

RESOLUTION No. 37380

Authorize the City Attorney to appeal the Final Order in *In the Matter of The City of Portland*, Oregon Administrative Hearing Case No. 2017-ABC-00832, Building Codes Division Case No. C2015-0200 in regards to automatic sprinkler systems in nightclubs (Resolution)

WHEREAS, on September 11, 2013, the Portland City Council passed Ordinance No. 186247 (“Ordinance”), which amended the Portland Fire Code to require existing nightclubs located in the City, with an occupancy load of more than 100 people, to install automatic sprinkler systems; and

WHEREAS, the Ordinance passed in the wake of decades of catastrophic nightclub fires, and a movement by state and local governments, as well as national standards boards, to address the unique fire safety challenges created by nightclubs; and

WHEREAS, the Ordinance ultimately affected 14 nightclubs, which were required over a period of one to two years to install fire sprinklers; and

WHEREAS, on July 21, 2017, the Building Codes Division (“BCD”) of the Oregon Department of Consumer and Business Services issued a Notice of Proposed Assessment of Civil Penalties; Notice of Proposed Order of Corrective Action; and Notice of Final Order (“Notice”), asserting that the Ordinance violated ORS 455.040(1) and ORS 455.020(1); and

WHEREAS, the City requested a hearing on the Notice, and on November 30, 2017, the assigned Administrative Law Judge issued a proposed order against BCD’s motion for summary determination and in favor of the City’s cross-motion for summary determination, finding that BCD lacked authority to take the action proposed in the Notice, including ordering the corrective action of repealing the Ordinance and assessing a civil penalty against the City; and

WHEREAS, on March 21, 2018, BCD issued an Amended Proposed Order, which rejected the conclusions of the Administrative Law Judge and instead ruled in favor of BCD’s motion for summary determination and proposed that the City be assessed civil penalties and ordered to repeal the Ordinance; and

WHEREAS, following the City’s submission of exceptions to the Amended Proposed Order, BCD issued a Final Order on July 19, 2018, ruling in favor of BCD’s motion for summary determination, assessing civil penalties of \$8,625 and ordering the City to repeal the Ordinance; and

WHEREAS, BCD’s Final Order overstates its jurisdictional authority and improperly analyzes the scope of preemption set forth in ORS 455.040; and

WHEREAS, the legal conclusions in the Final Order jeopardize the ability of the City to enact important public safety measures;

NOW, THEREFORE, BE IT RESOLVED, that, the City Attorney or her designee is authorized to take the steps necessary to appeal BCD's Final Order of July 19, 2018, *In the Matter of The City of Portland, Oregon* Administrative Hearing Case No. 2017-ABC-00832, Building Codes Division Case No. C2015-0200, 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: AUG ~~29~~ 2018

Commissioner: Mayor Wheeler
Prepared by: Naomi Sheffield
Date Prepared: August 13, 2018

Mary Hull Caballero
Auditor of the City of Portland
By

Deputy

Agenda No.

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Title

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 Administrative Hearing Case No. 2017-ABC-00832, Building Codes Division Case No. C2015-0200,
 (Resolution)

*in regards to automatic sprinkler
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INTRODUCED BY Commissioner/Auditor: Mayor Wheeler Commissioner Saltzman	CLERK USE: DATE FILED <u>AUG 21 2018</u>
COMMISSIONER APPROVAL Mayor—Finance & Administration - Wheeler <i>MP</i> Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman <i>[Signature]</i> Position 4/Safety - Eudaly	Mary Hull Caballero Auditor of the City of Portland By: <u><i>[Signature]</i></u> Deputy
BUREAU APPROVAL Bureau: City Attorney's Office Bureau Head: Tracy Reeve Prepared by: Naomi Sheffield Date Prepared: August 13, 2018 Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> City Auditor Office Approval: required for Code Ordinances City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter Council Meeting Date August 29, 2018	ACTION TAKEN:

AGENDA TIME CERTAIN <input type="checkbox"/> Start time: Total amount of time needed: (for presentation, testimony and discussion) CONSENT <input checked="" type="checkbox"/> REGULAR <input type="checkbox"/> Total amount of time needed: (for presentation, testimony and discussion)	<table border="1"> <tr> <th>FOUR-FIFTHS AGENDA</th> <th colspan="2">COMMISSIONERS VOTED AS FOLLOWS:</th> </tr> <tr> <th></th> <th>YEAS</th> <th>NAYS</th> </tr> <tr> <td>1. Fritz</td> <td><input checked="" type="checkbox"/></td> <td></td> </tr> <tr> <td>2. Fish</td> <td><input checked="" type="checkbox"/></td> <td></td> </tr> <tr> <td>3. Saltzman</td> <td><input checked="" type="checkbox"/></td> <td></td> </tr> <tr> <td>4. Eudaly</td> <td><input checked="" type="checkbox"/></td> <td></td> </tr> <tr> <td>Wheeler</td> <td><input checked="" type="checkbox"/></td> <td></td> </tr> </table>	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:			YEAS	NAYS	1. Fritz	<input checked="" type="checkbox"/>		2. Fish	<input checked="" type="checkbox"/>		3. Saltzman	<input checked="" type="checkbox"/>		4. Eudaly	<input checked="" type="checkbox"/>		Wheeler	<input checked="" type="checkbox"/>	
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