RESOLUTION No. **37500**

Authorize the City Attorney's Office to pursue litigation against the federal government to protect the City's right to a fair, accurate and legal Census (Resolution)

WHEREAS, the U.S. Constitution, Article I, Section 2 as amended by the Fourteenth Amendment, states that the apportionment of how many congressional seats go to each state is based on a Census count of the population of "*whole number of persons in each state*"; and

WHEREAS, by statute, the President is required to send to Congress a statement of the count showing the "whole number of persons in each state" and the number of congressional seats each state gets. 2 USC § 2a(a). The number of seats in the House of Representatives is fixed at 435 by federal law; and

WHEREAS, on July 21, 2020, President Donald Trump issued a memorandum requiring the Secretary of Commerce (which oversees the Census Bureau) to exclude immigrants without legal immigration documents from the apportionment base following the 2020 Census. This memo directs the Secretary to provide President Trump with the information needed in order to exclude undocumented immigrants from being counted in congressional seat allocations; and

WHEREAS, the President's memo orders the Secretary of Commerce to send to the President the Census tabulation of total population for congressional apportionment (13 U.S.C. 141(b)), with additional information that would allow the President to exclude the number of undocumented people from the final count; and

WHEREAS, the President's memo is counter to the plain language in the U.S. Constitution and federal statutes, and flies in the face of 250 years of established precedent and the clear language of the U.S. Constitution. The President's memo also runs counter to the consistent practice of previous Administrations, including the Departments of Justice under Presidents Carter, Reagan, H.W. Bush, and Obama that reaffirm this 250-year precedent; and

WHEREAS, cities and towns throughout the United State are where the largest numbers of Americans reside. Erasing immigrant families from the Census will reduce the representation of these cities and towns, and the millions of people who live in them, in Congress, state legislatures and every level of government; and

WHEREAS, erasing immigrant populations from the Census will also deprive these cities of federal dollars that represent the tax dollars paid by residents – citizen and non-citizen alike, documented and undocumented alike; and

WHEREAS, immigrant families often have a mix of citizen and non-citizen family members. Amongst non-citizen family members, there is often a mix of people with different immigrant documentation and status. People who have entered legally can fall out of status or have their status changed by new federal policies. Young people

brought to the U.S. by parents without documentation may have obtained temporary legal status; and

WHEREAS, erasing households from the Census count that are believed to have undocumented individuals will fall heaviest on some cities and towns, which already have thinly stretched resources to cope with COVID-19, on top of regular city services; and

WHEREAS, on July 24, 2020, Common Cause, the City of Atlanta, Georgia, the City of Paterson, New Jersey, Partnership for the Advancement of New Americans and individual plaintiffs located in New York, Florida, and California filed a lawsuit in the D.C. District Court, captioned *Common Cause v. Trump*, challenging the Trump Administration's recent memorandum to the Census Bureau instructing the Bureau to not include undocumented immigrants in their apportionment calculations.

NOW, THEREFORE, BE IT RESOLVED, that the City Attorney's Office is authorized to file any litigation and pursue any available legal remedy, including but not limited to any claim, cross-claim, counterclaim, third-party claim, appeal, or *amicus curiae* brief, in any available court, tribunal, or administrative forum whatsoever, against the federal government and any of its officials, agencies, or instrumentalities to protect the right of the City of Portland and its inhabitants to a fair, accurate and legal Census, including without limitation by joining as a plaintiff in *Common Cause v. Trump* filed on July 24, 2020.

Adopted by the Council: **August 5, 2020**

Commissioner Mayor Ted Wheeler
Prepared by: Tracy Reeve
Date Prepared: 07/31/2020

Mary Hull Caballero
Auditor of the City of Portland
By *CPhillips*

Deputy

Agenda No. 647-1

RESOLUTION NO. 37500

Title

Authorize the City Attorney's Office to pursue litigation against the federal government to protect the City's right to a fair, accurate and legal Census (Resolution)

INTRODUCED BY Commissioner/Auditor: Mayor Ted Wheeler	CLERK USE: DATE FILED August 4, 2020
COMMISSIONER APPROVAL	Mary Hull Caballero Auditor of the City of Portland
Mayor—Finance & Administration – Wheeler Mustafa Washington Digitally signed by Mustafa Washington Date: 2020.08.04 09:40:12 -07'00'	
Position 1/Utilities - Fritz Tim Crail Digitally signed by Tim Crail Date: 2020.08.03 15:49:19 -07'00'	By: _Karla Moore-Love_
Position 2/Works - Vacant	Deputy
Position 3/Affairs - Hardesty	
Position 4/Safety - Eudaly Jamey Duhamel Digitally signed by Jamey Duhamel Date: 2020.08.04 09:34:00 -07'00'	ACTION TAKEN:
BUREAU APPROVAL	
Bureau: City Attorney Bureau Head:	
Prepared by: Tracy Reeve Date Prepared: 7/31/2020	
Impact Statement Completed ✓ Amends Budget ☐	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes ☐ No ✓	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval: required for contract, code. easement, franchise, charter, Comp Plan	
Council Meeting Date August 5, 2020	

AGENDA		FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
			YEAS	NAYS
TIME CERTAIN ☐ **Start time:** _____ **Total amount of time needed:** _____ (for presentation, testimony and discussion)		1. Fritz Tim Crail Digitally signed by Tim Crail Date: 2020.08.03 15:49:46 -07'00'	1. Fritz X	
		2. Vacant	2. Vacant	
CONSENT ☐		3. Hardesty	3. Hardesty X	
REGULAR ✓ **Total amount of time needed:** 15 min (for presentation, testimony and discussion)		4. Eudaly Jamey Duhamel Digitally signed by Jamey Duhamel Date: 2020.08.04 09:34:18 -07'00'	4. Eudaly X	
		Wheeler Mustafa Washington Digitally signed by Mustafa Washington Date: 2020.08.04 09:40:30 -07'00'	Wheeler X	