

## RESOLUTION No. 37124

Authorize the City Attorney to make application for the City to appear Amicus Curia in *Lake Oswego Preservation Society v. City of Lake Oswego* in support of clarifying Oregon's owner consent law to retain designated historic resources (Resolution)

WHEREAS, The 74<sup>th</sup> Oregon Legislative Assembly adopted legislation now codified at ORS 197.772 and known as the "owner consent law" that prohibits a local government from imposing a historic designation whenever "a property owner" refuses to consent to the designation; and

WHEREAS, The owner consent law also requires a local government to allow "a property owner" to remove an existing historic designation that was imposed over the owner's objection; and

WHEREAS, The City of Portland has always understood the term "a property owner" to mean either the owner at the time a designation is proposed, or an owner who objected to a designation imposed before the effective date of the owner consent law and has never understood this term to mean a subsequent owner who knowingly purchases an already designated historic property; and

WHEREAS, The City's understanding of the owner consent law is consistent with both the plain meaning of the text of the law and its legislative history; and

WHEREAS, The successor owner of a designated historic resource in Lake Oswego asked the City of Lake Oswego to remove the property's historic designation and the City of Lake Oswego agreed to do so, a result that is contrary to the owner consent law; and

WHEREAS, The Lake Oswego Preservation Society and others appealed Lake Oswego's decision to the Oregon Land Use Board of Appeals (LUBA) in *Lake Oswego Preservation Society v. City of Lake Oswego*, LUBA No. 2014-009 and on August 5, 2014, LUBA reversed the city's decision and concluded the city erred in approving the successor owner's request to remove the property's historic designation; and

WHEREAS, The Lake Oswego Preservation Society and others appealed LUBA's decision to the Oregon Court of Appeals and on February 4, 2015 the appellate court reversed LUBA's decision and interpreted the term "a property owner" to include any new purchaser of a historic property for which a prior owner refused consent or had "never been asked" to consent, *Lake Oswego Preservation Society v. City of Lake Oswego*, 268 Or App 811 (2015); and

WHEREAS, The Oregon Supreme Court has granted the petition for review filed by the Lake Oswego Preservation Society to review of the Court of Appeal's decision and to consider the meaning of the term "a property owner" for purposes of the owner consent law in *Lake Oswego Preservation Society v. City of Lake Oswego*, S063048; and

WHEREAS, Two historic preservation groups, Restore Oregon and the Architectural Heritage Center, have been granted status as *amici curiae*, by the Oregon Supreme Court and have asked the City of Portland to join in their amicus brief to support LUBA's interpretation of the owner consent law; and

WHEREAS, The City of Portland has a compelling interest in the outcome of this case because the court of appeals' interpretation of the owner consent law could place up to 1,770 properties legally designated as historic resources at potential risk of having their designations removed;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Portland, that the City Attorney or her designee, on behalf of the City of Portland, may file or join in amicus briefs in support of clarifying Oregon's owner consent law to retain designated historic resources in *Lake Oswego Preservation Society v. City of Lake Oswego*, Supreme Court Case No. S063048.

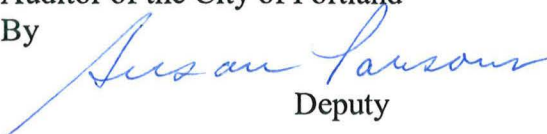
Adopted by the Council: MAY 20 2015

Mayor Hales

Prepared by: Al Burns

Date Prepared: May 13, 2015


**Mary Hull Caballero**  
Auditor of the City of Portland  
By

  
Deputy

Agenda No.  
**RESOLUTION NO. 37124**

Title

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<b>INTRODUCED BY</b> Commissioner/Auditor: <b>Mayor Hales</b>	CLERK USE: DATE FILED <u>MAY 15 2015</u>
<b>COMMISSIONER APPROVAL</b>	Mary Hull Caballero Auditor of the City of Portland  By:  Deputy  <b>ACTION TAKEN:</b>
Mayor—Finance and Administration - Hales	
Position 1/Utilities - Fritz	
Position 2/Works - Fish	
Position 3/Affairs - Saltzman	
Position 4/Safety - Novick	
<b>BUREAU APPROVAL</b>	
Bureau: Planning and Sustainability Bureau Head: Susan Anderson	
Prepared by: Al Burns Date Prepared: May 13, 2015	
Impact 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"/>	
<b>City Auditor Office Approval:</b> required for Code Ordinances	
<b>City Attorney Approval:</b> required for contract, code, easement, franchise, charter, Comp Plan	
Council Meeting Date <b>May 20, 2015</b>	

<b>AGENDA</b>
<b>TIME CERTAIN</b> <input type="checkbox"/> Start time: _____ <b>Total amount of time needed:</b> _____ (for presentation, testimony and discussion)
<b>CONSENT</b> <input type="checkbox"/>
<b>REGULAR</b> <input checked="" type="checkbox"/> <b>Total amount of time needed:</b> <u>15:30</u> (for presentation, testimony and discussion)

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"/>	