are elderly people there. That is what we are worried about. God forbid if something would happen to them. I don't want to knock on a members door and tell them hey guess what mom and dad isn't coming home today. That is what I am worried about and again we are all willing to sit and work together.

Mr. O'Connor:

Mr. Schwartzwalter.

Mr. Gratten:

Oh, no I am sorry. And then the next three incidents since this one is 2905 Sheraton Street, 1717 Lawry Street, there was also the sex assault the detectives had to go out there was 16 of them yesterday morning at 4:00 a.m. and they needed SWAT to go out because there could have been a possible, possible barricaded situation with a man that had a baby and he also had firearms. Bob if you want to take it from there go ahead.

The Chair:

Before Mr. Schwartzwalter, could I just get a clarification on the incidents that you mentioned that you listed, those were all SWAT responses?

Mr. Gratten:

Yes.

The Chair:

All right. Thank you.

Mr. O'Connor:

Yes I want to make that clear. You are talking about SWAT issues?

Mr. Gratten:

Yes.

Mr. O'Connor:

And what are the issues or do you want to address those?

Mr. Schwartzwalter:

Well my name is Bob Schwartzwalter. I am the officer safety chair for the FOP. What we are concerned about is the continuous actions one of which President Gratten forgot to mention. There was a letter sent out by the FOP. I think you had it in your packet that we supplied to City Council a week ago. The incident that occurred on December 14, 2001, it was a barricade situation and our policy which is 42-5 of the Police Rules and Regulations specifically address how those incidents are supposed to be handled.

In other words, what we referred to as incident command system, the incident command situation is made up of a talk, which is a tactical operation center, a knock which is negotiations operations center and then of course the command post which is manned by an incident commander and that is all specified within the policy. On that particular incident that didn't occur.

On these other three incidents that didn't occur and that is what we are concerned about. We have policy and you know we are not even complying with it and we believe that is where the jeopardy is occurring for our officer safety and that our officers are being asked to operate outside of their training. In other words, our officers when they attend these SWAT type forces, etc. are trained in this type of incident command and there is confusion because the officers are inside these structures, the officers are engaging in these activities and they are given conflicting information when they are inside.

Therefore, they are basing their decisions and they are also managing not only the suspect, but they are also managing their commanders. And so there has been a large outcry about that and the reason that we believe the NTOA - first of all whether I am a member of the NTOA, the SWAT team within the City is a member of the NTOA and they will be personally looked at, each one of those members. They have no problem with it and there is a whole bunch of members from that SWAT team that are NTOA members and I believe they pay for their own team membership out of their own pocket. And the NTOA is best suited for this.

I know Sid Hill is. I know who Ron McCarthy is. We know who all of these guys are because they write for the NTOA magazine. There are disagreements everywhere about whether they should be involved in the investigation or whether they should not. To say that they are going to jeopardize their reputation, their national and international reputation because some of us pay \$35 a year to be a member is ludicrous. They are not going to damage their reputation. We believe they are going to give you the most professional unbiased review of this situation.

To call in another government entity to do this review, we disagree. The union believes that this is the best unbiased review that you are going to get is from the NTOA. That is our position.

The Chair:

Discussion.

Councilman Ferlo.

Mr. Ferlo:

Well again I haven't heard a strong enough case yet from the Administration as to why we would not want to engage and I believe the resolution that Mr. O'Connor is offering doesn't, unless I am wrong, it doesn't explicitly state this particular tactical officers group, it says we should engage, I may be wrong on that, it says we should engage a professional consultant. I think we should do this and follow the same manner in which we consider other professional service contracts and that is we should decide first on a scope of services.

In other words, lets quantify what it is that we are actually looking to do and to find out including reviewing best practices around the Country and I think there should be an operating committee inclusive of Mr. O'Connor and our Public Safety Chair, well that is Mr. O'Connor now, but others on Council as well as others in the community. Well now it is actually in the legislation. But I think we should decide what is the scope of services and empower a group to do that and to develop that and basically review does this one organization that is being proposed in the resolution and there may be others.

There may be that the Administration wants to offer a different compilation of individuals that would be this group that will analyze and review and recommend and give us a report. It may be inclusive of the FBI or the County Police or others that the Chief spoke about; but I don't see what is wrong with proceeding and supporting this resolution and then getting more information on what would be the scope of services and what does this tactical group best offer us and are there other models or other consultants that we should employ or look at.

I don't know that I have heard - we are always going to have legal battles no matter what we do and in all due respect to the Chief, I don't think it is good enough and I applaud him for being out nationally and internationally what groups like the International Association of Chiefs of Police and if he learns something from his involvement with that organization and he comes back and provides it, but it is one thing for him to come back and provide I guess maybe either written information. It is a lot different that the men and women of the officer core being trained directly involved with the work and I don't think it is good enough to say well I went to this conference, I came back and I met with my command staff and here are some tips. We and - I will just close and maybe the Chief wants to respond.

This Council as long as I have been here, we have voted for every significant technology piece of equipment, whatever the Mayor, and this goes back to Dick Callegeri, Sophie and Mayor Murphy as far as me and four or five different Chiefs, we have given you everything you have asked from us, including things that looked futuristic you know based on national discussions about homeland security. A lot of discussion didn't happen at this table. You came to us for different kinds of tactical equipment, things that maybe we didn't even want to discuss that much in the public and we have voted nine zip to be supportive of that kind of appropriation for whatever it is that you thought was critical and I do think that there is a critical need to look objectively at the incident, not only the more recent incident but in general these kinds of problems and incidents that have come up and there are factors now that were not as present maybe twenty years ago.

I think everybody has something to gain from a critical review and a critique of this incident and or other incidents that need to be looked at and I would hope that it is done in the spirit of cooperation and best practices were it is not finger pointing the Chief or to the Mayor or to Jim

Ferlo, it is like how do we guarantee that we improve and enhance the technical and professional capabilities of police response. I am missing and greeting into this and I do support the resolution but I think the Civilian Review Board as a participant should be involved in some committee defining the scope of services and obviously the Police Bureau and the leadership of the Chief on down needs to be involved independently and separate from the rank and file.

So I am inclined to be supportive unless I hear some - you know we are always going to get sued, we are always going to have problems where there is finger pointing. There are always going to be incidents where FOP members in terms of either union politics or even their own right to litigate through collective - through binding arbitration. We are always going to have that present.

I am concerned more of what are we doing to respond to these incidents with an objective independent look and how do we improve and change policies well now and into the future. So I don't know - so far I am not hearing a demanding case as to why we should not move ahead with this best practice critical review look.

Chief McNeilly:

If I could say something.

Mr. Ferlo:

Yes.

Chief McNeilly:

When I was a Sergeant I worked in special operations for two years. I knew what equipment we had and what we were capable of doing. When I took over as Chief a lot of the officers told me personally that they felt that they didn't have enough equipment or that they didn't have enough training. These officers that are in our special deployment unit work in SWAT had the best equipment and they had more training than they ever had in the past and it is not like I went to some training and came back and passed on helpful hints. They go through training that is geared to SWAT. I don't do that training.

The training that I brought from the International Association of Police which was conducted by trainers who also teach for the NTOA dealt with commanding these situations and how they should be commanded and we are trying to make arrangements to bring those people in to do more training for our command staff. Unfortunately we can't send everybody for a week long school. We just can't. We don't have the money, we don't have the time to be able to send people to training like that. Hopefully it is cheaper and it more possible to bring them in to train the command staff. I am going to pass on training of how these situations should be commanded to the Sergeants and Lieutenants, not so much for them to be doing it, maybe in some occasions they will be, just so they have an understanding how these things are supposed to be done and it is not that I just passed on helpful hints, I spent five hours going over these things with the command staff. So there was a bit of information that was given; but like I said I don't teach the negotiations. I don't teach the tactical because we send people out to specific schools to train people in negotiations. We send people to specific training to

teach them tactics. They go through that. They are better trained and better equipped than they have ever been in the history of this Bureau since I have been here at least.

Mr. Ferlo:

Can I just ask one thing for clarification and then I will close. What actually is the work product from the Critical Incident Review Committee and when is that work product available and has there been a past work product based on previous incidents?

Chief McNeilly:

Well you have got to remember before I was Chief we didn't have an outside agency overseeing these investigations and we did not have a Critical Incident Review to look at these things to see if we needed to make changes as far as training and personnel or policy. We put that in place five or six years ago. This system has worked very good. We have looked at maybe a dozen or fifteen different incidents and we have learned things. I will give you an example of one of things we learned from prior incidents was the incident with John Wilbur when he was dragged along side that car.

Part of our policy now in stopping traffic is never to reach in a vehicle that is running. So I mean we learn things from mistakes in the past from tactical errors that our officers have made or from decisions that were made from somebody and we try to make sure that they are addressed and that is what the Critical Incident Review Board is there for.

Mr. Ferlo:

So when - just in closing - so when then - what is the work product and when does this work product appear to the command staff and yourself for this incident in question?

Chief McNeilly:

Well --

Mr. Ferlo:

You said earlier you convened already a Critical Incident Review Group.

Chief McNeilly:

Right.

Mr. Ferlo:

You may want to expand on that I don't know.

Chief McNeilly:

Okay.

Mr. Ferlo:

What is their work product, who gets it and when is it available?

Mr. Motznik:

And who are they?

Mr. Ferlo:

Yes.

Chief McNeilly:

Right now on the Critical Incident Review Board we - it varies. Each one is different depending on - we always have to pick somebody who is not involved. Sometimes it a commander and two lieutenants. Sometimes --

Mr. Ferlo:

Chief I am asking a very explicit question. The incident has been now several weeks behind us.

Chief McNeilly:

Yes.

Mr. Ferlo:

What I am trying to understand and I am asking in a supportive way as I can what is, relative to this incident, what is the Critical Incident Review Committee, what is going to be its work product and report and who receives it and when is it available? Try and understand what your specific response is.

Chief McNeilly:

I am trying to explain.

Mr. Ferlo:

Okay.

Chief McNeilly:

There are three people assigned to it. There is Assistant Chief Mullen, Commander Joyce and Commander Borone and we choose three people who are totally unrelated to it. There were a lot of

commanders out there on this incident that we don't use them because they had some knowledge on it. We want an independent review from somebody who was uninvolved. So those are three people on the Review Board right now. They have had one meeting in regard to this just to get the investigation under way and they will continue to meet and do interviews, capture reports and whatever they need to do to make their report.

They will make a report to me and then when the report comes to me they come with very specific recommendations in various areas under training, under policy, under personnel if there is discipline.

Mr. Ferlo:

How will they interact with the community aspect of this incident. When I say the community, I am talking about the street activity in the - whether it be family members or neighbors or the community groups. Is there any involvement by them in interviewing that aspect of this incident?

Chief McNeilly:

Normally we don't - the Critical Incident Review Board does not --

Mr. Ferlo:

What you get is that is one of the reasons why I have a problem with the - that is one of the issues that I am concerned about that it is so insulated and that it is not going to take into consideration critical issues that were concerns at the neighborhood level and the --

Chief McNeilly:

The investigation itself was --

Mr. Ferlo:

I want to say this as respectfully as I can and as tactfully as I could or can. If this happened in certain neighborhood, certain residential neighborhoods in the City of Pittsburgh you can bet that there would be a very strong community involvement and interview. Now I am trying to say that as tactfully as I can without being bombastic or in any way have people get flared up; but if this incident happened in certain areas, even in my council district you can bet that there would be a strong community interviewing process and involvement and I don't see that here and I am concerned about it.

The Chair:

Councilwoman Carlisle.

Ms. Carlisle:

I just want to ask a question Chief. What is done in other areas or municipalities as far as the training? How do they do that?

Chief McNeilly:

Well let me say that usually in incidents like this, like in Seattle, they did their own investigation just like we would do with the Critical Incident Review Board. There is an after action report that the Chief takes action on. No where does anybody go out and consult with various members of the community. I mean that is something all together different.

Ms. Carlisle:

No I am speaking in reference to the individual consultant, how do they handle that in other municipalities within this region?

Chief McNeilly:

I have never --

Ms. Carlisle:

Do you know?

Chief McNeilly:

I have never heard of that happening before in the past. There has only been a couple of times that I know that the NTOA has been involved. One was in Seattle and from what I understand they couldn't do a complete investigation up there and they were hired by the Union to do this and they didn't get a lot of cooperation from everybody in the department.

Ms. Carlisle:

Mr. Gratten would you know?

Mr. Gratten:

Ms. Carlisle here I will give you a copy since you haven't gotten a copy.

Ms. Carlisle:

Okay.

Chief McNeilly:

From the National Tactic Officer Association dated March 6, 2002. It goes from April of 1997 to September of 2001. One, two, three, four, five, six, seven incidents.

Now in all of those incidents I don't know or I can't guarantee whether the Union or the Association or that department or Sheriff's Department asked for it and or if not the local government asked for it. Again, the web sites are there, the fax number is there and they will be more than happy to give you all of the information.

Most important too is any time there is any type of reports done and it is turned back, if there are any criminal or civil actions we always know this too that that information can be brought forth through discovery. So whether it is the Chief's, our's or whomever's it can be brought forth through discovery.

The Chair:

Councilman Motznik and then Councilman Peduto.

Mr. Motznik:

I am still a little confused Chief about the County's participation in this one incident on February 20, 2002. I have heard some media reports that the County is no longer interested in assisting the Review and I heard you say here today maybe they are. Can you clarify that for me?

Chief McNeilly:

That is what I tried to explain in the very beginning. We are looking at two totally different animals here.

Mr. Motznik:

Okay.

Chief McNeilly:

We are looking at the investigation of the shooting itself.

Mr. Motznik:

That is what I want to talk about.

Chief McNeilly:

And then we are looking at our own internal investigation into procedures that were followed, policies that were followed. So on the first one, the overall shooting, they said - they notified us that they will not do the investigation, they will not supervise the investigation unless they can do the entire investigation with their officers, which was done one time in the past and the FOP filed an unfair labor practice against us for that.

Mr. Motznik:

So then the County is not involved in this investigation right now as we speak?

Chief McNeilly:

No. They were notified that night but they would not come out to it.

Mr. Motznik:

And right now the investigation that is ongoing is there anyone else involved or included other than the people that work for you and the Pittsburgh Police Department?

Chief McNeilly:

Well the DA's Office is going to review all of the reports.

Mr. Motznik:

Once the investigation is done?

Chief McNeilly:

Well they have got all of the reports now from what I understand.

Mr. Motznik:

As it is ongoing?

Chief McNeilly:

Yes.

Mr. Motznik:

And that is something new that you have just you and the District Attorney have just agreed on?

Chief McNeilly:

Yes.

Mr. Motznik:

Yesterday?

Chief McNeilly:

Well the announcement was yesterday. The agreement was last week.

Mr. Motznik:

And then will the District Attorney's Office be involved in these as they come along from here on it?

Chief McNeilly:

Yes, yes.

Mr. Motznik:

Instead of the County?

Chief McNeilly:

Yes they will always be involved in every one in the future.

Mr. Motznik:

Okay. Thank you.

The Chair:

Councilman Peduto. I am sorry did somebody - Mr. Schwartzwalter were you trying to say something?

Mr. Schwartzwalter:

No the only thing I said to the President is if the DA's Office is doing the investigation, everything there is absolutely discoverable to a criminal defendant and also to a civil defendant.

The Chair:

Councilman Peduto.

Mr. Peduto:

Thank you. I just want to start out by saying I am rather disappointed on both sides and both sides have stated a number of times now that you are not trying to point the finger at anyone but I feel that this City Council is black and blue from both of you pointing your fingers at each other and us being stuck in the middle. I think that this is a police policy that bringing it before Council may open up Pandora's box of how Council now will be involved in deciding police policy and it may be things that you don't want and just understand that by coming to this body and asking us to get involved we now have the opportunity to get involved in other things as well.

The FOP has the right to come here and it is a right that is given to them through a chain of command and through standard operating procedures if they feel they are not getting answers from the Administration, they can come directly to us to ask for assistance; but understand this as well though we may be up here on that chain of command, the people above us are the people, the people of Pittsburgh and we answer only to them. We don't answer to unions, we don't answer to the Mayor's Office, we don't answer to the Administration. We answer to the people of Pittsburgh. So in the best interest of what has to be found out today and what operation we take as a standard policy to determine the policy from this day forward, there is only one group that I am looking to and that is the people of Pittsburgh.

We have the list that is before us from NTOA. There is a lot of cities that have been involved. Is there any way of knowing how many of these investigations were paid for by the union and how many were paid for by the residents of that city?

Chief McNeilly:

We can find out and get you that information.

Mr. Peduto:

A couple of questions I have about the history of this. Six years ago there was a City Ordinance created in which critical incidents were to be studied and investigated, correct?

Chief McNeilly:

A study?

Mr. Peduto:

Investigated by an independent --

Chief McNeilly:

Just shootings - in 1996 Councilman Hertzberg brought that and it said that any shooting incident that we would have somebody from another agency supervise it.

Mr. Peduto:

What was the policy before that?

Chief McNeilly:

There was none.

Mr. Peduto:

For the past six years then --

Chief McNeilly:

We did the investigations ourselves.

Mr. Peduto:

It was internal?

Chief McNeilly:

Yes.

Mr. Peduto:

And for the past six years County police have done it?

Chief McNeilly:

Well off and on they - actually yes they have supervised some and they did the entire investigation on one.

Mr. Peduto:

Why did the County leave?

Chief McNeilly:

Because they said for legal reasons they could not supervise the investigation without conducting the entire investigation themselves. We did that once before and the shooting that we had in 1998 and the FOP filed an unfair labor practice because they said we were taking their bargaining --

Mr. Peduto:

I would like to hear from the FOP on that. Is that the take as well as to why the County left this responsibility?

Chief McNeilly:

That is what happened yesterday because they wanted total control.

Mr. Peduto:

There is 130 municipalities in this County, do they do it for the other counties - I am sorry townships and boroughs?

Chief McNeilly:

Well some of the - on homicides, most of the boroughs and townships call the County out to do investigations although some do those investigations themselves. I am not sure police officer involved shootings, I believe municipalities do them themselves.

Mr. Peduto:

I guess the basic question that comes down to us is the difference between the DA's Office doing this investigation - is that a standard practice in this County having the District Attorney's Office involved in the procedure or is that something that we are basically creating?

Chief McNeilly:

I don't know of any other municipality that does that?

Mr. Mr. Gratten:

You know what?

I am sorry - just let me -- on something I said Mr. Peduto. As far as 98, again we are not sure, but this is what the law states from October 16 through 17 of 1996, this is what it states so you know what we are not above the law, we have to abide by the law and abide by the rules.

Mr. Peduto:

Correct.

Mr. Gratten:

So whatever it states here, which it is, and it is Ordinance No. 31, 160.01 and that is what we have to abide by. It is self-explanatory there.

Mr. Peduto:

Okay.

Basically we are faced with the decision of choosing between hiring an outside consultant to come in to investigate this or to set up a policy to have the DA's Office investigate it. If we do hire an impendent consultant to come in to investigate it, would the DA's Office still investigate it as well and we do our own internal investigation and have three investigations of this one incident?

Chief McNeilly:

See I think we are still looking at the two different things that I was talking about before. One was the overall investigation that the - that is already proceeding. It is already up in the DA's Office. The other one is the internal part where we are looking at our own tactics, our own policies, our own training. That is what we are looking at. The DA is not going to be involved in that. That is the one that I suggested we bring somebody in from the outside if there is a concern about our people doing a critical incident review and I say we bring somebody in from the FBI, they have experts in the FBI on SWAT.

Mr. Peduto:

Right.

Chief McNeilly:

They have experts in the state on that too.

Mr. Peduto:

Right.

Chief McNeilly:

I am sure that we can get them to assist us on that and if everybody is intent on paying somebody who is a subject matter expert, I have names of other people we can ask too.

Mr. Peduto:

Well the NTOA, if they did - I believe that the FOP could go out and hire them tomorrow and to do this investigation with no problem, well other than the financial --

Chief McNeilly:

That is right.

Mr. Peduto:

Mr. Gratten.

Mr. Gratten:

Beside that is the reason that we come to government is the simple fact. If our officers are asked to give information, there is a possibility that they can be disciplined. All right. That is considered an unauthorized investigation to give information's to that. That is our view point. That is how we feel. So again we bring it to City Council, you spend the money then in turn our members have no problem.

Mr. Peduto:

Chief.

Chief McNeilly:

No they could do the same thing Seattle did. The union up there hired the NTOA to come in and talk to people. Granted many people would not talk to them. There is no way to guarantee that somebody would talk to them.

Mr. Peduto:

With the Administration or your administration - would the police be willing to cooperate with them?

Chief McNeilly:

I don't think we could force people to because it is an outside agency asking for information. We can only order somebody to talk to us when we are doing an internal investigation. That is the benefit of having a Critical Incident Review Board because we can order our officers to talk to us, everybody up to the Chief.

Mr. Peduto:

I actually live to hear the day when the FOP is being put in a similar situation as the Civilian Review Board and it is kind of amazing. I never thought that I would hear that; but you are asking us to make a decision that is taking an opinion on labor versus management and to spend \$20,000 I would rather spend that money to hire a relationship counselor and to have you guys sit down in a room and to work out your differences. I really am disappointed and I really honestly believe that the Deputy Mayor's comment that you know we will sit back and see what Council does. The Mayor and the Deputy Mayor should sit down with both of you and work this out. This isn't going to be the first time that you are going to be here. There is going to be - unfortunately there is going to be other shootings. We know that is going to happen. We have to have a standard policy that is in place that determines this. Otherwise we are going to be looking for \$20,000 each time in order to have something so that Labor feels that they have an independent voice and that management feels that they have a standard policy and you really have created an opportunity for Council to be more involved in police policy through this. I don't know how I am going to vote on this.

Chief McNeilly:

We are willing to sit and discuss with the FOP at any time. They have never asked to meet with us on any of these incidents. All they have is one letter that they sent to us, critical of the way one commander handled the situation in the South Side. In that letter they said you should have called out SWAT and actually that is a case where SWAT didn't need to be called out and that is what I sent back to them in a letter. It seems like -- - Executive Board I am always willing to sit and discuss any issue with them at any time.

The Chair:

Chief Moffatt you wanted to comment.

Mr. Moffatt:

Yes I am a little bit confused on the bill. From what I understand the bill is aimed at the incident on Hermitage Street; but we say here that there is no finger pointing and there is nobody to be held to blame. My question is is it aimed at Hermitage Street or is it aimed at our policy? To answer your question Mr. Peduto we do have a policy as Officer Schwartzwalter alluded to. We have a policy. For us to look at somebody to come and say that this officer and another officer did or did not follow the policy, I firmly believe that is the Chief's responsibility and we would be giving up our authority and our responsibility to do so.

Now the other question is is our practice and our policy the best policy, I guess that is opened up to interpretation so I am kind of confused at what the request is. Is the request to look at the actions of the officers on Hermitage Street or is the request to look at our policies and procedures as we know them and as we try to carry them out?

Mr. Peduto:

My only concern is that it is going to be ongoing and every time we have an incident we are going to be sitting here again and looking at having an independent consultant come in versus having a policy that is set that the union feels comfortable with which is going to be a criteria of it.

Mr. Moffatt:

That was my question. We do have a policy. We do have a procedure. Now the question remains what is the consultant coming in for to look at our policies and procedures or to look at the officers on Hermitage Street or any other incident did they not do what they were supposed to?

The Chair:

Let me ask Councilman O'Connor to answer that; but I am going to ask you to also limit your answer to that because there are some other Councilmembers who want to speak.

Mr. O'Connor:

If I can answer that. I think the intention at least at first and I discussed this exactly what you said; but since then and I believe in the last three weeks Mr. Gratten has showed me two or three other incidents where SWAT was called, wasn't called, there were problems and again we don't have to go into the total details so I can amend this when you look at the scope of services is there is a problem with policy and what he said to me and I don't know if he said it public enough when I was questioning him just as hard as you are and he said do you want to come with me when I call one of my - a kid or a wife or mother and said one of our officers isn't coming home. So that is what - that is how it was put to me. So what I am saying and I would hope we all agree and I don't know if you guys get in a room or don't get in a room and if you don't as Public Safety Chair now I would ask that the Deputy Mayor Sirabella who is involved with the overall safety of this City, we will all sit in a room and whoever walks out - one of us is going to walk --

The Chair:

The last man standing.

Mr. O'Connor:

But I am trying to make sure it is more than just this incident and I believe at least our intention and I don't know if it was expressed to make sure the safety of our officers is - you know there is always going to be mistakes, honest mistakes, to make sure that things are lined up that you two know what those two are doing and I believe that is some of the - at least the interpretation of whether you have it in writing or you don't - it hasn't been working that way I have been told - I am not a judge here and they are asking for an independent auditor to analyze it.

The Chair:

Then that clarifies it. This bill that is on the table speaks to 7200 Hermitage Street, but the sponsor of the bills retains the right to amend it.

Councilman Ricciardi.

Mr. Ricciardi:

Yes thank you very much. I believe Mr. O'Connor's initial view idea and that was to sit outside of these chambers with all parties involved was the way to go. At that point unfortunately the Administration did not think that was the best policy for one reason or another and Mr. O'Connor asked if I would also place my name on the legislation so without getting into details of the past so it did not seem that Mr. O'Connor had a personal agenda and for what reason he was seeking this and I agree to that because I believe Mr. O'Connor did not have a personal agenda to this. I believe and one of my colleagues stated and agree with me, obviously I am accountable and my boss are every time I pick up that phone and a constituent calls me - I disagree with the same colleague when we talk about the monies. I don't think the monies is the issue at all. The \$20,000, the \$21,000 in the budget of \$349,000,000 and for an issue that is as important as this is not issue and it is also not very important on who pays for it.

I do have a concern and I agree with the Chief when he states we need to know from the Law Department if the City pays for this from public funds if that report would then have to be made public because if it has to be made public then we need to see how that would affect on telling people what our policy is and letting them know on how they could either subvert the policy or use that to their advantage; but at the same time we need to be brutally honest and because we are dealing here with the safety and security of public residents, our police officers and all others involved at the scene including the media. So to be brutally honest and I apologize if in any way I offend anyone; but it is very clear that right now there is a mistrust from the officers on the Critical Incident Review Committee. That is obvious. They don't believe it is going to be objective because if either professional or personal relationships or just looking out to circle the wagons. I mean that is just so clear to me.

It is also very clear to me that something did go drastically wrong and Chief where I think with all due respect that you came up a little short when you said if it is correct that the review would take four to six months. I mean that is a long, long time and listening very closely to some of your response with Councilman Ferlo it appears that the committee just met and that was it. You really couldn't give us any more progress and it has been three weeks. I mean I would think we would have had much more progress than that and I think is, if you don't mind me saying, I think that was a draw back in your statement. You could clarify that. But for something so important like this four to six months is a long, long time.

Now I would also tell you and I will be perfectly frank with everyone involved, if someone said they were going to do an audit in my office I would get a little hesitant and say well wait a minute just let me look at it and I will talk to you about my own staff. It is always very difficult to say with someone that is going to critique my policy and critique my plans; but I am going to be perfectly honest with you my standpoint is I think we need an outside independent review for a number of reasons. Number one unfortunately there is this mistrust. Number two we really need to know that we are dealing with a very, very important issue. Number three it appears that this organization without even looking at their magazine, under special project this is something that they do, this is something that you have been trained by Chief. It does become an issue then. It is very complicated and then we obviously have to protect our own interest as the City if there is a lawsuit brought by the gentleman who was shot who appears

to have started this whole chain of events. We need to talk to the Law Department to see what information then would become released.

So let me just ask a question Chief, number one and you know sometimes I wish we weren't even part of this because you know I am wondering why we are even at this table, but there is a mistrust and we need to talk about that. Why is there is a mistrust from the FOP and officers on what your committee will come up with and number two why would it take four to six months? If you would have come out today or tomorrow after four weeks with a report and if everyone would have looked at it and said God that is objective, we wouldn't even be here. So maybe you could just respond to that.

Chief McNeilly:

Oh I was basing it on what past ones have done. In addition to this Critical Incident Review Board the duties that are involved in it, each one of those people are involved in many other things too, many other duties that takes time, it takes time to do everything that is necessary to do a complete investigation while doing it, while doing other duties.

Mr. Ricciardi:

Let me just interrupt, as a courtesy let me just interrupt, but that is the whole issue then. If they are busy in other things and we need to see if there is something out there that is not right and it could back fire on another hostage situation then that says to me that we need an independent view because they don't have the time to clearly dedicate to this alone.

Chief McNeilly:

Well I think we had another incident just last week and we showed that it went pretty well - the one on Lawry Street where the man was barricaded so normally we don't have any problems with these incidents. We are concerned that there were people hurt on this one too.

Mr. Ricciardi:

Right.

Chief McNeilly:

It is a matter of much concern to us as it is to the FOP. We want to make sure that nobody gets hurt on these two and that is precisely why we have done these internal investigations for the last five years so we can identify weaknesses and try to address them so that nobody does get hurt.

The Chair:

Before we have another second round of discussion, I would like to make some comments and then have final comments from Council and then we need to have a vote. If you are going to amend it, then you need to be prepared to amend it and then we need to dispose of this.

First of all I want to, going back to the Hermitage Street situation, I want to thank both the Chief and the tactical squad, the officers who were involved there, for the restraint that was shown in not killing the suspect. There are very few times when a suspect lasts that long and especially is involved with shooting police officers and comes out of it alive. Alive enough to as you suggested perhaps will file a lawsuit against the City to get his dope and guns back. Maybe that is what he is going to file for. So he is lucky to be alive and I thought that you showed great professionalism and restraint and I appreciate that.

Secondly, there are some - there are a number of safety issues that are involved. There is always the questions of the safety of the officers, there are questions of the safety of the suspects, there are questions of the safety of the public. The public has a very clear interest in this and I hope that this Council will act in a way that includes a way for the public to secure its interest. It is not only the incident that needs to be investigated but we have a situation where we got dangerous dope pushers being sent back to our communities by mistake. This guy was armed to the T and had a mountain of dope that high. That is a public issue and we are very concerned about it and we need to be able to be sure that this investigation uncovers the reasons why that happens and corrects them so that it doesn't happen and those kind of people are not sent back into our community.

According to newspaper accounts and other discussions that I have heard, there may have been some mistakes made, there may have been some problems with communications, there may have been some problems with command that evening, who was in charge and who was ordered to do what. There may have been some questions about the negotiation policy and whether or not our negotiation policy was followed properly and whether or not the improper following or value to properly follow negotiation policy resulted in some officers getting shot. Was there questions about whether or not the officer put himself in jeopardy and did not follow procedures. All of those questions need to be objectively considered.

Now I am really sad that the County has decided not to involve itself in independent investigations and as far as I am concerned, it is unacceptable to me the offer of the District Attorney to oversee an internal investigation. That is not good enough. What we need is an independent investigation when shootings occur, not the District Attorney overseeing an internal investigation. That will not do and if the District Attorney is unwilling to conduct a full investigation with having complete independence that they need to conduct it, then we need to find someone else who will and I would hope that the FOP and the Administration would not object to the District Attorney's Office or the County Police Office being able to conduct a full investigation and I don't blame them for saying if we can't conduct a full independent investigation then we are not going to be involved with it all. They should conduct a full independent complete investigation when a shooting occurs and I would hope that you would support that.

The contradiction of us sitting here discussing independent outside view is just too glaring when both the Administration and the FOP have frustrated the efforts of the Citizen Police Review Board to provide overview and to get answers from you from police officers when citizens have complaints about police misconduct. You don't want to cooperate. You don't want to give answers. You frustrate the Citizen Police Review Board, yet you want to come back to Council and ask us to pay for the NTOA to come in and do an investigation to protect the officers. Well the public needs protection too and that is why we created the Citizen Police Review Board and I would hope that as a result of this that a light shines on all of you and you

see the need for independent review, outside review, not just when it comes to the safety of the officers, but also when it comes to the rights of the citizens. They are needed in both cases. Don't be contradictory, be consistent. I think that what is necessary and I hope that the makers of the bill will amend the legislation. I think we need the outside investigation of the NTOA. I also think that we need the investigation perhaps of the involvement perhaps of some people who like from the FBI Tactical Squad or the State Police Tactical SWAT Team or some others like that involved in that process as well to assure objectivity and thoroughness and I also think that we need to provide for the involvement of the Citizen Police Review Board to have a roll in it as well to make sure that the public's interest is being protected. All of them need to be involved in it and hopefully it will not get to be too big and too cumbersome an operation but we need to make sure that all issues are uncovered, that what needs to be kept confidential is kept confidential, but it is examined objectively and that we have some answers that correct the practices because ladies and gentleman an officer came very close to being killed that night. Two officers came very close to being killed so we really do need to have an objective investigation. Nobody needs to be worried about covering their behinds. We need to look at this to see exactly what can be done to insure the safety of the officers, to insure the safety of the public and to strengthen the very good policies that thanks to you Chief to your credit you have put in place since you have been in command, but everybody needs to be involved in this.

Final round. Councilman Hertzberg you have not had an opportunity to speak.

Mr. Hertzberg:

Thank you. The Garrity Rule which is so important to these investigations that says when a police officer answers to our Office of Municipal Investigation because it is a term and condition of employment, they are compelled then to do that that anything they say won't be used against them. Is that something - it seems like we are taking different positions on whether that would apply here. I think you are - the Chief, correct me if I am wrong, you are saying you don't believe Garrity would apply?

Chief McNeilly:

No we can guarantee that with the Critical Incident Review Board because it is an internal investigation. We can't with an outside investigation.

Mr. Hertzberg:

You don't believe, in other words, for this NTOA one Garrity doesn't apply. You don't believe it would apply?

Chief McNeilly:

No and that is precisely why the officers in Seattle, many of them, chose not to cooperate with that investigation.

Mr. Hertzberg:

Does the FOP have a different position on that issue?

Mr. Gratten:

I don't think --

Mr. Hertzberg:

You are saying with or without the Garrity Rule they --

Mr. Gratten:

I don't think they would have a problem talking with them.

Mr. Moffatt:

Councilman if I may I don't think the question was answered. Whether or not the officers would have a problem talking to them didn't answer your question whether or not Garrity applied.

Mr. Hertzberg:

Right.

Mr. Moffatt:

The answer in my opinion is clear, as the Chief said it, Garrity applies to the employer and employee. That is where it applies at so there is no guarantee that an officer - if an organization was brought in here and an officer was brought in front of him he could say I am not talking to you and there is nothing that you could do at this table nor we could do to make that officer talk unless the Chief gave him Garrity. That is --

Mr. Hertzberg:

Right and I think the issue is whether we as a City make this part of the City's investigation and I think Garrity can be made to apply to this and it depends how it is handled by the City but I don't know - again the FOP do you have an official position on whether Garrity does or doesn't apply here?

Mr. Gratten:

Garrity applies if the officer chooses for it to apply so the officer asserts his privilege under Garrity like he does with the Civilian Review Board which was of course talked about in Denver versus Colorado case. That is where this all comes from. Our officers, at the ones that we are aware of, wouldn't have a problem at least the ones involved in this incident. Remember we believed that Officer Nep's shooting in Homewood was reasonable. We have no reason to believe that it was unreasonable. What we are looking at is this whole entire review Mr. Hertzberg is to stay on task here is that it will look at everything all the way down from the policies to the way the unit is deployed, to the way the unit responds, etc. and I - we believe the officers on scene that night, that wasn't a problem. We believe there is a problem with how they are managed, the critical incidents are managed not as far as how the officers responded. So we believe they would be forthcoming with

the information and does Garrity apply? Yes but it is the officer's right to assert in this situation.

Mr. Moffatt:

I disagree with him. Garrity cannot apply. If an officer goes in and says I am not going to talk to you, nobody on that board can say to him if you don't talk to us I am going to fire you because they do not have the right to fire him.

Mr. Hertzberg:

That would have to come from you or the Chief.

Chief McNeilly:

That is correct. Even then I couldn't do it.

Mr. Moffatt:

That is absolutely correct.

Chief McNeilly:

I could only order them to talk if that is going to be used for an internal investigation. If they are going to publish a report on this, that is going to be public, so I can't order them to talk.

Mr. Moffatt:

Part of Garrity if I am not mistaken - part of the Garrity if I am not mistaken prohibits the interview being given to a third party if I am not mistaken that is part of Garrity.

Mr. Hertzberg:

I know it certainly cannot be used against them in any criminal proceeding. I don't know how much further it goes.

Mr. Moffatt:

In any outside agency.

Mr. Gratten:

Well the decision is this --

Mr. Moffatt:

If I understand.

Mr. Gratten:

The decision is this - the Supreme Court stated that any compelled statement is a violation of the Fifth Amendment Privilege when you use the officer's job against them. That is what happens. What happens in these particular cases if the officer asserts his Garrity warnings, then the Chief has the right to order them to submit to questions. What the Chief is saying is he can't order them to speak to the NTOA. What the FOP is saying is that our members would probably speak freely to the NTOA understanding that they waived their Fifth Amendment privilege and they say that the NTOA can be used against them in court. That is the way it works.

Mr. Moffatt:

If I can interrupt there Mr. Hertzberg. I don't think anybody at this table can assert any officer's Fifth Amendment Rights. I don't think anybody from the FOP nor the Chief nor I nor anybody at this table can say that we believe an officer is going to come in there and waive his Fifth Amendment rights. You cannot do that. As you well know. The officer can.

The Chair:

Does the officer --

Mr. Hertzberg:

The officer has to make that decision.

Chief McNeilly:

Mr. Hertzberg is it is each and every individual when they walk in to whatever room it might be depending on any investigation, any review, it is up to that individual. It is his constitutional rights. So that is how we look at it that way; but it is.

Mr. Hertzberg:

I think I get the picture. One of the other issues raised previously was the - and I don't want to seem like I don't care about police, I do and I am certainly concerned that the officer that was hurt here and we have officers unfortunately who have been killed in the line of duty as well; but would we anticipate this ever occurring again the need for it to go to the NTOA? You know maybe in another year or two years something else.

Mr. Gratten:

Again you know what who is to say what will happen tomorrow, next week or next month. Our concern is not only our members, but also the citizens of Pittsburgh. Let me restate something again when I first stated this. We are concerned with a lot of the bystanders that were out in that one incident and or any other incident because first and foremost of us is to save lives in public safety and to take care of our citizens and then our members so that is what we are there for.

Chief McNeilly:

I have to agree that that is what we are concerned with - the safety of the public and the safety of our officers. We are willing to sit with the FOP and look at policy if they have suggestions as to

changes that need to be made.

Mr. Hertzberg:

No I am just trying to get a feel for whether we are talking about something that will happen once every 20 years, once a year and you are basically are telling me that you are not sure. You have to play it by ear if I am not mistaken by your response. It depends on the future. You don't have a crystal ball.

Mr. Moffatt:

I think the Chief put it on the table Mr. Hertzberg in response to Mr. O'Connor's question. He said we are willing to sit with the FOP and look at our procedures and if they have any problems with our procedures, let's work on correcting our procedures. That is the best way. Who is to say that we don't have the best practices. You know people come to us and ask us for what we do in certain instances. Let's get together and sit down as the Chief just put it on the table.

Mr. Gratten:

Mr. Hertzberg I think once and foremost after this independent review is done by that organization, if those recommendations are implemented, we don't think we will have another problem. We don't think.

Mr. Hertzberg:

And that is the other thing about this --

Mr. Gratten:

Excuse me Chief.

Mr. Hertzberg:

That is the other thing about this. That was the other point I was going to make.

Mr. Gratten:

God forbid you know what.

The Chair:

Gentlemen please.

Councilman Hertzberg you have the floor.

Mr. Hertzberg:

Yes. That was the other point I was going to make is that this, whatever it is you may agree with it, you may disagree with it, you may agree with it, you may disagree with it and we may agree

with it, I may take a look at the thing and say this is crazy, I don't know where they are coming from so it is not going to bind anybody to anything. It is just an outside organization comes out and looks and says this is what we think and maybe you don't think they should be doing it. Maybe you will think that the people involved were the wrong people, they are not even people that know what the heck they are doing and you would be entitled to think that. You know maybe that is right, but in the end it is not going to be binding on anybody is my understanding.

Mr. Moffatt:

Well I think that is part of the problem because what if you get a report and it says this and then you do get an incident and something in that report that maybe we all sitting here said no we are not going to do that, we don't think it is necessary and you go into a civil suit and they say why didn't you do this and we know that is what happens and you as a lawyer knows that is what happens.

Mr. Hertzberg:

And that is the last thing that I would let impact my vote today. I have got to tell you the truth Chief, I don't agree with any of this stuff about civil lawsuits, civil discovery, criminal lawsuits, criminal discover. You know if it is out there and it is a report and it becomes public, if it gets in someone's possession so be it. What ever it is it is.

Mr. Moffatt:

I am not saying that.

Mr. Hertzberg:

And I don't have a problem with that and incidentally this guy from all of the reports, unless every report I have heard is wrong - you know it is like the people I see occasionally come up to me as a lawyer and say hey can I sue, they give me this crazy set of facts, they have no case, they say can I sue. Well you ask me that question can I sue the answer is always yes. The Courts are always open. Anybody can sue anybody for anything. Now what is your percent of after you have filed a lawsuit of getting it thrown out, what is the likelihood of that, it is pretty darn high here. Well if you survive that how about the next step, you know the next phase when it can get thrown out. Well if it wasn't the first time, it is probably going to go the second and then you go to trial what is your percent of winning there. You know anybody can sue and that is for sure but that doesn't sound like one of the greatest plaintiff cases anyway.

The Chair:

Let's just put it on the Internet. Everything is on the Internet.

Mr. Hertzberg:

Well I mean if we - maybe it will happen. I mean people do - some lawyers take cases like this. It could happen; but I am not going to let my decisions here be guided by that kind of thing, neither on the defense on that.

The Chair:

We need to wrap up.

Mr. Hertzberg:

One other comment because it is apples and oranges but it keeps being brought up as a City ordinance whenever there is a discharge of a fireman by a police officer there is supposed to be some other law enforcement agency that supervises the investigation of that and that is by City ordinance and that is not the same thing that we are talking about here. This is completely a different kind of investigation that we are talking about. It is apples and oranges investigation wise, but I do want to - I want to thank District Attorney Steve Zapella for stepping up and doing this. It is not an easy job to do and I want to thank him for doing it. I think it can be done in the way it is envisioned under the ordinance so I disagree with the Chairman. I don't think the agency that is supervising it necessarily has to do all parts of it and I think if the District Attorney experiences problems in the efforts by our City police in being supervised by the District Attorney, I think he needs to go see the Chief and I think there are actions we can take if that turns out to be a problem. I don't know that it has been in the past. I am not sure what the County's problem was whether there was really a problem or whether there are other things going on out there why they decided to pull themselves out of the thing. But I thank District Attorney Zapella for that and also he is looking into the issue of the release of this gentleman from Allegheny County Jail and I want to thank him for doing that and that is certainly something that has to concern everybody in this room and I thank him for stepping into that also.

The Chair:

Let me request final brief comments and then we need to dispose of this bill.

Councilman Peduto and then Councilwoman Burns.

Mr. Peduto:

I am going to reluctantly support this bill and I am going to hold my support on Tuesday contingent upon Councilman Udin's amendments. That includes the involvement of the Civilian Review Board and the involvement of the DA's Office. I think those are very strong recommendations and I strongly will support that. Basically I would ask that in the meantime that the Mayor get personally involved in this issue so that this issue is not something that comes before this body each time there is an incident.

The Chair:

Thank you. Councilwoman Burns.

Ms. Burns:

See I thought that listening to all of this good conversation would make this very clear for me. I am now less clear about this and I feel like we should send everybody to a time out room because if money would help fix the relationships and keep people safe - I mean I am still stuck that we haven't figured out how to support the Civilian Review Board which the voters of this City have voted for and we have implemented. I probably would think better of this resolution if it wasn't - I mean obviously

these critical incidents brings attention to our weaknesses and failures of any system but we don't know if there has been failures in process you know where there was no real critical incident that drew the media out and whatever. So I would be - it would be easier for me to support something like this if it was inclusive of our practices and policies and who might add value to the protection of officers and the public in any of these critical incidents. Obviously you would look to these issues as part of that review but if it was more that if it read a consultants review of our police procedures you know when SWAT is called then I think we have defined a much broader scope because we are going to look at the failures or what happened in a couple incidents and we ought to be looking more holistically. I think either way it drives it but it is just cleaner to me when we are saying we want to know if our practices and procedures are the best. It is difficult when you have a close community of officers and then you are asking them to make judgments because ultimately we never know when the tables are turned so although we may not be involved directly with individuals, it doesn't mean that we don't have in the back of our mind that this might, that you might find yourself at the other end of this and I think that may in fact affect. It would affect me so I assume it will affect others in maybe being more critical so involving the FBI and involving other folks may in fact be something of value and I, rather than just - there is not even money tied to this resolution so --

Mr. O'Connor:

\$21,000.

Ms. Burns:

\$21,000 I mean --

Mr. Ricciardi:

No there is no resolution transferring it.

Ms. Burns:

Okay. I mean if \$21,000 fixed anything it would be a good day in the City of Pittsburgh. I don't think that is and it would be better if something came back more explicit about who we wanted to involve, how we intend to fix different things, how we intend to look at all incidents or the deployment of SWAT and then begin to figure out how when we have these incidents how more clearly we make sure that if something that didn't - wasn't deployed right you know that we have some internal steps in which to correct it and so I am just really unclear. I will probably abstain hoping that this improves by next Tuesday because I think people want to do the right thing here. We are just not quite sure at this point - we are really counting on you guys to be on the same team even though you may differ on some things. It is really a place where I feel uncomfortable trying to make a judgment because I will be the last person to say I am an expert in your rules and procedures and the internal things. Maybe we - maybe this will - you know the old saying be careful what you ask for. You may not want really our involvement in this because it will then force us to become more knowledgeable that at a level maybe lay people including elected officials don't need to be --

The Chair:

It is too late. They got us now.

Ms. Burns:

They got us. Okay.

The Chair:

Councilman Ferlo and then Councilman O'Connor and then we are going to vote.

Mr. Ferlo:

58 seconds or less. First of all I will vote for this but only if the Civilian Review representative is on this committee empowering the scope of services, the oversight and whatever the work product ends up being; however, I do feel very strongly that it is a complete conflict of interest for the District Attorney to be part of this process. This is not - the DA should not be a part of this committee or this process. This has to do with management and best practices and it is that kind of an issue. The DA is completely wrong and if you want to get the creative involvement and input from officers, the last thing you need is the District Attorney on this committee. So I would like some note or memo from the DA as to why he thinks that he needs to be involved in this. Unless I am mistaken the DA doesn't play any role or expertise in tactical armaments and SWAT operations. So I am for the Civilian Review. This is best practices. This is management. It is not a prosecutorial District Attorney role so I don't understand.

The Chair:

It wasn't the District Attorney - at least let me clarify. It was either I think the Chief suggested FBI, the State or the County. They all have SWAT capabilities, but not the DA.

Mr. Ferlo:

Okay. Well whatever the - I am all for these other law enforcement agencies with the expertise being involved but nothing with - the Honorable DA should not be involved in this process.

The Chair:

Right. Final word. I am sorry Mr. Gratten.

Mr. Gratten:

Mr. Udin we would have no problem with the HRT from Quantico, Virginia, with the FBI or commanders Dugan or Torcar from the Pennsylvania State Police. Okay. So we have no problem with that but remember it is a hostage rescue team from Quantico Virginia.

The Chair:

Right that is part of it, but there are some other issues as well.

Mr. Gratten:

I understand.

The Chair:

Okay.

Mr. Gratten:

Thank you sir.

The Chair:

Final word Councilman. I think you started this.

Mr. O'Connor:

There has been a lot of discussion and I think this is not a - I heard the word mistrust and I hope that isn't that far. I think there certainly though a lack of confidence and maybe again as you said, we are doing 90 percent the right thing, can we improve by 10 percent. You know this isn't a labor management argument about wages, it is really about public safety and I think we will all agree that is all our intent. I believe that this is the start. We won't be able to probably have it all in line by Tuesday but we have time before we go out for scope of services, like you say who would be involved in that, who would analyze it so we are really taking the first step. I expect to get both of you guys in a room with maybe the Deputy Mayor to see how we want to do this right. It may be more than the Hermitage - as you said there has been at least four things that have happened that should be a - it is more of a tactical management thing. When is SWAT called, when aren't they called. If nothing else I think you and we all have to have the confidence that we are doing the right thing for our officers and our people of Pittsburgh. So I believe this is something in the right direction and we can make it a very positive thing, a learning process; but again I am glad to see we are at least we are sitting at the same table with the same intentions. It is not to point fingers at a couple officers or commanders, it is to get to the bottom of the future so that none of you ever have to - hopefully none of our officers are ever shot at or wounded again and we know that it isn't realistic but we want to make sure we do the best for all of them.

The Chair:

Thank you. Before we vote, if there is a final comment from either the Chief or the FOP, then we are going to vote. Chief.

Chief McNeilly:

I have to agree with Councilman Hertzberg the last thing that is on our mind is civil litigation, but foremost in our mind is the safety of the public and the safety of our officers and we will do anything we can to make sure that that happens. I am glad to hear that the FOP said today that they would be willing to bring in the FBI or the State to work with us on these policies. We are always willing to sit and discuss with them regrettably that that didn't happen before we got here. I would have much preferred to be able to sit and discuss rather than to have to bring this issue in front of

you. If that is the case, if we are going to bring in the FBI or the State Police, we are willing to sit and work with them if they are subject matter experts, if they feel that there is need for changes in our training or in our policies or in any of our tactics. I would just caution about bringing in another agency like the NTOA to do an investigation where it hasn't succeeded in the past and we are talking about something very critical, we are talking about our tactics and if we are going to make our tactics or recommendations and changes in tactics public with some report that they do, I worry about the safety of our officers going into the future incidents like this with people having pre-knowledge of what we intend to do.

So I agree that we are willing to sit with the FOP. We are willing to bring in the FBI or the State Police or any agency to work with our Critical Incident Review Board. Put the FOP on the Critical Incident Review Board so they have some input. I believe there are ways we can do this without jeopardizing our tactics to the public in the future.

The Chair:

I would just hope that it is clear that I think we need more than just a narrow tactical review. I mean there are a number of other issues involved here as well and whoever is working from the DA's Office on the issue of how this guy got released in the first place, this all needs to be a part of the review as well as the issues of command and communication so it is not just on SWAT tactics or negotiation tactics. It is the whole incident and all of the issues related to the incident and perhaps other previous incidents.

Chief McNeilly:

That is being handled. The DA is looking into the release and in addition to that Mr. Roddey, County Executive, has empanelled a committee to look into exactly what the problems have been in the past and I know because I am sitting on that committee.

The Chair:

Good enough.

All in favor?

Aye.

Opposed?

The bill passes and whoever has amendments please get them to the sponsors of the bill before Tuesday.

Thank you all very much.

We go to the Committee on Engineering and Construction. Councilwoman Carlisle is the Chairperson. That sounds good doesn't it?

Ms. Carlisle:

Yes.

The Chair:

Bill No. 0293 and 0294 are companion.

Yes, sir.

Mr. Gratten:

I would like to thank all Council for your time and your consideration today. Thank you very much.

The Chair:

Thank you Mr. Gratten.

Mr. Gratten:

Thank you.

**BILL NO. 0293:**

Resolution providing for a reimbursement agreement with the Pennsylvania Department of Transportation, in connection with the reconstruction of Fort Pitt Boulevard, Eastbound, from Commonwealth Place to Grant Street, the Market Street Bridge, and the construction of the new I-279/I-376 Interstate Connector; cost not to exceed \$14,186.920.00.

**BILL NO. 0294:**

Resolution further amending Resolution No. 976, effective January 1, 1996, as amended, entitled "Adopting and approving the 1996 Capital Budget and the 1996 Community Development Block Grant Program; and approving the 1996 through 2001 Capital Improvement Program," by decreasing "Wood Street " by \$325,000.00 from \$1,110,995.89 to \$785,995.89 and creating a new line item "Fort Pitt Blvd, E.B.," in the amount of \$325,000.

The Chair:

Is there a motion on the two bills?

Ms. Carlisle:

Motion to approve for brief discussion.

Mr. Peduto:

Second.

The Chair:

Councilwoman Carlisle.

Ms. Carlisle:

Mr. Reginella would you just briefly discuss what you told me this morning in reference to the two bills.

Mr. Reginella:

I will be happy to. If it pleases the Chair I would like to take a few seconds to express my congratulations and well wishes to Wanda Carlisle, our newest member of City Council. I am looking forward to working with you particularly since you have been designated as our Councilmatic Chairman. I also want to thank all members of City Council for agreeing to consider these two bills. By waiving Rule 8, the reason for our request is that PennDot is anxious to award the contract for the reconstruction of Ft. Pitt Blvd. and the construction of the new interstate connector between the Ft. Duquesne Bridge and the Parkway East in as such they need a commitment from the City - actually they require the executive of a Reimbursement Agreement whereby we send PennDot our share of the monies. However, they have agreed to awarding the contract based on Council passing this resolution in as much as it will take a few more days or perhaps weeks to get the agreement actually executed by all parties.

Now to the bill proper. In 2000 we had a budget of \$24,000,000 for this project. That figure was based on an estimate developed by PennDot and it was intended at that time that the City would administer the design and the construction of the contract. As time went on, we did in fact administer the design phase and we also do counter responsibility for contracting for the demolition of the Ft. Pitt Blvd. It is now time to move on with the reconstruction which as I said PennDot will do. The budget that we had in 2000 was \$24,000,000 total consisting of Federal, State and City funds. The City funds amounted to \$540,000 and that was predicated on the City being responsibility for two and a quarter percent of the total cost of the project. That is because it was estimated that the cost of the interstate is about 55 percent of the total and the cost of the reconstruction of Ft. Pitt Blvd. is about 45 percent of the total.

In any event, when PennDot finally went to solicit bids they came in - the low bidder came in with a figure of \$31,000,000 roughly. Now we had already expended some monies for design and some monies for the demolition and it left us with about a \$17,000,000 balance including State, Federal and City money. The City's share, the remaining City balance, was only \$384,000. When we take the total contract amount \$31,000,000 and multiply that by 45 percent, we come up with a \$14,000,000 figure. That \$14,000,000 figure again is made up of 80 percent Federal funds, 15 percent State funds and 5 percent local match. So our share realistically for the reconstruction of Ft. Pitt Blvd. is \$709,000. In as much as we only have \$384,000 left we needed to come up with that additional \$325,000 and the place where we funded money is the old line item for Wood Street where apparently we had over budgeted and there were City bond monies left in that account and so we are asking that we be permitted to utilize \$325,000 out of that account.

The Chair:

Thank you.

Councilwoman have you finished?

Ms. Carlisle:

Yes.

The Chair:

Councilman Hertzberg.

Mr. Hertzberg:

Thank you. I will support this. I know the construction project is underway, it is needed, it is moving fact and I am happy to see that. I just - it is nothing that you have to answer today, but I just want to alert you, I have tried to alert everybody and I am getting no response on the Mon Wharf problem with the Just Ducky Boats. That has got to get resolved. Their season starts April 1 so I hope that we will get together on this very soon.

Mr. Reginella:

I certainly - I spoke with those people this morning by the way after having spoken with the Mayor's Office during the last several days. Our understanding was and I think you will agree that at the completion of the construction on the North Shore, that Just Ducky would be permitted to return to that site and the ramp that we constructed on their behalf along the same location where we are now, are rebuilding Ft. Pitt Blvd. was in fact intended to be relocated at the appropriate time. Now I am given the understanding that it is no longer desirable to have Just Ducky do their entry into the river at that location. Hence the problem that we are faced with and yes Just Ducky is ready to begin this season in about two weeks.

Mr. Hertzberg:

This is just like a every two year occurrence for this operation that everybody likes, everybody wants; but every two years with another construction project, they are faced with a last minute what to do. A few years ago they ended up using the public ramp on the South Side which was not good for their business, not good for the City and in fact they had to hire police, we ended up having to reimburse them for the police. This is something that we have got to take care of. That is all I want to say.

Mr. Reginella:

I fully agree with you.

Mr. Ferlo:

I just wanted to thank you for paying in excess of the Living Wage for this construction project. Thank you.

The Chair:

I had a couple of questions. One I am pleased to be able to transfer the \$325,000 from the Wood Street over billing - not over billing but remaining funds. My question though remains is how much remains in that fund after it is done, after you take out the \$325,000?

Mr. Reginella:

I am given the understanding that the current balance is \$1,110,000 and by taking out \$325,000 we still have a balance of \$785,000.

The Chair:

\$785,000?

Ms. Burns:

You now have out attention.

The Chair:

I thought that would get your attention. Thank you.

My second question has to do with the First Side. I have heard some complaints from some of the people who occupy some of the buildings there about the vibration from the construction jeopardizing the integrity of some historic structures in First Side. Can you tell me if those issues have been addressed and if not how you are going to address them.

Mr. Reginella:

Some of it has been addressed and we are continuing to address those issues. Given the fact that PennDot will be administering the construction contract these matters will have to be handled by PennDot. During the demolition phase, we received some complaints about vibrations being transmitted to the buildings; but given the nature of our work which was using a Horam to knock down the existing parapet wall comprising part of the deck of Ft. Pitt Blvd., those vibrations were actually minor in nature and while they were felt in the building, they were not of a magnitude to cause any concern whatsoever.

The Chair:

Have you convinced the First Side people of that.

Mr. Reginella:

Yes. We have communicated that to them.

The Chair:

Have you convinced them.

Mr. Reginella:

Well the demolition work is literally completed. The contractor is working on a very less block there between Smithfield and Grant and there have been no damages so I don't know that we need to do anything.

The Chair:

It was only through the demolition phase, it wasn't about the --

Mr. Reginella:

The construction phase is another matter entirely and I am coming to that Councilman. Initially the design called for a type of piling that would not require any driving of piling. Unfortunately the time table and the cost have forced all of us to consider the driven type, bearing type piles. Those vibrations are apt to be significantly greater than what was experienced during the demolition phase.

The Chair:

What is going to happen to those buildings?

Mr. Reginella:

Well the contract calls for the contractor to install monitoring devices in the buildings to record the magnitude of the vibrations. If in fact the magnitude of the vibrations prove to be too large, we will have to - we and PennDot will have to address that issue.

The Chair:

Is there a different way that the construction could be done that would reduce the amount of the vibration.

Mr. Reginella:

Well it would be to change the type of piling. As long as we are driving the piling, the impact will be such that vibrations will be generated. There is no question about that. The only issue is whether or not these vibrations will be of a magnitude to induce structural damages to the buildings.

The Chair:

I am worried about whether or not the monitoring will be --

Mr. Reginella:

We do not believe that that will be the case.

The Chair:

I am worried about whether or not the monitoring will be sensitive enough so that you are not

monitoring the collapse of a building but that you know well in advance whether or not the vibrations are doing some structural damage.

Mr. Reginella:

Yes. The monitoring devices that are available today are sophisticated and very sensitive. Yes to answer your question we can monitor these vibrations and know immediately whether or not we should be concerned about damages to the buildings.

The Chair:

If you --

Mr. Reginella:

What I wanted to say is that the building owners have a concern and justifiably so but they are lay people, they are not structural engineers, they are not experts in transmissions of vibrations. The experts have looked at this and the sense is that the vibrations will --

The Chair:

Will or not be?

Mr. Reginella:

The people that were doing the design for the reconstruction for Ft. Pitt Blvd. and the consensus seems to be that the vibrations would not be of major concern.

The Chair:

What would you do if you found that the vibrations were too great and were in fact threatening the buildings.

Mr. Reginella:

Well at that point in time we would have to stop operations and --

The Chair:

And do what? How would you get the job done?

Mr. Reginella:

And go back to a different type of piling.

The Chair:

What kind of piling?

Mr. Reginella:

Well it would be the auger type. The drill type instead of the driven type.

The Chair:

So that is more expensive. Is that the reason why you are not starting with that?

Mr. Reginella:

Yes, more expensive.

The Chair:

How much would that increase the cost?

Mr. Reginella:

It could increase the cost of the project maybe ten or fifteen percent. I am not sure, but it is also the time required to auger all those new pilings that would be of concern, the scheduling.

The Chair:

I am not sure that we are - I don't know I am not an engineer either and I don't know about this kind of monitoring sensitive equipment. I would hope however that there is sufficient discussion with your engineers and engineers that represent the building owners on First Side so that we are all agreed and all comfortable that the monitoring processes are sufficiently sensitive and that we have some kind of plan b to construct different kind of pilings if the drilling doesn't work.

Mr. Reginella:

You might be interested in knowing that we have scheduled a meeting with property owners with the First Side Group and I think that meeting is one day next week if I am not mistaken.

The Chair:

Would you please inform my office so that we can have someone there?

Mr. Reginella:

We will do so.

The Chair:

Councilwoman Burns and then Councilman Peduto.

Ms. Burns:

Sure. I lived through I279 and if you look at Madison Avenue and if you look at Howard Street,

all of the same wonderful PennDot contractors in there and all of those homes were lost because they didn't do it right so - you ought to be documenting for these buildings of the cracks and whatever because collapse is kind of an extreme. On all of those properties when they did their work they didn't give a damn. These buildings pulled away from their utilities. You could stand on the first floor and look out and see the sky and you were inside. So been there, done that so ten percent they ought to pay to do it right because the mistakes are great and I mean if you see Howard Street, which by the way we had to buy back, you want to talk about a lot of money because that street was half to remain. You see a street that is a mile or whatever with all of these utility lines, it is bazaar actually and that is all because they didn't do it right and they just don't care. So it is easier for them to actually pay for a few little buildings in downtown Pittsburgh than probably increase the cost because I saw what happened first hand and we are still looking at the blight and the loss of structures and people and the effect of that and the State paid a big price tag for that. So count me out for this one.

Mr. Reginella:

I can assure that neither the City or PennDot are looking at having to deal with damages to the buildings. The cost will be prohibitive.

Ms. Burns:

Neither did we.

Mr. Reginella:

If it costs the kind of damage that you described - again, I feel comfortable that we have taken all of the necessary precautions to be able to monitor the progress of the job and the ensuing consequences if that be the case.

The Chair:

Mr. Peduto and then we vote.

Mr. Peduto:

Director one quick question. Ft. Pitt Blvd. has a vast amount of decorative rail. It is an art deco style. It almost looks like a tulip. It goes all throughout that area. What is going to happen with it?

Mr. Reginella:

The City has requirements in the demolition contract that compels the contractor to remove the railing, take it to a shop, have it reconditioned and delivered back to the City to the Department of Public Works and that is going on as we speak.

Mr. Peduto:

Will it be put back to Ft. Pitt Blvd.

Mr. Reginella:

No. It will be stored at Public Works and used in the future as needed. One of the projects that we are working is Cotoma Street and we will be using some of those railing up at Cotoma. We also will use them in the future as needed where ever we may be able to fit them in.

Mr. Peduto:

What standard is being used along Ft. Pitt Blvd.?

Mr. Reginella:

The Ft. Pitt Blvd. is going to use a modified railing which is a combination of a concrete base with a metallic railing above that?

Mr. Peduto:

Is it the same standard that was used on the Blvd. of the Allies.

Mr. Reginella:

I don't believe it is the same thing. That is what is known as the Colorado railings. I think we are using the Texas IT or something or other; but it is similar to that.

The Chair:

Could you send a photograph to his office please.

Mr. Reginella:

We can do that.

Mr. Peduto:

Who is in charge of the standard, is that PennDot?

Mr. Reginella:

PennDot is doing the reconstruction, correct but we have all of the documents. We could provide you with a drawing of the railings.

Mr. Peduto:

Thank you.

The Chair:

Any other discussion?

All in favor?

Mr. Ferlo:

No.

The Chair:

Roll call vote.

Mr. Ferlo:

You don't need a roll call vote. I voted no because of the railing and I am still voting no.

The Chair:

Okay.

Mr. Ferlo:

We let PennDot uglify our City and we should stop it, but in any event.

The Chair:

Roll call vote.

The Clerk:

Ms. Burns: I will abstain.

Ms. Carlisle: Aye.

Mr. Ferlo: No.

Mr. Hertzberg:

Mr. Motznik:

Mr. O'Connor:

Mr. Peduto: Aye.

Mr. Udin, Chair: Aye.

Aye's three. No's one. One abstaining. Affirmative recommendation.

Mr. Peduto:

Director I would like those pictures before Tuesday or else that will be a no vote.

The Chair:

Thank you. We need to amend the invoices.

Mr. Ferlo:

I would like to make a motion to amend the invoices from my office so I don't have a work stoppage. Thank you.

The Chair:

Everybody has a copy?

All in favor?

Aye.

Opposed?

Motion passes.

That concludes all of the bills before Council. We now open the floor to the public. Anyone who wants to address from the public for up to three minutes, please approach the microphone and give your name and address.

There being no public speakers, we outlasted them, we have a reminder there are two public hearings today at 2:00 and 2:30 regarding Council Bill No. 86 Ordinance amending the Pittsburgh Code Title 9 Zoning by changing from Parks and open space a hillside in the Allentown community, 18<sup>th</sup> Ward, 3<sup>rd</sup> Council District immediately followed by public hearing for Council Bill No. 138, Ordinance amending the Pittsburgh Code Title 9 Zoning by changing from R to L, to family residence to R1DH residential single unit detached in Knoxville community, 38<sup>th</sup> Ward, 3<sup>rd</sup> Council District. Those two public hearings are this afternoon at 2:00 and 2:30.

Any other discussion or announcement? Councilman Ferlo.

Mr. Ferlo:

I wanted to ask the Chair respectfully to communicate to our colleagues about being here at the latter part of the meeting because some individuals may or may not be here for the next couple of weeks and I don't like to leave this group hanging but we need attendance at the end of the meeting.

The Chair:

So noted.

Motion to adjourn.

Ms. Burns:

So moved.

The Chair:

Thank you.

This meeting stands adjourned.

**ATTEST:**

**LINDA M. JOHNSON-WASLER  
CITY CLERK**

**BRIDGET AKYEA  
STENOTYPE REPORTER**