

ORDINANCE No. 190284

*Approve Revised Settlement Agreement in the matter of *City of Portland v. Monsanto et al.* and authorize the process for use of settlement funds (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. On July 15, 2020 by Ordinance 190050 as amended, Portland City Council approved and authorized a Settlement Agreement in litigation authorized by Council on March 16, 2016 by Resolution 37197. The litigation is regarding the public nuisance caused by Monsanto Company's manufacture of polychlorinated biphenyls (generally referred to as PCBs) and the resulting impairment of water bodies.
2. The Settlement Agreement was presented to the U.S. District Court for the Central District of California (Court) in a Motion for Certification of Settlement Class, Preliminary Approval of Class Action Settlement, Approval of Notice Plan, Appointment of Class Action Settlement Administrator and Appointment of Class Counsel (Case No. 2:16-cv-03493-FMO-AS).
3. The U.S. District Judge denied the motion without prejudice and identified various revisions to the Settlement Agreement to clarify the scope of release, payment of attorney fees, class notification process and basis for determining that the settlement would be fair, adequate and reasonable.
4. The City, through its outside counsel, has since revised the Settlement Agreement to include the clarifications identified by the Court for resubmission as a proposed settlement agreement that is part of a renewed motion in the proposed class action attached as Exhibit A to the Ordinance (Revised Settlement Agreement).
5. As in the original Settlement Agreement, the Revised Settlement Agreement provides that Monsanto Company will pay \$550 million to over 2,500 public bodies nationwide, including the City, as part of a class action lawsuit.
6. The Revised Settlement Agreement serves City interests by more explicitly confirming that the scope of release to Monsanto is limited to the claims that were or could have been brought in the underlying litigation and changing the payment terms from four installments to a single payment. Other revisions relate primarily to states other than Oregon or otherwise do not affect City interests.

7. Taking into consideration the risks, uncertainties and delay associated with this complex and novel litigation, the Revised Settlement provides the City a more certain benefit in a shorter timeframe than continued, protracted litigation. The Revised Settlement Agreement continues to provide monetary benefits nationwide to local jurisdictions that are impacted because of PCB-impaired waterways in their communities.
8. As in the Settlement Agreement, the Revised Settlement Agreement does not specify the amount that the City would receive. While portions of the \$550 million will be allocated pursuant to formulae in the Revised Settlement Agreement, other portions of the funds will be further allocated upon class member application and review by a Special Master. Therefore, the City's ultimate share of the funds will be determined by the Special Master and will depend on the number of jurisdictions that qualify for each type of funding.
9. As in the Settlement Agreement, the Revised Settlement Agreement allocates funds based on the particular costs associated with PCB-impacted water bodies, but does not direct or restrict the expenditure of settlement funds by any recipient.
10. Council does not wish to alter the findings or directions for holding and distributing funds as adopted in Ordinance 190050, as amended.
11. The City's Brownfield Program within the Bureau of Environmental Services works to address the need for environmental cleanup in communities disproportionately affected by that contamination and the unintended impacts of redevelopment that can displace those communities. Thus, the City's Brownfield program is uniquely qualified to perform the ministerial actions required by Ordinance 190050 as amended.

NOW, THEREFORE, the Council directs:

- a. Council hereby approves of, adopts, and gives full force and effect to the Revised Settlement Agreement attached as Exhibit A.
- b. All directions made in Ordinance 190050 as amended, and passed by Council on July 15, 2020 apply to the Revised Settlement Agreement attached as Exhibit A to this Ordinance and the funds received pursuant to that Revised Settlement.
- c. Council further directs that the Brownfield Program within the Bureau of Environmental Services shall cocreate the process with impacted communities for the use of the settlement funds in accordance with the findings above and in consideration of the findings in Ordinance 190050 as amended, and return to Council for approval of fund expenditures through the public process.

Section 2. The Council declares that an emergency exists because any future delay in approving the Revised Settlement Agreement could harm the City's standing in the settlement process and class action proceeding, thereby harming the public interest; therefore, this Ordinance shall be in full force and effect from and after its passage by Council.

Passed by the Council: February 3, 2021

Mayor Ted Wheeler Commissioner
Mingus Mapps

Prepared by: Nanci Klinger Date
Prepared: January 25, 2021

Mary Hull Caballero
Auditor of the City of Portland

By *Megan Lehman*

Deputy

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 Agenda No.
ORDINANCE NO. 190284
 Title

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INTRODUCED BY Commissioner/Auditor: Mayor Wheeler & Commissioner Mapps	CLERK USE: DATE FILED <u>January 26, 2021</u>
COMMISSIONER APPROVAL Mayor—Finance & Administration - Wheeler	Mary Hull Caballero Auditor of the City of Portland By: <u>Keelan McClymont</u> Deputy
Position 1/Utilities - Rubio	
Position 2/Works - Ryan	
Position 3/Affairs - Hardesty	
Position 4/Safety - Mapps <i>Mays Mapps</i>	
BUREAU APPROVAL Bureau: BES Bureau Head: Michael Jordan	ACTION TAKEN:
Prepared by: Nanci Klinger Date Prepared: 01/25/2021	
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter	
Council Meeting Date <u>2/3/2021</u>	

AGENDA	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
		YEAS	NAYS
TIME CERTAIN <input type="checkbox"/> Start time: _____ Total amount of time needed: (for presentation, testimony and discussion)	1. Rubio	✓	
	2. Ryan	✓	
	3. Hardesty	✓	
	4. Mapps	✓	
	Wheeler	✓	
CONSENT <input type="checkbox"/> REGULAR <input checked="" type="checkbox"/>			
Total amount of time needed: 15 Min. (for presentation, testimony and discussion)			