Item 519 - Proposed Amendment from Mayor Wheeler

Motion to make the following adjustments to the Over-expenditure Ordinance as filed to increase appropriation in the Portland Police Bureau to mitigate the risk of over-expenditure driven by personnel overtime.

- Increase bureau program expenses in the Police Bureau's General Fund Budget by $500,000
- Decrease General Fund Unrestricted Contingency by $500,000 to fund this change.
- Update exhibits 1-5 as needed to reflect this change.

EXECUTIVE SUMMARY

TO:

Mayor Ted Wheeler
Commissioner Mingus Mapps
Commissioner Carmen Rubio
Commissioner Rene Gonzalez
Commissioner Dan Ryan
Auditor Simone Rede

CC:

Council Chiefs of Staff
City Budget Managers and Contacts

FROM:

Tim Grewe, City Budget Office Director
Robert Cheney, Supplemental Budget Process Coordinator

DATE: June 16, 2023

RE: CBO Analysis & Recommendations for the FY 2022-23 Over-Expenditure Ordinance

BACKGROUND

The Over-Expenditure Ordinance, or "OEO" is the final Supplemental Budget Process that the City Budget Office coordinates in a given fiscal year. It is narrowly focused as the primary purpose of this ordinance is to mitigate violations of Oregon state budget law and prevent over-expenditures that may occur at the fund, bureau, or major object level. Bureaus are encouraged to adjust their budgets so that a fund does not end the fiscal year with a negative cash balance.

Unlike the Fall and Spring supplemental budget monitoring processes, the Council does not conduct a work session for the OEO. This report provides information and analysis on the OEO as filed for June 21, 2023. The OEO for FY 2022-23 does not include requests for late carryover or other programming of resources. The adjustments as filed are centered on management of bureau budgets to prevent over-expenditures by either fund, business area, or object category.

"Over-expenditure" is defined legally as spending in excess of amounts that are legally appropriated in the Budget Adopted Ordinance for FY 2022-23. The City appropriates at the fund, bureau, and "appropriation category." Appropriation categories are bureau program expenses (personnel services, external materials and services, internal materials and services, and capital outlays), debt service, interfund cash transfers, and contingency. Bureaus are encouraged to find cost savings within their own budget to absorb potential cost-overruns. Throughout the fiscal year, the CBO typically recommends allowable allocations that adhere to City Financial Policy for contingency, and analyzes whether the request is urgent, unforeseen, and unable to be absorbed within a bureau's existing resources.

There is $3 million in discretionary resources in unrestricted contingency in the City's General Fund. The amount of $3 million is typically the minimum amount the city has in its unrestricted contingency which originates in the annual Current Appropriation Level (CAL) development process. However, in the Fall of FY 2022-23 General Fund unrestricted contingency was reduced to zero. The City Budget Office ensured that unrestricted contingency was replenished to $3 million in the Spring BMP knowing there would be General Fund cost pressures driven by public safety overtime. The next section highlights and analyzes key requests made in the FY 2022-23 OEO.

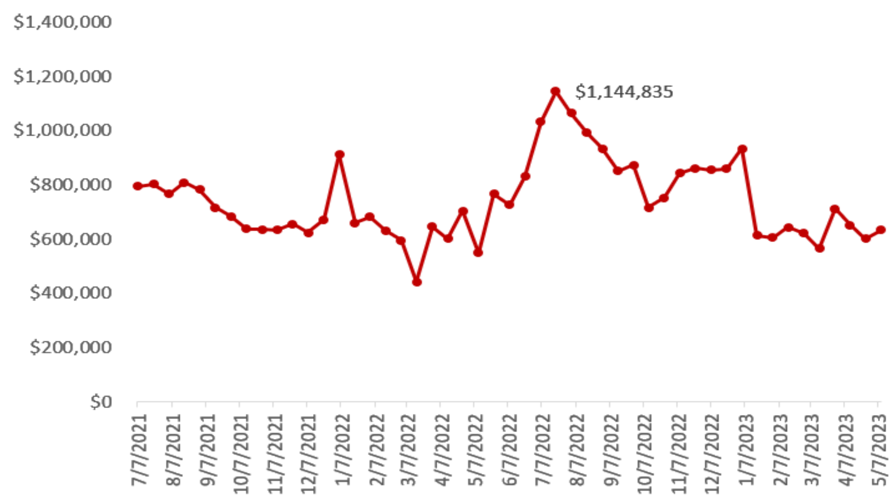
REQUESTS FOR UNRESTRICTED GENERAL FUND CONTINGENCY

PORTLAND FIRE & RESCUE

Portland Fire & Rescue (PFR) has requested the entirety ($3.0 million) of General Fund Unrestricted Contingency to address severe cost over-runs in their personnel services budget — driven primarily by overtime costs generated by sworn firefighters. Current CBO projections show that the bureau will over-expend its personnel services budget by $1.22 million. This is after realigning their budget in the Spring Budget Monitoring Process (BMP) to absorb the expected overtime costs above budget. (CBO's analysis of that request exists here).

Sworn firefighter overtime is being driven primarily by "call shift" overtime that pays fire fighters 1.5 times their hourly rate when they work on a planned day off to cover for another fire fighter that is sick, on vacation, or on leave. Unlike other services, Fire does not have the same degree of flexibility to scale back or reassign coverage when there are staffing shortages given contractual minimum staffing levels.

Figure 1. Fire fighter call shift overtime by pay period, Fiscal years 2019-20 to 2022-23 YTD



Overtime costs have steadily increased over the last few years, reaching $20.0 million in FY 2021-22 — a $7.5 million increase compared to just three years earlier. Fire is projected to spend $22.6 million in on overtime costs in FY 2022-23, $5.0 million more than what was in the Adopted Budget. This trend has been driven by different factors, including:

- COVID-related leave usage (both illness and potential exposures)
- Non-COVID related leave usage (regular sick leave, vacation leave, Paid Family Medical leave, and bereavement leave)
- A depleted traveler pool of Fire Fighters who can be assigned as needed to fill shifts.
- Other bargained increases that have impact on shift staffing, including additional Kelly days.

Historically the Travelers Pool[1] provided PF&R with additional flexibility to staff stations with straight-time funded positions, lessening the reliance on overtime. However, the current major issue is the need to increase the number of authorized Fire Fighter positions to match changes from the most recent labor bargaining agreement which reduced hours in the workweek, increased vacation leave hours, and added Kelly days.[2] It was assumed by individuals directly involved in the bargaining process that additional FTE would likely be needed for the third and last year of the contract (current FY 2022-23) but this was never implemented due to a variety of factors including turnover, pandemic-related staffing dynamics, and how the agreement was originally costed. This was further exacerbated by leadership changes

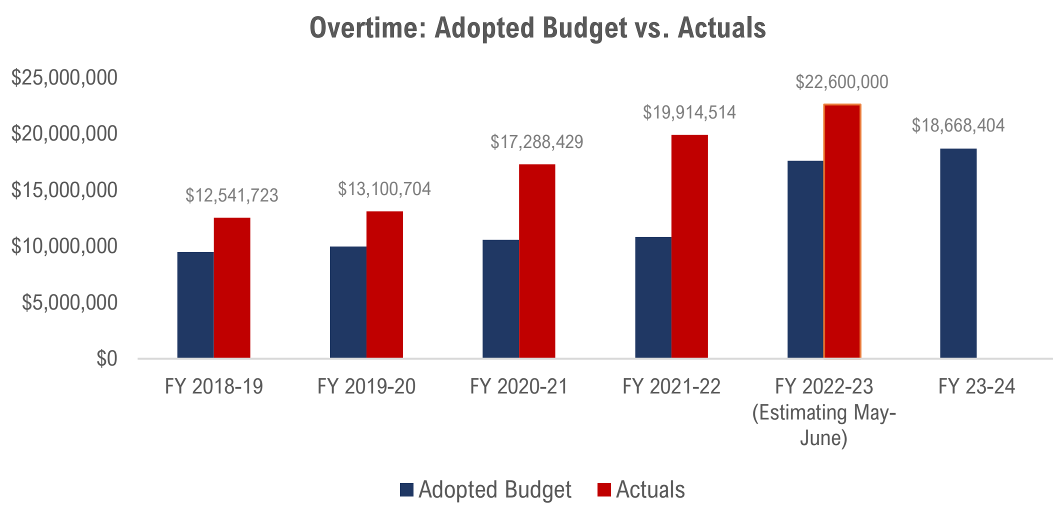
[1] A group of on-call firefighters who fill in for absent firefighters.

[2] Kelly days are unique to the firefighting profession and represent a paid shift off after a certain number of 24-hour shifts worked.

in Fire after the contract was negotiated. The position authority for 13.0 FTE that was approved in the Spring BMP does not significantly mitigate the need for additional firefighters, and the bureau currently lacks the funding to double-fill additional positions.

The FY 2023-24 Adopted Budget includes an $18.7 million overtime budget for FY 2023-24, which would be a reduction of approximately $4.0 million compared to current year actuals. Given issues regarding training capacity, significant potential retirements, and additional leave related to the Paid Family Medical Leave Act, it is unlikely that Fire Bureau will be able to curb overtime spending significantly by the end of FY 2023-24 without service level changes, increasing training capacity, or a combination of both. **Given Fire's request for the entirety of contingency and the risk of this recurring in FY 2023-24, CBO is recommending that Council consider an increase in the amount set-aside as contingency in the Fall BMP from the adopted amount of $3.0 million by as much as possible, potentially as much as $8 million.** At present, unrestricted contingency is less than 0.5% of General Fund discretionary expenses and this action will raise the contingency to just over 1%.

Figure 2. Adopted Budget versus Actual Overtime Expenses, prior 5 years.



Fire is also on track to overspend its General Fund capital budget by $1.7 million, its external materials and services (EMS) budget by $612,000, and under collect on external revenues by $123,000. In normal circumstances these could be at least partially covered by underspending in other budget areas; however, all available underspending has already been directed to address excess overtime. Thus, in addition to an additional $735,000 in general fund contingency to cover the EMS over expenditure and revenue under collection, CBO is recommending that the bureau establish a transfer from the Capital Reserve Fund to cover the capital expense. This represents a considerable draw and means that the bureau is spending down this store faster than initially planned and indicates that the bureau will either need to secure additional capital funding in the future or continue to defer maintenance and investment — a violation of City Financial Policy 2.03 regarding asset management. However, if the bureau does not need to execute the transfer and General Fund Contingency is sufficient the CBO recommends the bureau would not use the capital funds for this purpose.

Overall, CBO recommends $2.0 million in general fund contingency to cover over expenditures in EMS, personnel, and under collected revenue. Additionally, CBO recommends that the bureau can make a draw based on need not-to-exceed to $3.5 million from the Fire Capital Reserve Fund to cover incurred expenses. While it is unlikely the bureau will need the full amount, this gives the bureau the greatest flexibility for General Fund expenses.

CBO Recommendation

1. CBO recommends Portland Fire & Rescue be allocated $2.0 million from General Fund Unrestricted Contingency to mitigate the risk of over-expenditure driven by overtime costs as outlined above.
2. CBO recommends that PF&R be given the approval to draw up to $3.5 million from the Fire Capital Reserve Fund to cover incurred expenses but notes that relying on a capital reserve to absorb operating expenses violates citywide financial policy regarding asset maintenance.

3. CBO recommends that Council direct future supplemental budget resource to policy set-aside to mitigate the risk to the General Fund and cover current-year expenses.
4. CBO recommends that Council adopt a policy mandating a minimum of 1% of General Fund Discretionary be kept in General Fund unrestricted contingency during the FY 2023-24 Fall Supplemental Budget to reduce disruption to Bureau services should the current level of Adopted contingency be insufficient.

PORTLAND WATER BUREAU

The Portland Water Bureau has requested $500,000 in General Fund unrestricted contingency resource to mitigate the risk of the Portland Hydroelectric Fund from being overdrawn due to reduced power sale revenue.

The Portland Bureau of Hydroelectric Power was established in 1979 to supervise the construction and administer the ongoing operation of the Portland Hydroelectric Project (PHP) located in the Bull Run Watershed. Construction was completed and commercial generation began in early 1982.

That year, the City of Portland began the commercial operation of the Portland Hydroelectric Project (Project). The power generated from this facility was purchased by Portland General Electric Company under a Power Sales Agreement (PSA) that was signed in 1979. Under the original 35-year Power Sales Agreement, Portland General Electric (PGE) agreed to purchase all power generated by the PHP and took responsibility for PHP facility maintenance, operations, and repair. This original PSA expired on August 31, 2017. When the Bureau of Hydroelectric Power approached Portland General Electric Company about renewing the PSA, Portland General Electric Company informed the Bureau of Hydroelectric Power that they would be interested in purchasing the power from the facility in a new negotiated agreement — but would not want to continue to perform the operations and maintenance or the scheduling and dispatching operations.

In 2017, the City and PGE entered into a new agreement where PGE continues to purchase all power generated by the PHP, but operation, maintenance, and repair of PHP facilities, as well as scheduling and dispatching power from the PHP, became the responsibility of the PHP and are now covered by additional new contracts managed by the Portland Water Bureau. The City maintains an IGA with Energy Northwest to operate and maintain the power-generating facilities and sells the power generated by the facilities to Portland General Electric (PGE).

The Bureau of Hydroelectric Power evaluated options for generating and selling the power generated by the Project, both to Portland General Electric Company and to other agencies. After evaluation of the options available, it was determined that a new Power Purchase and Sales Agreement with Portland General Electric Company was the most economically advantageous to the City. Portland General Electric Company entered into a new Power Purchase and Sales Agreement (PPA) to purchase the power generated by the PHP. The Bureau of Hydroelectric Power would also establish separate agreements for the operations and maintenance, scheduling, and dispatching for the power generated by the Project; and for the maintenance of the transmission lines owned by the Project.

Per Ordinance 188582, as adopted by the Council in 2018, the terms of the contract for hydroelectric power sales agreement (PSA) lists the City's General Fund as the liable fund should power sales revenue not materialize in an amount sufficient to cover the contractually required payment. The current PSA for the PHP defines how power sales payments will be made from PGE to the Hydroelectric Power Operating Fund as follows: (1) A payment for the City's administration of the PHP's business and monitoring activities which is based on a lump-sum amount that is inflated along with the Bureau of Labor's Consumer Price Index for All Urban Consumers; (2) a profit payment for the generation of power at the PHP that is tied to the actual amount of power produced at the PHP during any given Contract Year which is in turn dependent on the amount and distribution of precipitation falling in the Bull Run Watershed and the availability of the PHP powerhouses to operate when needed, (3) another profit payment based on the difference between the unit cost paid by PGE for power received from the PHP and power generated at one of their own thermal power generation plants. **This payment, which is termed the "Share The Savings Element", does not generate revenue for the City at this time**. The Portland Hydroelectric fund also receives cash transfers from the Hydroelectric Power Renewal & Replacement Fund as needed to reimburse PGE for their performance of repairs or replacements of the facilities at the PHP. That fund currently has a $111,000 fund balance. Furthermore, Directive D of the Ordinance mandates

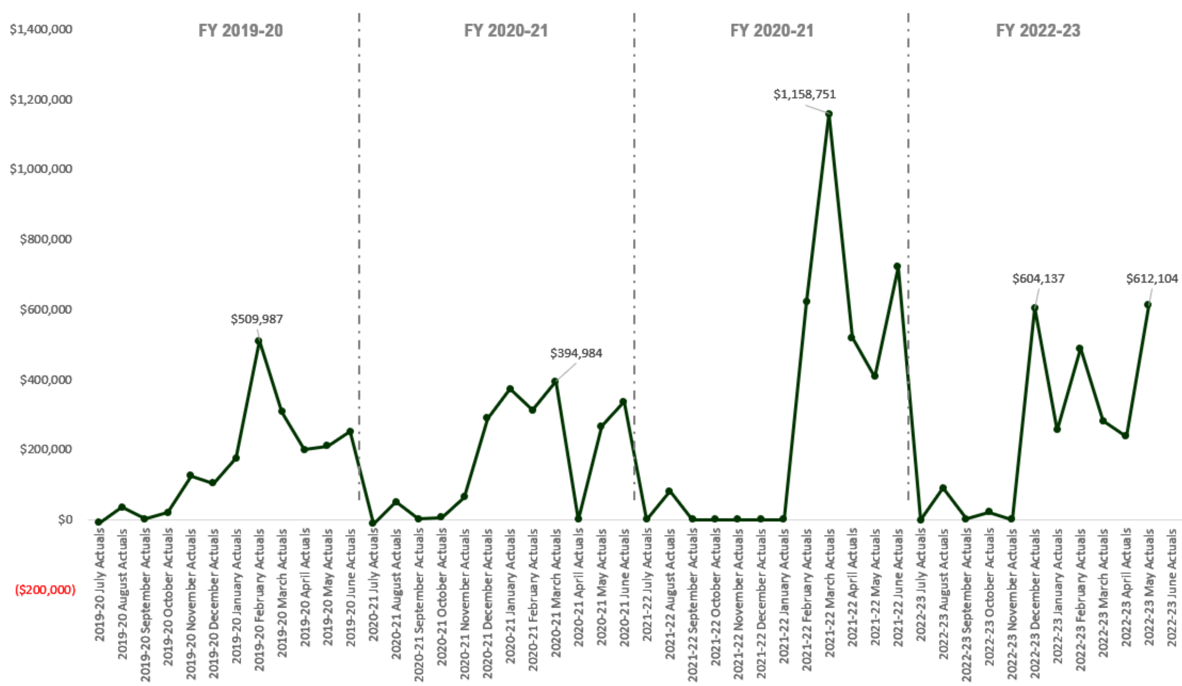
> *"That all revenues, including excess annual revenues, beginning balances, and surplus fund distributions from the Portland Hydroelectric Project accounts and operations, shall remain in the Hydroelectric Power Fund to ensure sustainable financial management of the Portland Hydroelectric Project until such time as the City's Chief Financial Officer, in consultation with the Water Bureau, has determined that distributions from the Fund can be made and are in the best interests of the City."*

A resolution scheduled to be heard by the Council on July 19th, 2023 asks Council to vote on whether to initiate the five-year Federal Energy Regulatory Commission (FERC) relicensing process that would authorize the Water Bureau to apply to the to renew the City's hydropower license with associated costs — estimated to total $8M — being absorbed by the Water Bureau and the Bureau of Hydroelectric Power.

The General Fund impacts of not relicensing are contingent on future power sales agreements. As noted, revenue generated by power sales above budget were previously transferred to the General Fund but were discontinued during FY 2016-17 and are not currently incorporated into the City's General Fund forecast. The potential outcome of renewing without mitigating the risk of power under-delivery and liquidated damages are more requests like this one, where the Water Bureau requires General Fund subsidy to buttress the Portland Hydroelectric Project.

Should Council choose to proceed with the re-licensing of the facility, it will want to fully understand the terms of power sales agreements and impacts on the General Fund — both potential revenues and liabilities. The tables below show the resources as received from the sales which are often dependent on variables often outside of the City's control, such as rainfall and snow melt.

Figure 3. Power Sales revenue in the Hydroelectric Power Operating Fund, FY 2019-20 to current FY 2022-23.



There also remains the risk of liquidated damages. Section 4.1 "Seller Failure to Deliver Specified Energy" of [Exhibit A of Ordinance 188582] states "If, during any hour, Seller fails to deliver Specified Energy in an amount that is equal to the Feasible Specified Amount Schedule for such hour, and such failure is not excused by a Force Majeure, then

Buyer shall make record of the under-delivery ("Hourly Deficiency"), the applicable hourly Market Index Price, and the Fixed Price during the hour which the Feasible Specified Amount Schedule was not delivered. [Redacted]."

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure to Deliver Specified Energy. If, during any hour, Seller fails to deliver Specified Energy in an amount that is equal to the Feasible Specified Amount Schedule for such hour, and such failure is not excused by a Force Majeure, then Buyer shall make record of the under-delivery ("Hourly Deficiency"), the applicable hourly Market Index Price, and the Fixed Price during the hour which the Feasible Specified Amount Schedule was not delivered. [redacted]

[redacted]

[redacted]

The Water Bureau has told the City Budget Office that the risk of liquidated damages persists, and that the potential impact of liquidated damages for under-delivery of power for June 2023 is difficult to project. The $500,000 in General Fund cash transfer could fully or partially mitigate a fund over-expenditure should that occur.

CBO Recommendation

1. CBO recommends the Portland Water Bureau be allocated $500,000 from General Fund Unrestricted Contingency to mitigate the risk of over-expenditure driven by reduced power sales revenue as outlined above. This action would give the bureau what projects to be sufficient appropriation should operating expenses end higher than power sales revenue. The actual cash transfer would not be executed if the fund does not ultimately require additional resources beyond current appropriations, allowing the resource to fall to fund balance at year-end.
2. CBO recommends that should the cash transfer be required to end the year in balance, the Portland Bureau of Hydroelectric Power reimburse the General Fund for the $500,000 when it has sufficient revenue to do so.
3. CBO recommends the City Council determine the City of Portland's role in selling Hydroelectric power to third party utilities, including power sales agreements that expose the General Fund to undue risk.
4. CBO recommends that the Water Bureau and the Bureau of Hydroelectric Power provide an updated projection of power sales for the next five years based on actuals and updated climate patterns to better understand power demand versus supply issues and to plan for possible over-expenditures. These update projections should also include the original projections presented to Council at the time the PSA was adopted.

REQUESTS FOR POLICY SET-ASIDE

PORTLAND POLICE BUREAU

The Portland Police Bureau has requested $1,000,000 be transferred from the Police Equipment Replacement Reserve Fund to cover expenses incurred by the purchase of a replacement aircraft ($700,000) and other equipment purchases that would qualify for these funds ($300,000). The actual transfer will be initiated based on the bureau's available General Fund balance at the end of the year.

This transfer will help to relieve cost pressures on the bureau's budget, with the bureau projected to end the year with less than 1% of its discretionary budget remaining. The cost pressures are driven primarily by high levels of spending on overtime with total personnel spending forecasted to end the year at approximately $181,500,000 or $2.87 million over the bureau's $178.6 million personnel budget. This is approximately $1.17 million more than PPB and CBO's

March 2023 year-end projection that PPB's personnel budget would over-expend by $1.7 million. The bureau continues to be reliant upon personnel backfill overtime to staff shift minimums across precincts which has increased significantly compared to the previous two years. Of the overtime "backfill" hours worked and categorized this fiscal year (as of May 2023), approximately 83% are worked by sworn officers and sergeants on "Special Tracking — Funded" which represents overtime for personnel shortage, priority projects, gun violence reduction, problem-solving, walking beats, community engagement, and grants match. Every overtime hour is 50% more expensive than an hour paid towards an officer's activities done during their regular shift. Consequently, this is straining the bureau's personnel budget beyond the savings provided by officer vacancies held over the course of the year.[3]

In the FY 2022-23 Spring Supplemental Budget, the Police Bureau requested $6.5 million of the $7.3 million available of General Fund Compensation Set-Aside for FY 2022-23 to address this issue. In addition to the bureau's request for Compensation Set-Aside resources, PPB's Spring Supplemental Budget included carryover requests of $6.9 million. The net impact of both items would have reduced the Police Bureau's General Fund Budget by $457,372. Conversely, CBO recommendation and the FY 2022-23 Spring Supplemental ordinance as filed included $4.9 million in Compensation Set-Aside resources and $4.3 million in carryover requests, which together, represented a net increase of PPB's General Fund budget by $585,432. **Thus, even if the Police Bureau had received all the requested Compensation Set-Aside resources, the total amount of Police Bureau's carryover requests, if approved by Council, would have resulted in a net decrease to the bureau's budget.**

CBO Recommendation

1. CBO recommends the Police Bureau be allocated $1.0 million from the Police Equipment Replacement Reserve Fund to mitigate the risk of over-expenditure driven by overtime costs as outlined above.
2. CBO recommends that an amendment be made to the Over-Expenditure Ordinance to allocate the $500,000 in unrestricted General Fund contingency to ensure the Police Bureau does not over-expend their budget. The actual transfer will be initiated based on the bureau's available balance at the end of the year.
3. CBO again recommends that Council adopt a policy mandating a minimum of 1% of General Fund Discretionary be kept in General Fund unrestricted contingency during the FY 2023-24 Fall Supplemental Budget to reduce disruption to Bureau services should the current level of Adopted contingency be insufficient.

TECHNICAL ADJUSTMENTS OF NOTE

Office of Management & Finance: Chief Administrative Office

With significant underspending, the personnel budget for the 311 Program is being reduced by $590,786, with $220,786 of that amount transferred to that program's interagency agreement with the Bureau of Technology Services for the Arriba project. The remaining $370,000 is balanced by a reduction in General Fund discretionary one-time, with $220,000 intended for the City's Permitting effort in the FY 2023-24 budget, and $150,000 transferred to Special Appropriations for the Schnitzer Sewer Project (in this year's Over-Expenditure Ordinance). Metro paid for this project and has requested that the City reimburse it with the $150,000 needed to fully recover the costs.

Office of Management & Finance: Division of Asset Management

The Division of Asset Management (DAM) has requested $14,929,395 from CityFleet Operating Fund contingency. Of this sum, $13,811,406 is requested for capital costs, including future vehicle purchases and equipment. Ensuring reliable cost for capital equipment requires CityFleet to lock in prices several months in advance. Encumbering funds for these purchases prior to finalized appropriations for the coming fiscal year (FY2023-24) will otherwise result in an SAP hard stop without CityFleet's draw on contingency. The remaining contingency funds request includes $1,100,000 for external materials and services to prevent possible overspending that may arise due to higher vendor costs for fuel and repair services, $12,339 for offset of debt interest payment on Line of Credit funded fueling stations, and a $5,650 cash transfer for a vehicle purchase Facilities made from the Bureau of Environmental Services (BES), with the cash transfer impacting the CityFleet Operating fund as Fleet manages Facilities' vehicles. CBO recommends this request to avoid higher bureau capital equipment costs and to avoid potential overspending.

[3] View the Portland Police Bureau's Overtime Dashboard here.

Bureau of Planning and Sustainability

There are requests in the Bureau of Planning and Sustainability (BPS) associated with ensuring the bureau has appropriations to execute cash advances in SAP, the City's financial system of record. These changes do not require funds on a cash basis, as the use of the advance process send the cash to the recipient in advance, and in this case, the cash was advanced to the vendors in FY 2020-21. The issue at present is there is $936,857 of advances that do not have budget appropriations to execute in SAP. In order to provide system flexibility to close out the cash advances, the CBO recommends an adjustment to resources for BPS that does not require cash to support the action. Further, CBO is going to recommend a policy in coordination with the Accounting Division of BRFS to require bureaus who use cash advances in the course of their business provide a reconciliation of their advances and a timeline and plan if any advances are projected to be outstanding with a plan for close-out in SAP.

Changes to the Portland Clean Energy Fund and Housing Bureau for Interagency Revenues to move to Direct Budgeting. This is a technical change to remove a cash transfer for sending PCEF funds to Housing Investment Fund based on the recommendations of the City's Controller in the Accounting Division. This recommendation of using direct budgeting is to ease the audit and expense reporting of PCEF funds for the projects led by Housing Bureau. The change in the transfer is 8,148,727. The FY 2023-24 Adopted Budget has been changed to reflect this request from Accounting.