

ORDINANCE No. 187372

*Ratify a Settlement Agreement between the City on behalf of the Portland Water Bureau, American Federation of State, County, and Municipal Employees, Local 189 and Operating Engineers Local 701 regarding premium pay for working underground or in a shored excavation (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The City and the District Council of Trade Unions (DCTU) are parties to a collective bargaining agreement (CBA) effective July 1, 2013 to June 30, 2017 (the 2013-2017 CBA). The American Federation of State, County and Municipal Employees, Local 189 (AFSCME) and Operating Engineers Local 701 (Local 701) are two of the signatory member Unions of the DCTU.
2. Schedule "A" at section 3. c. of the 2013-2017 CBA provides for the payment of a premium of 80 cents per hour to certain employees who are instructed to work "underground or in a shored excavation" (the underground premium). The previous CBA, in effect from July 1, 2010 to June 30, 2013 (the 2010-2013 CBA) had the same provision.
3. On August 18, 2010, during successor negotiations with the signatory Unions of the DCTU, the City made several disavowals of certain pay practices, including the practice of paying the underground premium to employees who enter vaults that are non-permit required confined spaces.
4. On December 13, 2010, the DCTU filed a grievance (LR #2010-111) concerning the City's disavowals, including the disavowal of paying the underground premium to employees who enter vaults that are non-permit required confined spaces.
5. On September 9, 2012, an arbitrator ruled that the DCTU did not have standing to file a grievance over the disavowals and that the grievance was not timely.
6. On January 31, 2013, Local 701 filed a grievance (LR #2013-004) alleging that the PWB failed to pay bargaining unit employees the underground premium for working in a non-permit required underground vault.
7. On March 13, 2013, AFSCME filed a grievance (LR #2013-013) alleging that the PWB failed to pay bargaining unit employees the underground premium for working in an underground vault.

8. On September 10, 2015, the City on behalf of the PWB, AFSCME and Local 701 entered into a Settlement Agreement (the Agreement), Exhibit A attached hereto and incorporated herein by this reference, that settles the grievances filed by Local 701 and AFSCME.
9. The Agreement provides that, effective August 13, 2015, all PWB employees in classifications represented by a signatory Union to the 2013-2017 CBA will be paid the underground premium pay of 80 cents per hour for a minimum of four hours when: (1) they work in a vault; (2) the vault is under the ground; (3) the vault is a confined space as defined by the Oregon Occupational Health and Safety Administration (OSHA); (4) the employee has completed a confined space entry form or permit-required space entry form as required by the PWB standard operating procedures; and (5) the employee has added the premium to his/her timesheet.
10. Pursuant to the Agreement, the PWB will also retroactively pay the underground premium to eligible employees for the period of November 13, 2010 through the pay period ending August 12, 2015. To be eligible for the back pay, an employee must be a current employee in a classification that is covered by the 2013-2017 CBA and must meet all of the requirements outlined in paragraph 10.
11. The PWB shall determine the amount of back pay owed by using the confined space entry forms that were completed by employees who entered into vaults under the ground that are confined spaces as defined by Oregon OSHA during the period of November 13, 2010 through August 12, 2015.
12. Local 701 and AFSCME have agreed to withdraw the grievances (LR #2013-004 and LR #2013-013) with prejudice as part of the Agreement.
13. The Agreement provides that the City expressly denies any admission of liability and that all parties understand that the Agreement is a compromise of disputed claims. The Agreement further provides that it is based on the particular circumstances and does not create a precedent of any kind.
14. The Agreement will not be effective until it has been ratified by Council.

NOW, THEREFORE, the Council directs:

- a. The Agreement between the City on behalf of the PWB, AFSCME and Local 701 attached hereto as Exhibit A is hereby ratified by this Council.
- b. The PWB is authorized to pay for the costs associated with the Agreement from its current service level budget.
- c. This ordinance is binding City policy.

Section 2. The Council declares that an emergency exists in order to avoid an unnecessary delay in the orderly implementation of the provisions of the Agreement; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council:

OCT 14 2015

Mayor Charlie Hales

Prepared by: Anna Kanwit:PTW:ss

Date Prepared: September 29, 2015

Mary Hull Caballero

Auditor of the City of Portland

By



Deputy

1039 -

Agenda No.
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<p>INTRODUCED BY Commissioner/Auditor: Mayor Charlie Hales</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</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Novick</p> <p>BUREAU APPROVAL</p> <p>Bureau: Bureau of Human Resources <i>[Signature]</i></p> <p>OMF CAO: Fred Miller</p> <p>Bureau Head: Anna Kanwit <i>[Signature]</i></p> <p>Prepared by: AK:PTW:ss</p> <p>Date Prepared: September 29, 2015</p> <p>Financial Impact & Public Involvement Statement</p> <p>Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>Portland Policy Document</p> <p>If "Yes" requires City Policy paragraph stated in document.</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>City Auditor Office Approval: required for Code Ordinances</p> <p>City Attorney Approval: Matthew V. Farley, Senior Deputy City Attorney required for contract, code, easement, franchise, comp plan, charter <i>[Signature]</i></p> <p>Council Meeting Date: October 14, 2015</p>	<p style="text-align: right;">OCT 09 2015</p> <p>CLERK USE: DATE FILED _____</p> <p style="text-align: right;">Mary Hull Cabellero 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"/></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	✓	
2. Fish	✓	
3. Saltzman	✓	
4. Novick	✓	
Hales	✓	