

## **RESOLUTION No. 37513 As Amended**

Establish rules and limitations on Portland Police Bureau members subject to deputization by federal law enforcement agencies.

WHEREAS, on September 25, 2020, the Governor of the State of Oregon issued Executive Order No. 20-54 in anticipation of demonstrations planned in Portland on September 26th. Pursuant to the Executive Order, the Governor declared a state of emergency and took control of local law enforcement, including the Portland Police Bureau (PPB) and placed PPB under the unified command of the Oregon State Police Superintendent and Multnomah County Sheriff.

WHEREAS, on September 26, 2020, at the direction of the unified command of the Oregon State Police Superintendent and Multnomah County Sheriff, members of PPB were deputized by the United States Marshals Service "to detain and make arrests under [federal] Title 18 authority ... to protect and defend U.S. federal government buildings and personnel during a civil disturbance" (the "Deputation").

WHEREAS, on September 27, 2020, the Governor of the State of Oregon terminated Executive Order No. 20-54, at which point local law enforcement returned to the normal local chain of command by the City of Portland.

WHEREAS, on September 29, 2020, the City of Portland formally withdrew and terminated the City's consent to the federal Deputation of local law enforcement by the United State Marshals Service.

WHEREAS, the United States Marshals Service refused to recognize the City's withdrawal of consent to the Deputation.

WHEREAS, under the Tenth Amendment to the United States Constitution, the federal government is prohibited from commandeering state and local officials to carry out federal functions and policies. As the United States Supreme Court said in *Printz v. United States*: "Such commands are fundamentally incompatible with our constitutional system of dual sovereignty."

WHEREAS, the United States Marshals Service's continuing Deputation of local PPB officers without the City's consent is unconstitutional and "fundamentally incompatible with our constitutional system."

WHEREAS, local PPB officers cannot lawfully act pursuant to the unconstitutional federal Deputation in violation of the Tenth Amendment.

NOW, THEREFORE, BE IT RESOLVED, the continuing Deputation of PPB members is unlawful and unconstitutional.

BE IT FURTHER RESOLVED, all PPB members remain under the local control of the City of Portland, including the elected City Council.

BE IT FURTHER RESOLVED, PPB members shall take no action of any kind pursuant to the Deputation.

BE IT FURTHER RESOLVED, PPB members subject to the Deputation shall only make arrests and detentions under state or local law for purposes of crowd control and responding to demonstrations, and shall not make any arrests or detentions under any federal law pursuant to the Deputation for those purposes.

BE IT FURTHER RESOLVED, PPB members subject to the Deputation shall not take any order, command, directive or assignment from any federal agent or official, or from any state agent or official acting under a federal deputation, for purposes of crowd control or responding to demonstrations; provided, however, if the Governor issues an executive order taking control of PPB after consultation with the Police Commissioner, then all PPB members may take orders, commands, directives, or assignments from the Oregon State Police Superintendent, Multnomah County Sheriff, or other officers operating under a unified command authorized by the Governor.

BE IT FURTHER RESOLVED, any actual or attempted order, command, directive or assignment given to any PPB member subject to the Deputation for purposes of crowd control or responding to demonstrations by any federal agent or official, or from any state agent or official acting under a federal deputation, shall be immediately reported by PPB to the entire City Council via email; provided, however, this requirement does not apply to orders, commands, directives or assignments issued by the Oregon State Police Superintendent, Multnomah County Sheriff, or other officers operating under a unified command authorized by the Governor after consultation with the Police Commissioner.

BE IT FURTHER RESOLVED, all PPB members, including without limitation any Portland Police Bureau member subject to the Deputation, remains subject to the following:

1. Directive 810.10 Bureau Contact with members of Immigrant Communities and Individuals with Diplomatic immunity.
2. ORS 180.805 Prohibited Involvement of Public Bodies in Federal Immigration Law Enforcement
3. ORS 181A.820 Enforcement of Federal Immigration Laws
4. Oregon Executive Order 17-04, Renewing Oregon's Commitment to Protecting Its Immigrant, Refugee, and Religious-Minority Residents
5. City of Portland Resolution No. 37277, Declare the City of Portland a Welcoming City, a Sanctuary City, and an Inclusive City For All
6. City of Portland Resolution No. 37502, Updated Resolution Requiring Portland Police Bureau to Cease Cooperation with Militarized Federal Forces
7. ORS 181A.250, which prohibits collection or maintenance of people's social, political or religious affiliation without suspicion of criminal conduct.

BE IT FURTHER RESOLVED, unless authorized in writing by the Police Commissioner or the Chief of Police, PPB members subject to the Deputation shall not communicate or cooperate for purposes of crowd control or responding to demonstrations with any agents or employees of the U.S. Marshals Service or agents or employees of the Federal Protective Service. Any such written authorization shall be immediately reported by PPB to the entire City Council via email.

BE IT FURTHER RESOLVED, City employees are required to comply with this Resolution, and failure to do so may subject them to discipline. Nothing in this Resolution prohibits any PPB member subject to the Deputation from cooperating with any state criminal prosecution, and nothing in this Resolution prohibits any PPB member subject to the Deputation from testifying or appearing as a witness in a federal criminal prosecution, provided that no other City resources may be used to assist with said federal prosecution.

BE IT FURTHER RESOLVED, this Resolution is binding City Policy. This Resolution may be cited in any court, or other proceeding, by any person as evidence of the City's official position that the Deputation is unlawful, unconstitutional, and of no further force or effect.

Adopted by the Council, October 28, 2020

Commissioner JoAnn Hardesty  
Prepared by: Derek Bradley  
Date Prepared: October 19, 2020

**MARY HULL CABALLERO**  
Auditor of the City of Portland  
By *Keelan McClymont*  
Deputy

**RESOLUTION NO. 37513 As Amended**

Title

Establish rules and limitations on Portland Police Bureau members subject to deputization by federal law enforcement agencies (Resolution)

<p style="text-align: center;"><b>INTRODUCED BY</b> Commissioner/Auditor: <b>Jo Ann Hardesty</b></p>	<p>CLERK USE: DATE FILED <u>October 20, 2020</u></p>
<p style="text-align: center;"><b>COMMISSIONER APPROVAL</b></p>	<p>Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <u><i>Keelan McClymont</i></u> Deputy</p> <p><b>ACTION TAKEN:</b></p>
<p>Mayor—Finance &amp; Administration – Wheeler</p>	
<p>Position 1/Utilities - Fritz</p>	
<p>Position 2/Works - Ryan</p>	
<p>Position 3/Affairs - Hardesty <i>J. Hardesty</i></p>	
<p>Position 4/Safety - Eudaly</p>	
<p style="text-align: center;"><b>BUREAU APPROVAL</b></p>	
<p>Bureau: Bureau Head:</p>	
<p>Prepared by: <b>Derek Bradley</b> Date Prepared: <b>10/19/2020</b></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 checked="" type="checkbox"/> No <input type="checkbox"/></p>	
<p><b>City Auditor Office Approval:</b> required for Code Ordinances</p>	
<p><b>City Attorney Approval:</b> required for contract, code, easement, franchise, charter, Comp Plan <i>R. Taylor</i></p>	
<p>Council Meeting Date <b>October 28, 2020</b></p>	

<b>AGENDA</b>
<p><b>TIME CERTAIN</b> <input type="checkbox"/></p> <p>Start time: _____</p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>
<p><b>CONSENT</b> <input type="checkbox"/></p>
<p><b>REGULAR</b> <input checked="" type="checkbox"/></p> <p>Total amount of time needed: <u>30</u> (for presentation, testimony and discussion)</p>

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