

## RESOLUTION No. 37253

Authorize City Attorney to seek review by Writ of Mandamus or Prohibition of the Order entered on November 10, 2016 in *United States of America v. City of Portland*, United States District Court No. 3:12-cv-02265-SI (Resolution).

WHEREAS, the City Council is entrusted by the community with responsibility for properly managing the City's police bureau; and

WHEREAS, the United States Department of Justice Civil Rights Division and the United State Attorney for Oregon (USDOJ) work to ensure that local police departments have constitutional policing practices; and

WHEREAS, in 2012, the City and USDOJ entered into a Settlement Agreement to safeguard the constitutional rights of persons who contact police officers during a mental health crisis; and

WHEREAS, community trust in policing in Portland depends on the City's elected officials demonstrating that they are committed to the values embodied in the Agreement and are capable of fully implementing it; and

WHEREAS, having the City's elected officials directly responsible for oversight of the Agreement ensures that the public knows who is responsible and accountable for managing the police bureau in conformance with the community's values; and

WHEREAS, in December 2012, the City and USDOJ submitted the Settlement Agreement for the Court's approval as well as a stipulated order dismissing the case; and

WHEREAS, the Settlement Agreement is a legally enforceable contract between the City and the United States and the stipulated order contained standard legal language asking the court to act as the judge in any future contract disputes between the parties; and

WHEREAS, on August 28, 2014, the District Court approved the Settlement Agreement as "fair, reasonable, and adequate" but entered an Order imposing additional conditions which the City had not reviewed or accepted which required the City, the Compliance Officer and Community Liaison (COCL), and additional parties, to appear at hearings whenever called by the Court and to produce any evidence directed by the Court; and

WHEREAS, the City appealed that Order to clarify the authorized frequency, scope, procedure, and evidentiary burdens the Court could impose; and

WHEREAS, after the City filed its appeal, the parties engaged in mediation of the issues raised with the assistance of Ninth Circuit Mediation Program and Senior Ninth Circuit Judge Edward Leavy; and

WHEREAS, the parties agreed to settle the City's appeal on the basis that there would be one annual non-evidentiary status conference before the District Court at which the parties, the COCL, a representative of the Community Oversight Advisory Board (COAB), the Portland Police Association (PPA) and the Albina Ministerial Alliance Coalition (AMAC) would appear to describe to the Court the status of progress on the Settlement Agreement and related agreements and that the case would otherwise be conditionally dismissed and placed on the Court's inactive docket, subject to recall to the active docket should the United States move to enforce the Settlement Agreement; and

WHEREAS, the Court entered an Order so providing on July 30, 2015; and

WHEREAS, the first annual status conference was held on September 14, 2015 before the Court in accordance with the parties' Settlement Agreement and the Court's Order; and

WHEREAS, the second annual status conference was held on October 25, 2016; and

WHEREAS, at the second annual status conference, the Court heard reports from the United States, the City, the COCL, the COAB representative, the AMAC and the PPA generally providing that the City had made significant progress under the Settlement Agreement over the preceding year and was in partial or substantial compliance in all areas but one; and

WHEREAS, the United States reported that the City was in non-compliance with regard to the COAB, and noted that the City had faced substantial barriers to compliance in this area, including civil unrest at COAB meetings; and

WHEREAS, the Court then invited members of the public to appear and provide commentary, including the plaintiff in another case before the Court against the City; and

WHEREAS, many individuals were permitted to speak over a period of several hours; and

WHEREAS, an individual who regularly disrupts COAB and other City meetings was permitted to speak and to impugn one of the City's attorneys, a Black Haitian American woman, based on her national origin without admonishment by the Court; and

WHEREAS, other individuals were permitted to engage in ad hominem attacks on City officials and volunteers; and

WHEREAS, the United States requested at that time that additional status conferences be set by the Court; and

WHEREAS, following the second annual status conference the City filed its Post Status Conference Memorandum and a letter from the City's six elected officials objecting to the conduct which was permitted to occur at the status conference, particularly the attack on the City's attorney based on her national heritage; and

WHEREAS, the City further objected to the conduct of additional status conferences prior to the next annual status conference on October 5, 2017; and

WHEREAS, the Court nonetheless issued an Order on November 10, 2016, ordering the City to appear for a status conference on January 31, 2017 and opining that the Court has inherent authority to require the City to appear and be present for any status conferences deemed appropriate by the Court; and

WHEREAS, the Court further characterized the several hours of commentary by members of the public as the participation of *amicus curiae* and stated that the Court has inherent authority to hear comments at a status conference from any *amicus curiae* the Court considers appropriate; and

WHEREAS, the City is not challenging the terms of the Settlement Agreement and has made and is continuing to make substantial progress toward achieving full compliance with those terms; and

WHEREAS, the City is actively working to develop a framework for a more effective and functional structure for the COAB and is working with the parties, intervenor and amicus to facilitate this; and

WHEREAS, the City is not asking to stay implementation of the Settlement Agreement; and


WHEREAS, it has been and will remain the policy of the City to vigorously implement and adhere to the reforms of the Settlement Agreement regardless of any court proceedings related to it;

NOW, THEREFORE, BE IT RESOLVED, the City Attorney or her designee is authorized to file an appeal or petition for writ of mandamus or prohibition as to the November 10, 2016, order in *United States of America v. City of Portland*, United States District Court No. 3:12-cv-02265-SI, and to pursue it to its conclusion in any higher court, and, in furtherance of such appeal or mandamus or prohibition, is authorized to make any request, stipulation, agreement or admission as in her judgment may be in the best interest of the City.

Adopted by the Council: DEC 07 2016

Mayor Hales

Prepared by: Tracy Reeve  
Date Prepared: November 11, 2016

Mary Hull Caballero,  
Auditor of the City of Portland  
By   
Deputy

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<p style="text-align: center;"><b>INTRODUCED BY</b> Commissioner/Auditor: <b>Mayor Hales</b></p>	<p>CLERK USE: DATE FILED <u>NOV 29 2016</u></p>
<p style="text-align: center;"><b>COMMISSIONER APPROVAL</b></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 style="text-align: center;">Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <i>[Signature]</i> Deputy</p>
<p style="text-align: center;"><b>BUREAU APPROVAL</b></p> <p>Bureau: City Attorney Bureau Head: Tracy Reeve</p>	<p><b>ACTION TAKEN:</b></p>
<p>Prepared by: Tracy Reeve Date Prepared: November 21, 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 <b>November 30, 2016</b></p>	

**AGENDA**

**TIME CERTAIN**   
Start time: \_\_\_\_\_

**Total amount of time needed:** \_\_\_\_\_  
(for presentation, testimony and discussion)

**CONSENT**  *Pull*

**REGULAR**   
**Total amount of time needed:** \_\_\_\_\_  
(for presentation, testimony and discussion)

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	✓	