

RESOLUTION No. **371 83**

Authorize the City Attorney to institute proceedings challenging the District Attorney's Order in the Petition of Mark Bartlett. (Resolution).

WHEREAS, The City of Portland is committed to an open and transparent government, in which all people have access to public documents, and

WHEREAS, The commitment to open government must be balanced with the right to receive attorney-client communication, and

WHEREAS, The right to attorney-client privilege has been long recognized under Oregon law and is currently codified under ORS 40.225, and

WHEREAS, Oregon law generally recognizes that the public interest is served by government bodies ability to have privileged communication with their legal counsel, commensurate with the rights of privileged communications afforded to private clients, and

WHEREAS, Under ORS 192.495, Oregon law requires the disclosure of certain otherwise exempt public records after 25 years, and

WHEREAS, In *Swindler & Berlin v. United States*, 524 US 399, the Supreme Court found that the attorney-client privilege is not temporally limited and does not even end with the client's death, and

WHEREAS, In response to a public records petition from Mark Bartlett the District Attorney has ordered the City of Portland to disclose certain City Attorney opinions and advice given to the City Council, and

While ordering the disclosure, the District Attorney's order recognized that the intersection of public records law and the attorney-client privilege presents complex and important issues that would be served by judicial or legislative clarification, and

NOW, THEREFORE, BE IT RESOLVED, the City Attorney is authorized to institute proceedings in Multnomah County Circuit Court to challenge the District Attorney's Order in the petition of Mark Bartlett, and to pursue to conclusion those proceedings in any higher court, and, in furtherance or resolution of such proceedings, is authorized to make any stipulation, agreement, or admission as in her judgment may be in the best interest of the City.

Adopted by the Council: **JAN 13 2016**

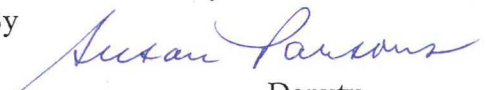
Mayor: Charlie Hales

Prepared by: Jenifer Johnston

Date Prepared: January 11, 2016

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

By

  
Deputy

Agenda No. **371 83**  
**RESOLUTION NO.**

Title 2158

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<p style="text-align: center;"><b>INTRODUCED BY</b> Commissioner/Auditor: <b>Mayor Charlie Hales</b></p>	<p style="text-align: right;">JAN 11 2016</p> <p>CLERK USE: DATE FILED _____</p>
<p style="text-align: center;"><b>COMMISSIONER APPROVAL</b></p>	<p style="text-align: center;">Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <u><i>Mary Hull Caballero</i></u> Deputy</p> <p><b>ACTION TAKEN:</b></p>
<p>Mayor—Finance and Administration - Hales <i>JAH</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 style="text-align: center;"><b>BUREAU APPROVAL</b></p>	
<p>Bureau: City Attorney Bureau Head: Tracy Reeve <i>TR</i></p>	
<p>Prepared by: Jenifer Johnston <i>JJ</i> Date Prepared: January 11, 2016</p>	
<p>Financial Impact Statement &amp; 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><b>City Attorney Approval:</b> required for contract, code, easement, franchise, charter, Comp Plan</p> <p>Council Meeting Date <u>January 13, 2016</u> <u>Jan 13, 2016</u></p>	

<b>AGENDA</b>
<p><b>TIME CERTAIN</b> <input type="checkbox"/></p> <p>Start time: _____</p> <p><b>Total amount of time needed:</b> _____ (for presentation, testimony and discussion)</p>
<p><b>CONSENT</b> <input type="checkbox"/></p>
<p><b>REGULAR</b> <input checked="" type="checkbox"/></p> <p><b>Total amount of time needed: 10 minutes</b> (for presentation, testimony and discussion)</p>

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