

Minutes from the December 1, 2011 Public Safety Committee Meeting

The meeting was called to order at 5:20 p.m. by Councilor Suslovic, Chairman of the Public Safety Committee. Committee members Councilors Coyne and Marshall were present and Councilors Leeman and Waxman also attended and participated in the meeting.

The subject on the Committee's Agenda was the application by OccupyMaine for a permit. The amended petition sought to occupy approximately 2/3 of the park on a 24/7 basis for at least 179 days for OccupyMaine's purposes including residential camping and the ongoing presence of a number of structures including a number of tents to be determined by City Code spatial separation requirements and other structures erected by OccupyMaine as well as 50 overnight campers.

City staff and administrative officials in attendance were City Manager Mark Rees, Corporation Counsel Gary Wood, Captain Chris Pirone of the Portland Fire Department, Tammy Munson, Division Head of the Building Inspections Division, Acting Police Chief Mike Sauschuck, Police Legal Advisor Beth Ann Poliquin, Assistant City Manager Anita LaChance, and Communications Director Nicole Clegg.

Chairman Suslovic called for reports about the encampment from the city staff and administration officials. City Manager Mark Rees gave the Committee his report followed by Corporation Counsel, Gary Wood, Captain Christopher Pirone of the Portland Fire Department, Division Head of Inspections Department, Tammy Munson and Acting Police Chief Mike Sauschuck.

The City Manager's report focused on the chronology of events starting in October and the efforts of city staff and representatives of OccupyMaine to reach some kind of consensus solution.

The Corporation Counsel's report provided an analysis of city ordinances that required a permit by OccupyMaine (Section 18-40 of the City Code) and required that its application be considered and acted on by the Council (Section 18-41) in a quasi-judicial capacity in which the Council would find facts and determine whether the ordinance requirement necessary for a permit, specifically those in Sections 18-44 to 18-47 were met.

Captain Pirone and Tammy Munson's report identified specific violations of the City's Life Safety Code requirements and specific requirements in the City's building codes. Acting Police Chief Sauschuk's report listed a long chronology of disturbance activities and misbehavior in the park by members of OccupyMaine and others that required a response by PPD and in some cases arrests for crimes.

In support of their testimony, staff presented a number of documents including a list of the city code violations found by city staff in its inspection of the park on November 17th as well as a 4 page report from the Portland Police Department about the number and type of incidents that PPD had responded to since the encampment began in Lincoln Park.

The record, in addition to OccupyMaine's application, also contained documents submitted by Attorney John Branson for OccupyMaine on the code violation issues and the activities of the Portland Police Department.

Following the staff presentations members of the Committee inquired of Tammy Munson, Chris Pirone and Acting Chief Sauschuck how much time had been spent to date by them and their departments in relation to OccupyMaine issues. Ms. Munson and Mr. Pirone reported that they had spent approximately 1 day doing an inspection tour and writing up the results of that report. Acting Chief Sauschuck stated that he did not have an exact number but that the public safety issues addressed by PPD were taking significant time away from other needed police duties. He also answered in the affirmative when asked if the number and type of incidents addressed by PPD in Lincoln Park would have led to sanctions on a property owner under the City's Disorderly House Ordinance.

The Committee also inquired about the Council's role in relation to the application. Corporation Counsel told them that under the City ordinances that this application has to be approved by the Council because it seeks to use a public park for more than three consecutive days. Staff also informed the Council, in addition to a permit for park use, that building permits were required for the structures that had been erected in the park but no such permits had been applied for or issued by the City.

Chair Suslovic opened the floor to public comment at 6:10 p.m. starting with Attorney John Branson, the legal counsel for OccupyMaine. Attorney Branson laid out the course of proceedings that had been followed to date by OccupyMaine and the city administration and reviewed the substance of the application that was before the Committee as well as the points that he submitted in favor of the application.

Following his presentation Attorney Branson answered several questions posed to him by Committee members regarding the public safety and health issues outlined by city staff. Those questions and Mr. Branson's answers focused primarily on behavior that required a response by the Portland Police Department, the code violations that had been listed by City staff and that were made part of the record and trash removal and sanitation issues. He also answered an inquiry about the training of OccupyMaine's "safety team" that was present in the park and part of OccupyMaine's presence.

Thirty-three members of the public then testified regarding the application. Ten members of the public opposed a recommendation to grant the application. 23 members of the public supported the application.

Chairman Suslovic closed the public comment at 8:25 p.m.

He asked Doug Gardner the City's Director of Public Health to give a brief overview of the homeless services available in the City and whether anyone had ever been referred to Lincoln Park who had approached the City seeking assistance for their needs as a homeless person. Mr. Gardner identified 5 or 6 facilities available in the City. He answered that no homeless person is

ever turned away who seeks assistance and that no one has been referred to Lincoln Park by any city staff.

Corporation Counsel was asked about the City's liability exposure in relation to the presence of OccupyMaine and responded that under the Maine Tort Claims Act, the City had general liability protection but that the liability insurance requirement in the city ordinance is important because in cases involving liability claims there is often a high cost for attorneys to defend the claim.

Acting Police Chief Sauschuck confirmed that the incidents of violent activity and their intensity had increased sequentially while the weather was good and is much higher in Lincoln Park than other parks since the OccupyMaine residency began.

In considering the application as presented, Councilor Marshall stated that he could under certain circumstances support a 24 hour free speech zone but that he was not at all comfortable with the concept of a residential use in the park as proposed. He did not think that ordinance revisions were necessary to properly address the application before the Committee. In relation to the existing occupation and the application to allow it to continue Councilor Marshall said that he would not support it because it asks for too many tents and other permanent structures. He said he would look much more favorably on an application that proposed far few structures and far less overnight use. He also said that the application does not meet the City's code requirements as required by Section 18-44 of the City ordinance that lays out the requirements necessary for the administration or the Council to grant an application to use city property. He asked that staff work with OccupyMaine to get to the heart of the health, welfare and safety issues and bring the application to the Council with recommendations to address those issues.

Councilor Coyne agreed that the petition as written was not acceptable. He noted in general that the original message of OccupyMaine has been lost in the context of the health, welfare and safety problems that have surfaced since the encampment began at Lincoln Park and that it is unlikely that the First Amendment requires a municipality to allow that kind of use on public property. He also noted that there is a considerable cost to the City's taxpayers to address the issues generated by the presence of OccupyMaine members and others in the park, particularly in relation to the Police Department. He agreed with Councilor Marshall that there was no need to amend the ordinance at this time but stated that he would support an amendment in the future to make it crystal clear that camping would not be permitted in the city parks. Councilor Coyne also said that the duration of the occupation sought (at least 179 days), the size of the occupation in terms of the number of structures, the space it would take in the park, its request to use the park on a 24/7 basis for occupation, its non-compliance with city codes and its failure to meet the requirements in Section 18-44-47 meant that he could not support or recommend that the application be granted as presented. He also noted that the liability insurance requirement had not been met nor had a bond been posted to repair any damage to the park from the requested use as required by Section 18-45.

Chairman Suslovic stated he agreed with the conclusion of other Committee members that the application should not be recommended for approval. He stated he could not support the application as presented for similar reasons and particularly because several of the criteria in Section 18-44 and 18-45 had not been met. He noted that the application did not show that the

activity would not endanger persons in the park. That adequate sanitation facilities had not been provided, and that the occupation was damaging the park. He stated that in order to be fair and consistent to everyone under the City's ordinances, all groups seeking to use public space must meet the same health, welfare and safety ordinance requirements and that it was clear that this application had not met those at this time. He agreed that liability insurance is an important requirement to protect the City's taxpayers as is the requirement to have financial security posted in order to make sure that the park could be repaired.

Councilor Suslovic also expressed general concerns about the requested duration of the park use by OccupyMaine which was far greater than had ever been allowed or permitted in the past, as well as the placement of permanent structures in the park for an extended period, even if those structures were to comply with city building codes which the current structures did not.

He agreed that there was no need to amend the city ordinances at this time to act effectively and fairly on the application given the content of that application and the information provided to the Committee by the testimony of city staff, Attorney Branson and the public, and the documents provided and made part of the record.

Councilor Coyne made a motion to recommend that the Council deny the application as written. His motion was seconded by Councilor Marshall. It passed 3-0.

Motion was made by Councilor Suslovic to adjourn the meeting at 8:55 p.m. and seconded by Marshall. It passed 3-0.