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# 37674

Resolution

## Authorize the City Attorney to appeal the judgment in Kelly Jones as Personal Representative for the Estate of Michael Townsend v. City of Portland (Circuit Court of the State of Oregon for the County of Multnomah Case 22CV05575)

Adopted

WHEREAS, the City began a trial in the above-referenced matter on April 29, 2024 in the Circuit Court for the State of Oregon, Multnomah County.

WHEREAS, on May 3, 2024 the jury in the above-referenced matter entered an adverse verdict against the City.

WHEREAS, on August 12, 2024 the Multnomah County Circuit Court signed a judgment against the City (the "Judgment").

WHEREAS, during the trial the Multnomah County Circuit Court entered an Order denying the City's Motion for Directed Verdict on May 1, 2024 (the "Directed Verdict Order").

WHEREAS, in the above-referenced matter, the City raised an affirmative defense under ORS 31.180.

WHEREAS, on May 2, 2024, the Multnomah County Circuit Court declined to include jury instructions related to the City's affirmative defense under ORS 31.180 and declined to include the City's affirmative defense on the verdict form (the "Affirmative Defense Order").

WHEREAS, the Orders and Judgment concern issues of causation and the interpretation of Oregon's justification statute for use of deadly force by a peace officer, ORS 161.242.

WHEREAS, the appropriate interpretation and application of ORS 161.242 is critical for the City and its employees because it sets forth the standard for when a police officer is justified in using deadly force.

WHEREAS, the applicable standard for when deadly force is justified implicates Portland Police Bureau training and discipline, as well as officer and community safety.

Introduced by

[Mayor Ted Wheeler](#)

City department

[City Attorney](#)

Contact

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Requested Agenda Type

Regular

Date and Time Information

Requested Council Date

September 4, 2024

Time Requested

10 minutes

WHEREAS, the appropriate interpretation of ORS 161.242 is also important to the City because its application impacts the City's civil liability in some matters related to a police officer's use of deadly force.

WHEREAS, the Office of the City Attorney recommends that the City seek clarification on these issues through an appeal of the Judgment.

NOW, THEREFORE, BE IT RESOLVED, that the City Attorney is authorized to take all steps necessary to appeal from the trial court's Judgment and any related orders or judgments in *Kelly Jones as Personal Representative for the Estate of Michael Townsend v. City of Portland*, Circuit Court of the State of Oregon for the County of Multnomah Case No. 22CV05575, to pursue the appeal to its conclusion in any higher court, and, in furtherance of such appeal, to make any stipulation, agreement, or admission as in the City Attorney's judgment may be in the interest of the City.

## **Impact Statement**

### **Purpose of Proposed Legislation and Background Information**

Resolution authorizes City Attorney to initiate appeal of a judgment by the Circuit Court of the State of Oregon for the County of Multnomah. The appeal specifically addresses the appropriate application of Oregon's laws in the context of deadly force.

### **Financial and Budgetary Impacts**

During the pendency of the appeal, interest will accrue on the judgment at a rate of 9% per annum pursuant to ORS 82.010. Otherwise, pursuing this appeal would have no immediate financial or budgetary impacts. The legal work will be performed by lawyers and support staff within the City Attorney's Office, using budgeted staff and resources.

### **Community Impacts and Community Involvement**

This Resolution involves direction from the Council to its lawyers in the City Attorney's Office, based on privileged attorney-client communications, so there was no public outreach or input. There are no expected community impacts at this time.

### **100% Renewable Goal**

Pursuing this appeal would have no impacts on the City's total energy use or renewable energy use.

## Document History

Item 771 Regular Agenda in [September 4-5, 2024 Council Agenda](https://www.portland.gov/council/agenda/2024/9/4)  
(<https://www.portland.gov/council/agenda/2024/9/4>)

City Council

Adopted

Commissioner Rene Gonzalez Yea

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Nay

Commissioner Dan Ryan Nay

Mayor Ted Wheeler Yea