

RESOLUTION No. 36963

Authorize City Attorney to appeal an order issued by the Employment Relations Board in *Portland Police Association v. City of Portland*, UP-023-12 (Resolution)

WHEREAS, on January 29, 2010, City police officers, including Officer Ronald Frashour, were dispatched to a residence as a result of a telephone call that stated that Aaron Campbell was inside, that he was suicidal and that he might be threatening to commit suicide by police; and

WHEREAS, on that same day, Mr. Campbell came out of the apartment where he had been found, and after refusing to comply with some police directives was struck by rounds shot from a beanbag shotgun, at which point he began to run. Approximately three seconds after Campbell began running he was shot and killed by Officer Frashour with his AR-15 rifle; and

WHEREAS, on November 17, 2010 the City discharged Officer Ronal Frashour for violation of City Policies 1010.10 and 1010.20 regarding the use of force; and

WHEREAS, the Portland Police Association (PPA) represents a bargaining unit of City employees who work at the Portland Police Bureau; and

WHEREAS on November 17, 2010 the PPA filed a grievance over Frashour's discharge, contending that he had been discharged without just cause; and

WHEREAS, on March 30, 2012, after an arbitration proceeding regarding the grievance, an arbitrator concluded that the City had failed to prove that Officer Frashour's use of force against Mr. Campbell violated Police Bureau directives 1010.10 and 1010.20 and ordered the City to reinstate him to his former position as a police officer and to make him whole for wages lost during the period of his unemployment, less interim earnings; and

WHEREAS, Mayor Sam Adams, the Commissioner-in-charge of the Portland Police Bureau, believed that the arbitrator's decision was legally flawed and refused to reinstate Officer Frashour; and

WHEREAS, following that refusal, the PPA filed an unfair labor practice complaint against the City with the Employment Relations Board (ERB); and

WHEREAS, the City contended before ERB that state law does not permit arbitration decisions to be enforced in certain situations, including those such as Officer Frashour's, where the arbitrator and/or ERB failed to take certain public policies into account, including the egregious use of deadly force; and

WHEREAS, on September 21, 2012, ERB ruled against the City and ordered the City to reinstate Officer Frashour within 30 days of the date of its order to the same position he held at the time of his dismissal; and

WHEREAS, the City believes that, with all due respect to ERB, that ERB incorrectly applied applicable state law in regard to whether the arbitration decision was enforceable; and

WHEREAS, ERB acknowledged in its decision that the legal test it was applying has never been approved or rejected by the appellate courts in this State; and

WHEREAS, the City believes that this case presents an important issue regarding the ability of PPB to impose discipline and enforce its policies regarding the use of force and therefore believes the matter should be appealed to the Oregon Court of Appeals; and

WHEREAS, the Commissioner-in-Charge of the Portland Police Bureau, out of which the litigation arises, recommends going forward with the appeal.

NOW, THEREFORE, BE IT RESOLVED, that the City Attorney or his designee is authorized to commence an appeal to the Oregon Court of Appeals, and to pursue it to its conclusion in any higher court, of the order entered in *Portland Police Association v. City of Portland*, UP-023-12, and, in furtherance or resolution of such appeal, is authorized to make any stipulation, agreement, or admission as in his judgment may be in the best interest of the City.

Adopted by the Council: OCT 04 2012

Mayor Sam Adams

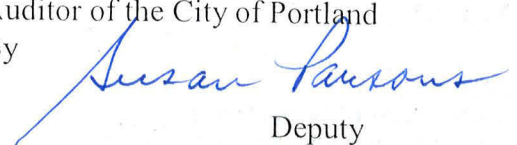
Prepared by: Amy Ruiz

Date Prepared: September 27, 2012

LaVonne Griffin-Valade

Auditor of the City of Portland

By




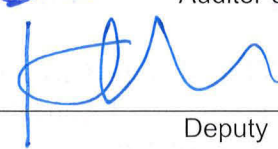
Deputy

Agenda No.
RESOLUTION NO.

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Title

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INTRODUCED BY Commissioner/Auditor: Mayor Sam Adams	CLERK USE: DATE FILED <u>SEP 28 2012</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Adams 	LaVonne Griffin-Valade Auditor of the City of Portland
Position 1/Utilities - Fritz	By:  Deputy
Position 2/Works - Fish	
Position 3/Affairs - Saltzman	
Position 4/Safety - Leonard	
BUREAU APPROVAL Bureau: Mayor's Office Bureau Head: Mayor Sam Adams	
Prepared by: Amy Ruiz Date Prepared: Sept 27, 2012	ACTION TAKEN:
Financial Impact & Public Involvement 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"/>	
Council Meeting Date October 4, 2012	
City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan	

AGENDA TIME CERTAIN <input checked="" type="checkbox"/> Start time: <u>2 pm</u> Total amount of time needed: <u>1 hour</u> (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Leonard	4. Leonard	✓	
Adams	Adams	✓	