

RESOLUTION No. 37381

Authorize City Attorney to appear as *amicus curiae* to support City's interest in recreational use of public lands. (Resolution)

WHEREAS, The City of Portland supports and encourages the recreational use of public lands and lands held in public trust wherever such recreational use is possible and appropriate; and

WHEREAS, The Oregon Legislature enacted ORS 105.682 to encourage the recreational use of land by providing immunity to any landowner, public or private, who directly or indirectly permits any person to use land for recreational purposes; and

WHEREAS, The Oregon Court of Appeals, in *Ortega v. Martin et al.*, 293 Or App 180, __ P3d __ (Aug 1, 2018), held that ORS 105.682 does not apply to public beaches and the ocean adjoining those beaches; and

WHEREAS, The Oregon Court of Appeals, in *McCormick v. State ex rel. Oregon State Parks & Rec. Dep't*, 293 Or App 197, __ P3d __ (Aug 1, 2018), held that ORS 105.682 does not apply to land held in public trust by the State of Oregon; and

WHEREAS, The court's reasoning in those two decisions appears to be based on a misinterpretation of ORS 105.682; and

WHEREAS, The court's reasoning in those two decisions, if upheld, might expose public landowners to liability when they permit the public to use public land or land held in public trust for recreational purposes; and

WHEREAS, The court's reasoning in those two decisions, if upheld, would penalize public landowners for permitting the recreational use of public lands and lands held in public trust and discourage the recreational use of such lands; and

WHEREAS, The Attorney General of the State of Oregon has informed the City Attorney that it intends to seek Supreme Court review of the decisions of the Court of Appeals in those two cases.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Portland, that the City Attorney or her designee, on behalf of the City of Portland, may file or join *amicus curiae* briefs in support of the state in *Ortega v. Martin et al.*, 293 Or App 180, __ P3d __ (Aug 1, 2018), and *McCormick v. State ex rel. Oregon State Parks & Rec. Dep't*, 293 Or App 197, __ P3d __ (Aug 1, 2018), and in any resulting appeal or petition for review in either of those cases.

Adopted by the Council: AUG 20 2018

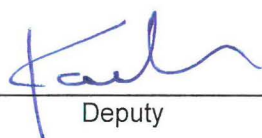
Mayor Wheeler
Prepared by: Denis M. Vannier
Date Prepared: August 20, 2018

Mary Hull Caballero
Auditor of the City of Portland

By  Deputy

Agenda No.
RESOLUTION NO. 37381
 Title

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INTRODUCED BY Commissioner/Auditor: Mayor Wheeler	CLERK USE: DATE FILED <u>AUG 21 2018</u>
COMMISSIONER APPROVAL Mayor—Finance & Administration – Wheeler WFW Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Eudaly	Mary Hull Caballero Auditor of the City of Portland By: <u></u> Deputy
BUREAU APPROVAL Bureau: City Attorney's Office Bureau Head: Tracy Reeve	ACTION TAKEN:
Prepared by: D. Vannier Date Prepared: 8/20/18	
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, charter, Comp Plan	
Council Meeting Date 8/29/18	

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)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz ✓	
2. Fish	2. Fish _____	
3. Saltzman	3. Saltzman ✓	
4. Eudaly	4. Eudaly ✓	
Wheeler	Wheeler ✓	