

RESOLUTION No. 37482

Authorize City Attorney to initiate a validation action under ORS 33.710-.720 regarding the expenditure of ratepayer funds to implement the Community Opportunities and Enhancement Program and the resolutions and ordinances creating and implementing the Community Opportunities and Enhancement Program (Resolution)

WHEREAS, by Resolution No. 37331 (the "Initial Resolution"), effective November 8, 2017, Council directed the Office of Management and Finance and the Office of Equity and Human Rights to develop the Community Opportunities and Enhancements Program (the "COEP") to provide funding to support low-income, disadvantaged, minority and women workers in the construction trades and disadvantaged, minority-owned, women-owned, emerging small business enterprises ("D/M/W/ESB"); and

WHEREAS, the purpose of the COEP is to address the historical disparity that exists in the construction industry and provide construction contracting opportunities for Disadvantaged, Minority-owned, Women-owned, Emerging Small Businesses and Service-Disabled Veteran-owned Business Enterprises (D/M/W/ESB/SDVBE), as well as diversity in the workforce in the construction trades; and

WHEREAS, on January 29, 2020, by Ordinance No. 189834, Council authorized an Intergovernmental Agreement among the Office of Management and Finance, the Office of Equity and Human Rights, and Prosper Portland, to administer Phase 1 of the COEP; and

WHEREAS, on January 29, 2020, by Ordinance No. 189835, Council also authorized the Office of Management and Finance to utilize funds set aside to support the COEP from the Water Bureau Washington Park Reservoirs Improvements Project; and

WHEREAS, the COEP is to be funded through the collection of 1% of hard construction costs on each City public improvement construction contract, including those of the Water Bureau and the Bureau of Environmental Services, which are ratepayer funded; and

WHEREAS, the 2018 Portland Metro Region Construction Workforce Market Study found that an additional 445 apprentices, 1,074 minority and 1,416 female construction workers are necessary to meet the Metro area's five-year demand for construction workers; and

WHEREAS, the Water Bureau and the Bureau of Environmental Services have each identified certain positions in their construction projects and their services where there is an insufficient number of specially trained contractors, including D/M/W/ESB/SDVBE contractors, available to perform necessary trades; and

WHEREAS, the Water Bureau and the Bureau of Environmental Services have each

identified certain positions within their bureaus where there is a shortage of specially trained applicants, including low-income, disadvantaged, minority and women applicants; and

WHEREAS, by training low-income, disadvantaged, minority and women workers in needed construction trades, and by training and supporting D/M/W/ESB/SDVBE contractors, and by providing business technical assistance, outreach, recruitment, and retention activities, the COEP can directly supply the Water Bureau and the Bureau of Environmental Services with a specially trained workforce to help fulfill their internal trades positions and their contracting needs; and

WHEREAS, by training low-income, disadvantaged, minority and women workers in needed construction trades, and by training and supporting D/M/W/ESB/SDVBE contractors, and by providing businesses technical assistance, outreach, recruitment, and retention activities, the overall workforce in the construction trades will increase and will result in more competitive bidding among contractors, which will directly benefit the Water Bureau and Bureau of Environmental Services in their procurement of contractors for their construction projects; and

WHEREAS, the Portland City Charter requires that the expenditure of ratepayer funds must be reasonably related to the provision of water and sewer services, pursuant to a ruling of the Multnomah County Circuit Court; and

WHEREAS, Council, in its discretion, intends to implement the COEP with the use of ratepayer funds, and intends to do so in full compliance with the provisions of the Portland City Charter and the rulings of the Multnomah County Circuit Court; and

WHEREAS, litigation regarding the use of ratepayer funds for COEP has already been credibly threatened against the City; and

WHEREAS, to ensure that the expenditure of ratepayer funds in the COEP is in full compliance with the law, the Office of Management and Finance and the City Attorney's Office, in consultation with the Water Bureau, the Bureau of Environmental Services and Prosper Portland, have jointly devised a rubric, attached as Exhibit A to this Resolution, that sets forth the various ways that ratepayer funds may be used to provide development and training opportunities for low-income, disadvantaged, minority and women trades workers and D/M/W/ESB/SDVBE contractors to increase the supply the Water Bureau and the Bureau of Environmental Services with a needed diverse workforce; and

WHEREAS, Council directs the City Attorney to initiate a validation action pursuant to ORS 33.710(2)(d)-(g) and ORS 33.720 in Multnomah County Circuit Court to determine the legality of ratepayer fund expenditures to implement the COEP, substantially similar to Exhibit A to this Resolution.

NOW, THEREFORE, BE IT RESOLVED, the City Attorney or the City Attorney's

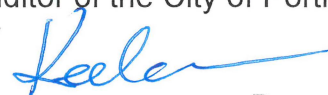
designee, on behalf of the City of Portland, shall file a validation action proceeding to determine the legality of ratepayer fund expenditures to implement the COEP in accordance with a rubric, substantially similar to that attached as Exhibit A to this Resolution, and the resolutions and ordinances creating and implementing the Community Opportunities and Enhancement Program, and shall see such action to conclusion, at trial and in any subsequent appeals.

Adopted by the Council: MAR 11 2020

Mayor Ted Wheeler
Prepared by: Karen L. Moynahan
Date Prepared: February 20, 2020

Mary Hull Caballero
Auditor of the City of Portland

By



Deputy

Authorize City Attorney to initiate a validation action under ORS 33.710-.720 regarding the expenditure of ratepayer funds to implement the Community Opportunities and Enhancement Program and the resolutions and ordinances creating and implementing the Community Opportunities and Enhancement Program (Resolution)

<p>INTRODUCED BY Commissioner/Auditor: Mayor Wheeler</p>	<p>CLERK USE: DATE FILED <u>MAR 03 2020</u></p>
<p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance & Administration – Wheeler <i>[Signature]</i></p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Vacant</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Eudaly</p>	<p>Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <u><i>[Signature]</i></u> Deputy</p> <p>ACTION TAKEN:</p>
<p>BUREAU APPROVAL</p> <p>Bureau: Office of the City Attorney Bureau Head: Tracy Reeve</p>	
<p>Prepared by: K. Moynahan Date Prepared: March 2, 2020</p>	
<p>Impact Statement</p> <p>Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p>	
<p>Portland Policy Document</p> <p>If "Yes" requires City Policy paragraph stated in document.</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	
<p>City Auditor Office Approval: required for Code Ordinances</p> <p>APPROVED AS TO FORM</p>	
<p>City Attorney Approval:</p> <p><i>[Signature]</i> CITY ATTORNEY, 3/2/2020</p>	
<p>Council Meeting Date: CITY ATTORNEY, 2020 March 11, 2020</p>	

<p>AGENDA</p>
<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"/> PM Session <i>[Signature]</i></p> <p>Total amount of time needed: 45 (for presentation, testimony and discussion)</p>

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