

RESOLUTION No. 37108

Authorize City Attorney to seek and appeal a limited judgment in *Anderson v. City of Portland*, Multnomah Circuit Court No. 1112-15957, the water and sewer fund expenditure case (Resolution)

WHEREAS, Lloyd Anderson, Paige Craford, and Millard Christner sued the City alleging that the City Council had violated the City Charter by expending water and sewer funds for matters unrelated to the water and sewer systems, *Anderson v. City of Portland*, Multnomah Circuit Court No. 1112-15957;

WHEREAS, the complaint in *Anderson v. City of Portland* challenges dozens, if not hundreds, of expenses;

WHEREAS, the Circuit Court has now issued an order on the parties' motions for partial summary judgment;

WHEREAS, in its opinion and order on partial summary judgment, the Circuit Court interpreted the Charter to give courts authority to conduct *de novo* review of City Council expenditure decisions and declined to adopt the City's own Charter interpretation under which a court should review Council expenditure decisions under a deferential "abuse of discretion" standard of review;

WHEREAS, applying its Charter interpretation, the Court held that the following expenditures violated the Portland City Charter: (a) City expenditures of approximately \$462,000 of water and sewer funds that provided approximately twenty-nine percent of the now-repealed Voter-Owned Elections program to finance the election campaigns of candidates running for certain City offices; and (b) City expenditures of approximately \$530,000 of water funds that provided approximately thirty-four percent of the cost of the Portland Loos projects (other than expenditures to connect the Portland Loos to the City water system);

WHEREAS, the Court also held that the following expenditures, totaling approximately \$10.6 million, did not violate the Portland City Charter: (a) City expenditures of approximately \$4.43 million in water funds to relocate water facilities in connection with Phase I of the TriMet South Corridor light rail project; (b) City expenditures of \$6 million in sewer funds to pay approximately fifty-three percent of the purchase price of the River View Cemetery in Southwest Portland; (c) City expenditures of approximately \$85,285 in water and sewer funds that were used to pay administrative, enforcement and other expenses of the City Auditor in carrying out the City Auditor's functions and duties under the Voter-Owned Elections program; and (d) City expenditures of approximately \$88,624 in water funds to pay for the costs of connecting the Portland Loos to the City water system;

WHEREAS, the Mayor, the Commissioner in Charge of the Portland Water Bureau and the Bureau of Environmental Services, and the City Attorney recommend an appeal of the Circuit Court's interpretation of the Charter, for the interpretation deprives the

Council of reasonable discretion to make budgetary decisions and improperly allows courts to intrude on Council policy choices;

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

NOW, THEREFORE, BE IT RESOLVED, the City Attorney is authorized to take the steps necessary to appeal the Circuit Court's order on motions for partial summary judgment of March 26, 2014, in *Anderson v. City of Portland*, to pursue that appeal to its conclusion in any higher court, and, in furtherance of such appeal, to make any stipulation, agreement, or admission as in her judgment may be in the interest of the City.

Adopted by the Council: FEB 04 2015

Commissioner: Mayor Charlie Hales
Commissioner Nick Fish

Prepared by: Terence L. Thatcher

Date Prepared: January 21, 2015

Mary Hull Caballero
Auditor of the City of Portland

By  Deputy

Agenda No.
RESOLUTION NO. 37108
Title

Authorize City Attorney to seek and appeal a limited judgment in *Anderson v. City of Portland*, Multnomah Circuit Court No. 1112-15957, *the water and sewer fund expenditure case (Resolution)*

<p>INTRODUCED BY Commissioner/Auditor: Mayor Charlie Hales Commissioner Nick Fish</p>	<p>CLERK USE: DATE FILED <u>JAN 30 2015</u></p>
<p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Hales <i>[Signature]</i></p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish <i>[Signature]</i></p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Novick</p>	<p style="text-align: center;">LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <u><i>[Signature]</i></u> Deputy</p> <p>ACTION TAKEN:</p>
<p>BUREAU APPROVAL</p> <p>Bureau: Office of the City Attorney Bureau Head: Tracy Reeve</p>	
<p>Prepared by: Terence L. Thatcher Date Prepared: 01/21/2015</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>City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan <i>[Signature]</i></p>	
<p>Council Meeting Date February 4, 2015</p>	

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>

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