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191519

Emergency Ordinance

***Approve amendments to Settlement Agreement between the United States and the City in the United States District Court Case and authorize an alternative selection process for an Independent Monitor**

Passed

The City of Portland ordains:

Section 1. The Council finds:

1. The Settlement Agreement (Agreement) between the United States Department of Justice (DOJ) and the City of Portland (City) in United States District Court Case No. 3:12-cv-02265-SI requires sustained reforms to policies, programs, and procedures in, and oversight of, the Portland Police Bureau (PPB).
2. The City Council first approved the Agreement in November 2012, and it was adopted by the Court in August 2014. Since Council's approval in 2012, the City has been diligently working to comply with its requirements for more than a decade. Under its current terms, the Agreement may only be terminated after a monitoring report by the DOJ finds the City in substantial compliance with all requirements of the Agreement, and the next year the DOJ again finds that the City has sustained that universal substantial compliance.
3. In September 2021, U.S. Attorney General Merrick Garland issued a set of principles for the DOJ's use of monitors in civil settlement agreements, such as the City's Agreement. Although those principles are required only of new settlement agreements, DOJ and the City were motivated to explore their application to the Portland case. In his guidance, the Attorney General highlighted the importance of ensuring that monitors are "independent, highly qualified, and free of conflicts of interest," that "monitorships are conducted consistently, efficiently, with significant community input, and with respect for the financial realities that state and local governmental entities confront," and that monitoring must be structured to focus on timely resolution, including the use of partial terminal provisions and the transfer of monitoring responsibilities to the jurisdiction over time.
4. Over the last year, the City and DOJ developed a proposal to amend the Agreement's Implementation and Enforcement provisions in keeping

Introduced by

[Mayor Ted Wheeler](#)

Bureau

[City Attorney](#)

Contact

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Monday - Friday, 8:00am - 7:00pm

Requested Agenda Type

Time Certain

Date and Time Information

Requested Council Date

November 8, 2023

Requested Start Time

2:00 pm

Time Requested

1 hour

with the Attorney General's stated principles. The City and DOJ exchanged drafts and joined multiple mediation sessions with United States Magistrate Judge Stacie Beckerman, who invited participation from Intervenor-Defendant Portland Police Association (PPA), Enhanced Amicus Curiae the Albina Ministerial Alliance Coalition for Justice and Police Reform (AMAC), and Amicus Curiae the Mental Health Alliance (MHA).

5. Thereafter, the DOJ and the City agreed to propose amendments for a new Section XII on Agreement Implementation and Enforcement, to replace the existing Section X. The proposed Section XII includes three important modifications to the Settlement Agreement.
6. First, Section XII allows for the appointment of an Independent Monitor to objectively assess the City's compliance with and implementation of the Settlement Agreement. Under the current Settlement Agreement in Portland – unique among all DOJ consent decrees and settlement agreements on policing – the DOJ itself serves as both Plaintiff and monitor, filing periodic compliance assessment reports. In addition, under the current arrangement, a City-hired Compliance Officer/Community Liaison files quarterly compliance reports and outcome assessments. The proposed Section XII replaces that arrangement with an independent, highly qualified Monitor, free of conflicts of interest, consistent with the United States Attorney General's principles.
7. The Monitor shall be selected through a public process, including the joint selection by the Parties of three finalists after considering input from the PPA, AMAC, MHA and the Portland Committee on Community-Engaged Policing. Finalists will participate in a public town hall forum during a 32-day public comment period. Under the proposal, the Parties will jointly select a candidate for the Court to appoint as the Monitor.
8. The Monitor will develop a Monitoring Plan to ensure reliable compliance assessments; conduct semi-annual compliance assessments and outcome assessments; identify barriers to compliance and provide recommendations to overcome them; and file semi-annual reports with the Court that detail the status of the City's progress in implementing the Agreement.
9. Second, Section XII includes provisions to immediately terminate certain obligations under the Settlement Agreement where the City has a demonstrated history of substantial compliance. Whereas the current Agreement requires the City demonstrate its substantial compliance of all provisions continuously for a two-year period, if these amendments are adopted by Council and the Court, forty (40) paragraphs of the Agreement will be immediately terminated.
10. Third, for the remaining obligations, Section XII creates a process that will allow the City to focus its compliance efforts by providing for self-monitoring followed by termination of groups of paragraphs of the Agreement on an ongoing basis. Fifteen paragraphs of the Agreement will move into immediate self-monitoring upon approval of Section XII,

with others eligible after future assessments find substantial compliance. During self-monitoring, the City shall create a plan, in consultation with the Monitor, to report semi-annually on its continued substantial compliance. After the City maintains substantial compliance with a discrete section for two consecutive reports, the section will be subject to partial termination.

11. The immediate partial termination and self-monitoring provisions will recognize the City's efforts and progress on many fronts, while allowing the City, DOJ, and the Monitor to focus their attention on the work that remains. As the U.S. Attorney General's guidance states, "A consent decree cannot last forever, and success should be measured not only by the substantive reforms that have been made but also by the jurisdiction's ability to engage in reform and monitor itself long after the decree has ended."
12. In addition to the public hearing on this ordinance, the amendments to the Agreement detailed in Exhibit 1 will also be subject to public comment at a hearing before the Court on November 30, 2023, where the Court will determine whether the remedies are fair, adequate, and reasonable.
13. If these amendments to the Agreement are approved by Council and the Court, it is beneficial to the City to move expeditiously toward presenting a candidate for Monitor to the Court, and the City shall be responsible for executing on the public solicitation and selection process described above. Because of the specific process required by Section XII, a Request for Proposals process is not the appropriate avenue for selection of the Monitor. An alternative selection process is suitable in this instance, and a waiver of the solicitation requirements of City Code 5.68 is appropriate.
14. Awarding the contract for Monitor services as a Contract-Specific Special Procurement substantially promotes the public interest in a manner that could not otherwise practicably be realized by complying with the solicitation requirements under Portland City Code 5.68, and is unlikely to encourage favoritism in the award of public contracts or to substantially diminish competition for public contracts.

NOW, THEREFORE, the Council directs:

- A. The amendments to the Settlement Agreement reflected in the Proposed Amended Settlement Agreement attached as Exhibit 1 are approved. The City Attorney is authorized to sign a Joint Motion to Amend Settlement Agreement with the United States to propose amendments substantially in the form of Exhibit 1.
- B. The solicitation requirements of City Code 5.68 are waived, and the Chief Procurement Officer (CPO) is authorized to use a Contract-Specific Special Procurement such as a Request for Information for determination of the Independent Monitor contract.
- C. The CPO shall report to City Council summarizing the results of the solicitation and the public comments received on the finalists ("Report"),

and identifying the candidate the Parties deem most qualified and appropriate to meet the requirements of the Agreement Amendments.

- D. Upon Council acceptance of the CPO's Report, the City Attorney is authorized to sign a Joint Motion to propose the Applicant to the Court for appointment as Monitor.
- E. Pending the Court's appointment of the proposed Monitor, Procurement Services in cooperation with the Mayor's office is authorized to negotiate a contract with the candidate, provided the contract has been approved as to form by the City Attorney's Office, and provided that execution of the contract is contingent on the Court's appointment of the proposed Monitor.

Section 2. The Council declares that an emergency exists because of the urgency required to implement these remedies and the need to seek Court approval of the amendments to the Settlement Agreement at a fairness hearing at the earliest possible date; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Documents and Exhibits

 [Exhibit 1 \(https://www.portland.gov/sites/default/files/council-documents/2023/doj-amendment-monitor-proposal.pdf\)](https://www.portland.gov/sites/default/files/council-documents/2023/doj-amendment-monitor-proposal.pdf) 266.91 KB

An ordinance when passed by the Council shall be signed by the Auditor. It shall be carefully filed and preserved in the custody of the Auditor (City Charter Chapter 2 Article 1 Section 2-122)

Passed by Council
November 8, 2023

Auditor of the City of Portland
Simone Rede

Impact Statement

Purpose of Proposed Legislation and Background Information

- This amendment to the Settlement Agreement between the US Department of Justice (DOJ) and the City will implement a new monitoring structure and will provide for partial termination and self-monitoring of Settlement Agreement requirements with which the City has a demonstrated record of substantial compliance.
- After Council adoption, the U.S. District Court will hold a fairness hearing and invite comment from the amici and community before deciding whether to approve the Amendment.

Financial and Budgetary Impacts

The City Council, in adopting the FY 2023-24 Budget, provided funding during this fiscal year for DOJ Settlement Compliance. The funding was sufficient under the current structure, where a Compliance Officer/Community Liaison (COCL) is responsible for compliance assessment duties. The transition to an Independent Monitor, depending on the outcome of the procurement process and selection, will likely increase the City's direct contracted expenses, as a Monitor has more duties than the COCL. The expected additional cost is unknown at this time and will depend on the responses to a request for proposals for a monitor. Any additional expenses related to this Amendment to the Settlement Agreement, including any required addition to the DOJ Settlement Compliance budgeted line item, will be presented to the Council as part of a decision package necessary to address Council-approved programs required under the Settlement Agreement. The transition to an Independent Monitor under the Amendment is very likely to affect Current Appropriation Level and future budgets.

Community Impacts and Community Involvement

Community members, organizations designated as *amici* by the Court, the Portland Committee on Community-Engaged Policing, and the Court itself have all long urged the Parties in this case to amend the Agreement to provide for an Independent Monitor to assess the City's compliance with the Agreement's requirements. The Portland Police Association (PPA), enhanced amicus the Albina Ministerial Alliance Coalition for Justice and Police Reform (AMAC), and amicus the Mental Health Alliance (MHA) participated in the mediation that led to this proposed amendment, which will be subject to a fairness hearing with public testimony in U.S. District Court. The proposed Monitor will be selected through a process that engages the community, including through a month-long public comment period and direct input from PPA, AMAC, MHA and PCCEP.

100% Renewable Goal

Not applicable.

Budget Office Financial Impact Analysis

This action would approve amendments to the Settlement between the United States and the City of Portland in the United States District Court case number 3:12-cv-02265-SI. Council provided funding during the current Fiscal Year for DOJ Settlement Compliance. As outlined in prior Ordinance, several of the remedies include on-going reforms that will affect the Current Appropriation Level and future budgets, including the addition of an Independent Monitor.

Agenda Items

948 Time Certain in [November 8, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/11/8)
(<https://www.portland.gov/council/agenda/2023/11/8>)

Passed

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Yea

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Mayor Ted Wheeler Yea