

RESOLUTION No. 37397

Authorize City Attorney to sue or join as a party in litigation challenging federal government's refusal to disburse certain statutorily mandated funds to Oregon jurisdictions (Resolution)

WHEREAS, On March 22, 2017, the Council adopted Resolution 37277, to "Declare the City of Portland a Welcoming City, a Sanctuary City, and an Inclusive City for all"; and

WHEREAS, Resolution 37277 further declares that the City of Portland embraces, celebrates, and welcomes the collective contributions of all persons, cherishing and respecting people of every race, color, national origin, immigration or refugee status, heritage, culture, religion, sex, gender identity and gender expression, sexual orientation, ability, age, and economic status; and

WHEREAS, Resolution 37277 further declares that the City will continue to, in a manner consistent with state and federal law, prohibit the use of City funds, personnel, or equipment to enforce federal immigration law; and

WHEREAS, On January 25, 2017, the President of the United States promulgated Executive Order 13768 to strip federal funding from cities and other local governments that refuse to assist the federal government in effectuating its immigration enforcement policies; and

WHEREAS, Executive Order 13768 purported to direct the Attorney General of the United States to "take appropriate enforcement action" against any city that "has in effect a statute, policy, or practice that prevents or hinders the enforcement of federal law"; and

WHEREAS, On April 3, 2017, the Council adopted Resolution 37280 to direct the City Attorney to file an action to challenge Executive Order 13768; and

WHEREAS, On October 24, 2018, the City won that lawsuit when a federal district court ruled that Executive Order 13768 is unconstitutional and that "it would be unconstitutional for Executive Branch agencies to withhold appropriated funds from [the City of] Portland pursuant to Section 9(a) of the Executive Order." *City of Portland et al. v. Trump et al.* (W. Dist. of Wash. Case No. C17-497-RAJ); and

WHEREAS, Despite this and other adverse court rulings, the federal government has taken steps to withhold Byrne Justice Assistance Grant ("Byrne JAG") funds from numerous jurisdictions, including the City; and

WHEREAS, The federal government has required jurisdictions that wish to receive the Byrne JAG funds to which they are entitled by statute to certify that they will comply with the federal government's interpretation of Section 1373, a federal immigration statute, and help the federal government enforce federal immigration laws; and

WHEREAS, Federal courts have held that Congress “did not impose any immigration enforcement conditions” on the receipt of Byrne JAG funds—“In fact, Congress repeatedly *refused* to approve of measures that would tie funding to state and local immigration policies”—that Section 1373 is unconstitutional under the Tenth Amendment, and that “the Attorney General has no authority to demand compliance with Section 1373 * * * under the Byrne JAG statute.” *City of Chicago v. Sessions*, 888 F.3d 272, 277 (7th Cir. 2018) (emphasis added); *City of Chicago v. Sessions*, __ F. Supp.3d __, 2018 WL 3608564 (N.D. Ill. July 27, 2018); and

WHEREAS, The federal government has ignored those adverse court rulings by continuing to impose or attempting to impose the unlawful immigration conditions struck down by the courts to current Byrne JAG awards, and by imposing the same unlawful immigration conditions to future Byrne JAG applications; and

WHEREAS, in October 2018, after more than a year of delay, the federal government issued its fiscal year 2017 Byrne JAG award to the City after the United States Conference of Mayors won a preliminary injunction barring the federal government from imposing those unlawful immigration conditions against members of the United States Conference of Mayors, which includes the City; and

WHEREAS, despite issuing the City its 2017 Byrne JAG award, the federal government is still fighting that preliminary injunction and arguing that it can require the City to comply with the federal government’s interpretation of Section 1373 and help the federal government enforce federal immigration laws as a condition of receiving Byrne JAG funds; and

WHEREAS, The federal government has failed to award the City the fiscal year 2018 Byrne JAG funds to which it is entitled by statute; and

WHEREAS, The State of Oregon intends to commence an action in the United States District Court for the District of Oregon, seeking a declaration that the federal government’s requirements tying the disbursement of Byrne JAG funds to cooperation with federal immigration enforcement are illegal and unconstitutional, an injunction barring the federal government from imposing those unlawful conditions, and a writ of mandamus ordering the federal government to disburse the Byrne JAG funds to which it is entitled by statute; and

WHEREAS, The City of Portland is statutorily entitled to Byrne JAG funds under the statutory formula passed by Congress; and

WHEREAS, The City of Portland has a direct stake in any litigation challenging the federal government’s withholding of Byrne JAG funds.

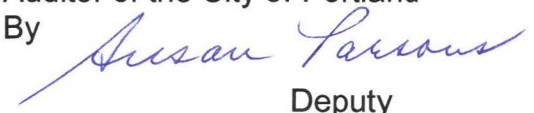
NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Portland, that the City Attorney or the City Attorney's designee, on behalf of the City of Portland, may file or join the state of Oregon as a co-plaintiff in a lawsuit against the United States and any responsible officers of the United States, and file any *amicus curiae* or other brief in any related proceeding, to vindicate the City's entitlement to Byrne JAG funds, and to prosecute such actions to conclusion, at trial and in any subsequent appeals, on behalf of the City of Portland.

Adopted by the Council: NOV 21 2018

Mayor Ted Wheeler
Commissioners Eudaly, Fish, Fritz and Saltzman
Prepared by: Denis M. Vannier
Date Prepared: November 8, 2018

Mary Hull Caballero
Auditor of the City of Portland

By

A handwritten signature in blue ink, appearing to read "Susan Larios", is written over the word "By".

Deputy

Agenda No.
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<p>INTRODUCED BY Commissioner/Auditor: Mayor Wheeler, Eudaly, Fritz, Fish, Saltzman</p> <p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance & Administration – Wheeler <i>MP</i></p> <p>Position 1/Utilities - Fritz <i>IF</i></p> <p>Position 2/Works - Fish <i>Sue for Nick Fish</i></p> <p>Position 3/Affairs - Saltzman <i>In OK</i></p> <p>Position 4/Safety - Eudaly <i>OK</i></p> <p>BUREAU APPROVAL Bureau: City Attorney's Office Bureau Head: Tracy Reeve <i>TR</i></p> <p>Prepared by: D. Vannier/cj Date Prepared: 11/9/18</p> <p>Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>City Auditor Office Approval: required for Code Ordinances</p> <p>City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan</p> <p>Council Meeting Date 11/21/18</p>	<p>CLERK USE: DATE FILED <u>NOV 13 2018</u></p> <p style="text-align: center;">Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <u><i>[Signature]</i></u> Deputy</p> <p>ACTION TAKEN:</p>
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<p style="text-align: center;">AGENDA</p> <p>TIME CERTAIN <input type="checkbox"/> Start time: _____</p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p> <p>CONSENT <input type="checkbox"/></p> <p>REGULAR <input checked="" type="checkbox"/> Total amount of time needed: 10 min. (for presentation, testimony and discussion)</p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:30%;">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 style="text-align: center;">✓</td> <td></td> </tr> <tr> <td>2. Fish</td> <td style="text-align: center;">✓</td> <td></td> </tr> <tr> <td>3. Saltzman</td> <td style="text-align: center;">✓</td> <td></td> </tr> <tr> <td>4. Eudaly</td> <td colspan="2" style="text-align: center;">_____</td> </tr> <tr> <td>Wheeler</td> <td style="text-align: center;">✓</td> <td></td> </tr> </table>	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:			YEAS	NAYS	1. Fritz	✓		2. Fish	✓		3. Saltzman	✓		4. Eudaly	_____		Wheeler	✓	
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