

RESOLUTION No. 37013

Authorize City Attorney to appeal the judgment in *Gallagher Smith v. City of Portland*, Multnomah County Circuit Court No. 1110-13098 (Resolution).

WHEREAS, Gallagher Smith sued the City of Portland, alleging a number of claims arising out of his encounter with the police on the public sidewalk outside a downtown nightclub, and

WHEREAS, a critical issue in the case concerned whether the police had the authority to order Mr. Smith to leave the area of the public sidewalk outside the nightclub on the basis of information they had received that he was creating a disturbance when the proprietors of the nightclub denied him re-entry into the club, and

WHEREAS, the case was tried to a jury, and, notwithstanding PCC 14C.30.030, which authorizes Portland Police officers to direct pedestrian traffic on any public right of way, the Circuit Court instructed the jury that the police lacked probable cause to arrest Mr. Smith when he disobeyed their order to move away from the sidewalk in front of the nightclub, and

WHEREAS, the jury thereafter returned a verdict, and judgment was entered against the City of Portland on that verdict, for \$305,872.74, plus \$2,380.30 in costs, and

WHEREAS, Risk Management and the Portland Police Bureau desire that the City appeal the judgment in order to vindicate the authority of the police to maintain order, particularly in the downtown Entertainment District, and

WHEREAS, the City Attorney has advised that there is a legitimate basis for the appeal,

NOW, THEREFORE, BE IT RESOLVED, the City Attorney or his designee is authorized to file a notice of appeal of the judgment in *Gallagher Smith v. City of Portland*, Multnomah County Circuit Court No. 1110-13098.

Adopted by the Council: APR 17 2013

Mayor Hales

Prepared by: Harry Auerbach

Date Prepared: March 28, 2013

LaVonne Griffin-Valade
Auditor of the City of Portland

By



Deputy

343
Agenda No.
RESOLUTION NO. 37013
Title

Authorize City Attorney to appeal the judgment in *Gallagher Smith v. City of Portland*, Multnomah County Circuit Court No. 1110-13098 (Resolution).

<p>INTRODUCED BY Commissioner/Auditor: Mayor Hales</p> <p>COMMISSIONER APPROVAL <i>[Signature]</i> Mayor—Finance and Administration - Hales</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Novick</p> <p>BUREAU APPROVAL Bureau: City Attorney Bureau Head: James H. Van Dyke <i>[Signature]</i></p> <p>Prepared by: Harry Auerbach Date Prepared: March 28, 2013</p> <p>Financial Impact Statement & Public Involvement Statement</p> <p>Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Council Meeting Date April 17, 2013</p> <p>City Attorney Approval <i>[Signature]</i></p>	<p>CLERK USE: DATE FILED <u>APR 12 2013</u></p> <p style="text-align: center;">LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <i>[Signature]</i> Deputy</p> <p>ACTION TAKEN:</p>
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AGENDA
<p>TIME CERTAIN <input type="checkbox"/></p> <p>Start time: _____</p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>
<p>CONSENT <input checked="" type="checkbox"/> <i>Pulled</i></p>
<p>REGULAR <input type="checkbox"/></p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz		<input checked="" type="checkbox"/>
2. Fish	2. Fish	<input checked="" type="checkbox"/>	
3. Saltzman	3. Saltzman	<input checked="" type="checkbox"/>	
4. Novick	4. Novick	<input checked="" type="checkbox"/>	
Hales	Hales	<input checked="" type="checkbox"/>	