

IMPACT STATEMENT

Legislation title: *Approve settlement agreement in the matter of City of Portland v. Monsanto et al. and authorize expenditure of settlement funds (Ordinance)
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Purpose of proposed legislation and background information:

This purpose of this ordinance is to approve a Settlement Agreement (attached as Exhibit A) with Monsanto Company and local governments and port districts, including the City, and to authorize the expenditure of settlement funds received by the City in accordance with a publicly-developed plan. The Settlement Agreement was provisionally signed by the City Attorney's Office on June 22, 2020, pending Council approval.

The Settlement Agreement resolves the matter of City of Portland v. Monsanto et al., filed by the City in 2016 pursuant to Resolution No. 37197. The purpose of that lawsuit was to protect the City's rights and seek relief, related to the public nuisance caused by Monsanto Company's manufacture of polychlorinated biphenyls (PCBs) and resulting impairment of waterbodies.

The City, through its outside counsel, has been litigating this matter in the United States District Court, Portland Division. The court has heard several motions in this case, and an intensive discovery process has been underway since December 2018. Trial is scheduled for August 2021.

The Settlement Agreement provides that Monsanto Company will deposit \$550 million into an escrow account through a class action lawsuit. The class members are the more than 2500 local governments and port districts nationwide that are required to incur costs of meeting regulatory requirements because they discharge stormwater into waterbodies impaired by PCBs. The settlement funds will be allocated over a four-year period pursuant to various formulae set forth in the Settlement Agreement and pursuant to applications made by the local governments that are reviewed by a court-approved Special Master. Attorney fees and costs of administering the settlement fund distribution are paid from separate funds and do not diminish the amount of benefits to the class members.

Settling this litigation provides the City with a more certain benefit over a shorter timeframe than continuing to litigate the matter would do, especially taking into consideration the risks and uncertainties inherent in the complex and novel issues posed in this lawsuit.

Although the Settlement Agreement specifically allocates settlements funds based on costs associated with PCB-impacted water bodies, it does not direct or restrict the expenditure of funds. Therefore, the City has full discretion to direct how the settlement funds may be

used. Acknowledging the disproportionate effect that PCB contamination in City waterways has had on Black, Indigenous, people of color, immigrant and refugee communities, and the need for environmental cleanup within those communities, this ordinance provides for settlement funds awarded to the City to be focused on creating a process with impacted communities to determine how the settlement funds will be spent. This process provides for the Director of the Bureau of Environmental Services, or their designee, to develop a plan for the use of the funds that recognizes the need for structural and lasting improvement for those disproportionately affected communities, including the needs of Indigenous communities to fully practice their culture, to address brownfields in underserved communities, and other needs and goals that the process identifies that are not currently being addressed.

If the Settlement Agreement is approved by Council, the 2016 litigation will be dismissed and the City will proceed as one of the 13 named plaintiffs in the class action litigation. If Council does not approve the Settlement Agreement, the City will not be a named plaintiff in the class action and will not receive settlement funds that would reimburse City litigation costs. The City could also choose to pursue continued litigation independently but would bear all costs of that litigation.

Financial and budgetary impacts:

This ordinance will have a positive, although undetermined, budgetary impact. It will reduce further litigation costs to the City. Although the City has pursued this litigation pursuant to a contingent fee arrangement with outside counsel, the City has had to devote some staff and attorney time to support the litigation. The settlement funds will be disbursed in four annual payments as follows: Year 1: 40%, Year 2:20%, Year 3:20% Year 4:20%. The distribution process will begin after the court certifies the class action, the class members are notified, the administrative process to make claims concludes and the court approves the Final Approval Order for the case. These steps are anticipated to be completed within the next 12 months.

Community impacts and community involvement:

The ordinance provides for settlement funds to be focused on Black, Indigenous, people of color, immigrant and refugee communities that have been disproportionately impacted by contamination. The Director of the Bureau of Environmental Services, or their designee, must develop a plan for the use of the funds through a process that includes the impacted communities. The ordinance provides a unique opportunity for the City to acknowledge harm experienced by these impacted communities by involving them in a process to identify needs and goals that can be addressed by the application of the settlement funds.

100% Renewable Goal:

Not Applicable.

Budgetary Impact Worksheet**Does this action change appropriations?**☐ **YES:** Please complete the information below.☒ **NO:** Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount