

## Agenda No. 304

### ORDINANCE NO. 190382

\*Approve Second Revised Settlement Agreement in the matter of *City of Portland v. Monsanto et al.* (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. On February 3, 2021, by Ordinance 190284, Portland City Council approved and authorized a Revised Settlement Agreement for litigation authorized by Council on March 16, 2016 by Resolution 37197. Council authorized the initial settlement agreement on July 15, 2020 by Ordinance 190050.
2. The litigation is regarding the public nuisance caused by Monsanto Company's manufacture and distribution of polychlorinated biphenyls (referred to as PCBs) and the resulting impairment of water bodies.
3. The presiding judge for this matter in the U.S. District Court for the Central District of California has requested additional revisions to the proposed Revised Settlement regarding fund administration.
4. The City, through its outside counsel, has since prepared the Second Revised Settlement Agreement in response and attached as Exhibit A to this Ordinance (Second Revised Settlement Agreement). The settlement is included in a Motion for Certification of Settlement Class, Preliminary Approval of Class Action Settlement, Approval of Notice Plan, Appointment of Class Action Settlement

#### **Introduced by**

Mayor Ted Wheeler

#### **Bureau**

City Attorney

#### **Prepared by**

Nanci Klinger

#### **Date Prepared**

April 15, 2021

#### **Requested Council Date**

May 5, 2021

#### **Requested Agenda Type**

Consent

#### **Date Filed with Clerk**

April 27, 2021

Administrator and Appointment of Class Counsel (Case No. CV16-3493 FMO (AS)).

5. The revisions relate to the administrative processes for distributing settlement funds including requiring an appeals period for fund allocation and limiting a class member's ability to receive payments from multiple sub-funds. The addition of the appeal period and other administration processes will extend the time period for distribution of funds and may affect the amount of funds that the City ultimately receives.
6. As in the original Settlement Agreement, the Second Revised Settlement Agreement:
  1. 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 to be filed in the USDC for the Central District of California;
  2. Does not specify the amount that the City would receive because that will be determined based on the ultimate number of class members and the determinations of a Special Master regarding division of funds; and
  3. Does not direct or restrict the expenditure of settlement funds by the City.
7. Taking into consideration the risks, uncertainties and delay associated with this complex and novel litigation, the Second Revised Settlement continues to provide the City a more certain benefit in a shorter timeframe than continued, protracted litigation. The Second Revised Settlement Agreement continues to provide monetary benefits nationwide to local jurisdictions that are impacted because of PCB impaired waterways in their communities.
8. Council does not wish to alter the findings or directions for holding and distributing funds that the City will receive as previously adopted in Ordinances 190050 and 190284.

NOW, THEREFORE, the Council directs:

- A. Council hereby approves of, adopts and gives full force and effect to the Second Revised Settlement Agreement attached as Exhibit A.

Section 2. The Council declares that an emergency exists because any future delay in approving the 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 Council: May 5, 2021

**MARY HULL CABALLERO**

Auditor of the City of Portland

Action Taken:

By *Christina Thomas*

Deputy

Commissioners voted as follows (Yea or Nay)

Rubio - Yea

Ryan - Yea

Hardesty - Yea

Mapps - Yea

Wheeler - Yea