RESOLUTION No. 37308

Authorize City Attorney to appeal final opinion and order in *Columbia Pacific Building Trades v. City of Portland,* Land Use Board of Appeals No. 2017-001 (Resolution)

WHEREAS, in December, 2016, the Council amended City Code Title 33, Planning and Zoning, to address zoning of fossil fuel terminals (Ordinance No. 188142); and,

WHEREAS, the 2016 ordinance was a policy extension of the City's 2015 Climate Action Plan, which identified the need to establish a "fossil fuel export policy that considers lifecycle emissions, safety, economics, neighborhood livability and environmental impacts" (Resolution 37135); and,

WHEREAS, in November, 2015, the Council adopted Resolution 37168, expressing the City's opposition to the "expansion of infrastructure whose primary purpose is transporting or storing fossil fuels in or through Portland or adjacent waterways." It also expressed the Council's intent not to restrict improvements in safety, efficiency, or seismic resilience; the provision of service directly to end users; or infrastructure that will accelerate the transition to nonfossil fuel energy sources; and,

WHEREAS, the City's 2035 Comprehensive Plan sets policy direction to encourage disaster-resilient development and specifically to reduce natural hazard risks to critical energy and transportation infrastructure in Portland Harbor; and,

WHEREAS, most of the City's employment and industrial zones are located in areas with moderate to high levels of liquefaction susceptibility, as documented by the Portland Bureau of Emergency Management' s Critical Energy Infrastructure Hub Study (2016); and,

WHEREAS, the Council has responsibility to regulate the location of land uses that pose significant potential threats to public health and safety; and,

WHEREAS, the validity of Ordinance No. 188142 was challenged by an appeal to the Land Use Board of Appeals ("LUBA"), which concluded that the City's regulations were constitutionally invalid, and separately questioned the factual basis for the regulations; and,

WHEREAS, if the jurisprudential underpinnings to the LUBA opinion stand, there will be significant legal uncertainty for other City regulatory programs;

NOW, THEREFORE, BE IT RESOLVED, the City Attorney is authorized to take the steps necessary to appeal the Land Use Board of Appeals' final opinion and order of July 19, 2017 *Columbia Pacific Building Trades v. City of Portland,* Land Use Board of Appeals No. 2017-001, to pursue that appeal to its conclusion in any higher court, and, in furtherance of such appeal, to make any stipulation, agreement, or admission as in her judgment may be in the interest of the City.

Adopted by the Council: 08/02/2017

Mayor Ted Wheeler
Prepared by: Tracy Reeve/bwalters
Date Prepared: July 25, 2017

Mary Hull Caballero
Auditor of the City of Portland
By *CPhillips*

Deputy

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Agenda No.

RESOLUTION NO. 37308

Title

Authorize City Attorney to appeal final opinion and order in Columbia Pacific Building Trades v. City of Portland, Land Use Board of Appeals No. 2017-001 (Resolution)

INTRODUCED BY Commissioner/Auditor: Mayor Wheeler	CLERK USE: DATE FILED _____ **JUL 25 2017**
COMMISSIONER APPROVAL	Mary Hull Caballero Auditor of the City of Portland
Mayor—Finance & Administration – Wheeler *KID*	By: _____ Deputy
Position 1/Utilities - Fritz	
Position 2/Works - Fish	
Position 3/Affairs - Saltzman	ACTION TAKEN:
Position 4/Safety - Eudaly	
BUREAU APPROVAL	
Bureau: Office of the City Attorney Bureau Head: Tracy Reeve	
Prepared by: B Walters Date Prepared: July 20, 2017	
Impact Statement Completed ☒ Amends Budget ☐	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes ☐ No ☒	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval:	
Council Meeting Date **August 2, 2017**	

AGENDA	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
			YEAS	NAYS
TIME CERTAIN ☐ **Start time:** **Total amount of time needed:** (for presentation, testimony and discussion)	1. Fritz	1. Fritz	✓	
	2. Fish	2. Fish	✓	
CONSENT ☐	3. Saltzman	3. Saltzman	✓	
REGULAR ☒ **Total amount of time needed: 15** (for presentation, testimony and discussion)	4. Eudaly	4. Eudaly	✓	
	Wheeler	Wheeler	✓	