

IMPACT STATEMENT

Legislation title: * Authorize an intergovernmental agreement between the City of Portland, City of Gresham, City of Vancouver, Clackamas County, Port of Portland, and Clark County, Washington to maintain and equip a unit capable of an immediate response to situations involving explosives and explosive disposal (Ordinance)

Contact name: Aubrey Lindstrom

Contact phone: 503-823-0364

Presenter name: Captain Bryan Parman

Purpose of proposed legislation and background information:

This ordinance would allow the City of Portland to enter into an intergovernmental agreement with the City of Gresham, City of Vancouver, Clackamas County, Port of Portland, and Clark County, Washington to maintain a highly trained and properly equipped unit capable of an immediate response to situations involving explosives and explosive disposal.

The City of Portland, City of Gresham, City of Vancouver, Clackamas County, Port of Portland, and Clark County, Washington will all participate in and fund the activities of the Metropolitan Explosive Disposal Unit (MEDU).

Financial and budgetary impacts:

In the event MEDU needs to purchase special equipment, the participating jurisdictions agree to help purchase that equipment as their respective management and fiscal constraints allow.

Community impacts and community involvement:

This agreement brings together the expertise of highly trained individuals from multiple agencies to deal with an situations involving explosives and explosive disposal.

Budgetary Impact Worksheet

Does this action change appropriations?

- YES: Please complete the information below.
- NO: Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount



**METROPOLITAN EXPLOSIVE DISPOSAL UNIT
MUTUAL LAW ENFORCEMENT AGREEMENT**

This Intergovernmental Agreement (“Contract”) is made by and between City of Portland, City of Gresham, City of Vancouver, Clackamas County, Port of Portland and Clark County, Washington (“Agency”) pursuant to authority granted in ORS Chapter 190 and RCW 10.93.

RECITALS:

Several units of local government in the Portland Metropolitan area recognize the ongoing need to maintain a highly trained and properly equipped unit capable of an immediate response to situations involving explosives and explosive disposal.

In recognition of that need, pursuant to ORS 190.010, and pursuant to RCW 10.93 and 39.34, the units of local government wish to participate in and fund the activities of the Metropolitan Explosive Disposal Unit (“MEDU”).

This Mutual Law Enforcement Assistance Agreement contemplates the participation of law enforcement agencies within the Oregon Counties of Clackamas, Multnomah, and Washington and the law enforcement agencies within the Washington Counties of Clark to fund and participate in activities of the MEDU to coordinate disposal of explosive devices in the participating jurisdictions.

This Agreement, as it pertains to Portland, Vancouver and Clark County, only, is subject to all terms and conditions of that certain Master Interlocal Mutual Law Enforcement Assistance Agreement (“Master Agreement”) executed by the parties with Clark County Auditor Number 3434632, except as expressly provided herein.

NOW, THEREFORE, in consideration of their mutual promises, the participating jurisdictions agree as follows:

1. **DEFINITIONS.**

“Participating jurisdiction” shall mean the units of local government who enter into this Agreement.

“Participating agency” shall mean the respective law enforcement agencies for each of these participating jurisdictions.

“Participating body” shall mean any other governmental body, unit, or authority of each of these participating jurisdictions, other than the respective law enforcement agencies.

“Requesting agency” shall mean any participating agency or body making a request for assistance under this Agreement.

2. **MEDU.** The participating jurisdictions to this Agreement hereby agree to participate in and to fund those activities of the MEDU.
3. **PURPOSE, FUNCTION, POWERS AND AUTHORITY.** The purpose of this Agreement is to provide for combined use of highly trained and properly equipped personnel unit, capable of an immediate response to handle situations involving explosives and explosive disposal. The MEDU is vested with all powers, rights and duties necessary for performing those functions to coordinate disposal of explosive devices in the participating jurisdictions. Those functions include, but are not limited to:
 - A. Rendering safe improvised or contraband explosive devices;
 - B. Destroying unsafe or contraband explosives, or hazardous explosive chemicals;
 - C. Investigating criminal incidents involving explosives; and,
 - D. Preserving physical evidence and providing expert testimony on matters pertaining to explosives.
 - E. The sole accrediting body for bomb squads and hazardous device technicians is the Federal Bureau of Investigation, Hazardous Devices School (HDS). In order to determine the number of squads and technicians assigned to each of those squads, HDS completes a needs assessment survey. Staffing allocation for MEDU is set in conjunction with HDS. Nothing in this agreement shall preclude a participating jurisdiction or their agencies from working with HDS to try and establish their own bomb squad. It is further understood and agreed that participating jurisdictions shall have the right to own, use, and control all equipment, supplies, personnel and animals maintained by them consistent with applicable laws, guidelines, and grant funding requirements.
4. **COMMENCEMENT, DURATION, WITHDRAWAL, AND TERMINATION.** This Agreement shall commence on the date this Agreement is executed by at least two parties and shall renew automatically on the 1st day of January thereafter, for a maximum of ten (10) years. After that, this is subject to renewal, provided however:
 - A. Any participating jurisdiction may withdraw from this Agreement upon providing not less than 90 days written notice to the City of Portland’s Bureau of Police; or

B. This Agreement may be terminated upon either the withdrawal of all the participating jurisdictions or upon their unanimous agreement for termination.

5. **INCREASING MEMBERSHIP.** This Agreement may be amended on the unanimous approval of the parties as well as the Hazardous Devices School to allow other units of government to participate in and fund the activities of the MEDU.

6. **JURISDICTION.**

A. Any participating agency or body making a request for assistance shall be known as a "requesting agency." Once a request for assistance is made, MEDU shall be an agent of the requesting agency for the purpose of ORS 30.260 to 30.300 for the duration of the MEDU mission arising from the request. By making a request for assistance, a requesting agency or body authorizes MEDU to respond to the requesting jurisdiction and conduct operations there.

A MEDU mission begins when a requesting agency makes a request for assistance to the MEDU contact person within the City of Portland's Bureau of Police and terminates when all MEDU personnel have returned to their respective participating agencies.

The MEDU may respond to requests of other agencies or bodies that are not signatories to this Agreement if:

- (1) The MEDU has the available resources,
- (2) The non-participating request agency is willing to indemnify and hold harmless the MEDU, each of the participating jurisdictions and their officers, agents, commissioners, directors, agents and employees consistent with the terms of paragraph 10 of this Agreement;
- (3) The non-participating requesting agency agrees to cover any and all extraordinary costs and liabilities consistent with the provisions of paragraph 9 (B) of this Agreement;
- (4) The requestor agrees to confer on MEDU complete authority to determine how to handle the tasks for which MEDU's help is requested.

B. The requesting agency will retain primary investigative responsibility of any criminal or other incident. Responding MEDU personnel will provide technical and investigative support.

7. **PARTICIPATING JURISDICTION RESPONSIBILITIES.**

A. Each participating jurisdiction, through its participating agency, will:

- (1) Provide trained and accredited hazardous device technicians, as agency management and fiscal constraints may allow, to participate in MEDU operations. Whenever the use of the Port of Portland's bomb dog is deemed by MEDU to be appropriate, the Port shall only have to provide the dog and its handler rather than a dog handler, dog and MEDU technician, absent extraordinary circumstances.
- (2) Provide funds, as agency management and fiscal constraints allow, to the City of Portland's Bureau of Police for the purchase of special equipment specifically for MEDU, (e.g., new robot). Such equipment will be controlled by the City of Portland's Bureau of Police and dedicated exclusively to MEDU.
- (3) Grant MEDU personnel complete authority to determine how to handle the tasks for which MEDU's help is requested.
- (4) Grant MEDU personnel the right to participate in any investigation where the expertise of MEDU personnel is necessary in the judgment of MEDU personnel.
- (5) Designate an appropriate contact person within the jurisdictions participating agency to receive information from the City of Portland's Bureau of Police on MEDU matters.
- (6) Make their assigned personnel available for training on a schedule determined by the supervisor of MEDU. The training schedule will be designed, after consultation with the participating agencies, to ensure that all MEDU personnel comply with certification requirements.
- (7) Make their participating part-time technicians available to serve full-time at MEDU one month per year on a schedule determined by the MEDU supervisor after consultation with the participating agencies.

8. **MEDU ADMINISTRATIVE RESPONSIBILITIES.**

A. MEDU shall have no employees. Those individuals participating in MEDU shall remain employees of their respective jurisdictions notwithstanding their participation in MEDU, and they shall remain on their respective jurisdiction's payroll for the duration of their involvement with MEDU.

- B. The City of Portland's Bureau of Police shall have the administrative authority and responsibility for directing all MEDU administrative matters, including training personnel, equipment maintenance and storage, and developing formal operational policies and procedures. The City of Portland's Bureau of Police shall provide a copy of these policies and procedures to all participating agencies when requested.
- C. The City of Portland's Bureau of Police MEDU representative shall coordinate training. Training will be held every Wednesday of every Month.

9. **DIVISION OF MEDU COSTS AND LIABILITIES.**

- A. Costs for Special Equipment. In the event MEDU needs to purchase special equipment (e.g., a new robot), the participating jurisdictions agree to help purchase that equipment as their respective management and fiscal constraints allow.
- B. Extraordinary Costs and Liabilities. Extraordinary costs and liabilities are defined as any costs incurred or liabilities suffered by MEDU arising out of a request for assistance pursuant to paragraph 6(A). Any participating jurisdiction whose participating agency or body requests assistance pursuant to paragraph 6(A) shall be solely responsible for all costs and liabilities associated with or arising out of that agency's request except for the gross negligence of any MEDU member as noted in Section 10, Indemnity, infra. Notwithstanding the above, costs and liabilities associated with workers' compensation and other employee benefits including payroll shall remain the responsibility of the respective employers of the MEDU members.
- C. Liability Arising Out of MEDU Activities Not Associated With Any Request For Assistance. With the exception of those extraordinary costs and liabilities discussed in 9(B) above, pursuant to and as limited by ORS 30.265, each participating jurisdiction shall remain responsible for the torts of its employees acting within the scope of their employment or duties while those employees participate in MEDU activities or other activities that are not associated with a request for assistance.

10. **INDEMNITY AND HOLD HARMLESS.** Subject to the conditions and limitations of the Oregon Tort Claims Act (ORS 30.260 to 30.300), or the conditions and limitations of Washington tort claims law if the requesting agency is a Washington agency or body, the participating jurisdiction whose participating agency or body requests operation of the MEDU within that participating agency or body's jurisdiction pursuant to paragraph 6 (A) shall hold harmless, defend and indemnify the other participating jurisdictions, their officers, commissioners, directors, agents and employees against all claims, demands, actions and suits

(including all attorney's fees and costs) brought against any of them arising out of the requested response of MEDU personnel.

Notwithstanding the above, any claims, demands, actions or suits solely attributable to the gross negligence of a particular MEDU member shall remain the responsibility of that member's particular employer. However, in no event shall this responsibility for gross negligence be any different than that provided for under ORS 30.260 to 30.300 or Washington tort claims law if the requesting agency is a Washington agency or body.

11. **AMENDMENTS.** This Agreement may only be changed, modified, or amended upon the unanimous written approval of all the parties.
12. **SEVERABILITY.** The terms of this Agreement are severable and a determination by an appropriate body having jurisdiction over the subject matter of this Agreement that results in the invalidity of any part shall not affect the remainder of the Agreement.
13. **INTERPRETATION.** The terms and conditions of this Agreement shall be liberally construed in accordance with the general purposes of this Agreement.
14. **GOVERNING LAW AND FORUM.**
 - A. This Agreement shall be governed by the laws of the State of Oregon.
 - B. Any litigation or arbitration arising out of this Agreement shall be conducted in an appropriate forum in Portland, Oregon.
15. **AUTHORITY.** Each party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.
16. **SIGNATURE TO THIS AGREEMENT.** The parties shall sign this Agreement as follows:
 - A. City of Portland at Page 7
 - B. City of Gresham at Page 8
 - C. Clackamas County at Page 9
 - D. Port of Portland at Page 10
 - E. City of Vancouver at Page 11
 - F. Clark County, Washington at Page 12

CITY OF PORTLAND, OREGON

By:

Name: Michael W. Marshman

Title: Chief of Police

Date:

APPROVED AS TO FORM:

Title: City Attorney

Date:

Address for Notice:

1111 SW 2nd Ave.

Portland, OR 97204

CITY OF GRESHAM, OREGON

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Title: _____

Date: _____

Address for Notice:

CLACKAMAS COUNTY, OREGON

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Title: _____

Date: _____

Address for Notice:

PORT OF PORTLAND, OREGON

By:

Name:

Title:

Date:

APPROVED AS TO FORM:

Title:

Date:

Address for Notice:

CITY OF VANCOUVER, WASHINGTON

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

Title: _____
Date: _____

Address for Notice:

CLARK COUNTY, WASHINGTON

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Title: _____

Date: _____

Address for Notice:

ORDINANCE No.

* Authorize an Intergovernmental Agreement between with the City of Gresham, City of Vancouver, Clackamas County, Port of Portland, and Clark County, Washington to maintain and equip a unit capable of an immediate response to situations involving explosives and explosive disposal (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. Oregon Revised Statute (ORS) Chapter 190 and RCW 10.93 provides that a unit of local government may enter into a written agreement with any other unit of local government for the performance of any or all functions and activities that a party to the agreement based the authority to perform;
2. Several units of local government in the Portland Metropolitan area recognize the ongoing need to maintain a highly trained and properly equipped unit capable of an immediate response to situations involving explosives and explosive disposal;
3. The units of local government listed above wish to participate in and fund the activities of the Metropolitan Explosive Disposal Unit (MEDU) pursuant to ORS 190.010 and RCW 10.93 and 39.34;
4. This agreement makes clear that once a request for assistance is made, MEDU shall be an agent of the requesting agency for the purpose of dealing with explosives and explosive disposal for the duration of the MEDU mission and by making a request for assistance, a requesting agency or body authorizes MEDU to respond to the requesting jurisdiction and conduct operations there;
5. It is beneficial to the City and community that this agreement may be authorized as quickly as possible to establish a formal mutual law enforcement agreement.

NOW THEREFORE, The Council directs:

- a. That the Chief of Police is authorized to execute an intergovernmental agreement between the City and City of Gresham, City of Vancouver, Clackamas County, Port of Portland, and Clark County, Washington as outlined in a form similar to the contract attached as Exhibit A.
- b. The Chief of Police is authorized to execute amendments to the scope of services or the terms and conditions of this Agreement, provided the changes do not increase the amount of compensation or increase the City's financial risk.

Section 2. The Council declares that an emergency exists because there is currently no formal mutual aid agreement in place. Therefore this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council:

Commissioner: Mayor Charlie Hales
Prepared by: Rachel Stansbury
Date prepared: November 14, 2016

Mary Hull Caballero
Auditor of the City of Portland
By

Deputy

Agenda No.
ORDINANCE NO.

Title *with the*

* Authorize an intergovernmental agreement between the City of Portland, City of Gresham, City of Vancouver, Clackamas County, Port of Portland, and Clark County, Washington to maintain and equip a unit capable of an immediate response to situations involving explosives and explosive disposal (Ordinance)

<p>INTRODUCED BY Commissioner/Auditor: Mayor Charlie Hales</p>	<p>CLERK USE: DATE FILED <u>NOV 29 2016</u></p>
<p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration — Hales <i>[Signature]</i></p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Novick</p>	<p>Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <i>[Signature]</i> Deputy</p>
<p>BUREAU APPROVAL</p> <p>Bureau: Police Bureau Head: Chief Michael Marshman <i>[Signature]</i></p> <p>Prepared by: Rachel Stansbury Date Prepared: 11/14/2016</p> <p>Financial Impact & Public Involvement 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, comp plan, charter <i>[Signature]</i></p> <p>Council Meeting Date</p>	
<p>ACTION TAKEN: DEC 07 2016 <i>REFERRED TO COMMISSIONER OF FINANCE AND ADMINISTRATION</i></p>	

AGENDA
<p>TIME CERTAIN <input type="checkbox"/></p> <p>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"/></p> <p>Total amount of time needed: 10 Min (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz	
2. Fish	2. Fish	
3. Saltzman	3. Saltzman	
4. Novick	4. Novick	
Hales	Hales	