

RESOLUTION No. 37000

Authorize the Director of the Bureau of Human Resources, with the concurrence of the City Attorney, to commence legal proceedings to protect the City's interests and rights under state collective bargaining law in connection with an investigation and resulting lawsuit filed by the United States Department of Justice regarding police practices (Resolution)

WHEREAS, the Director of the Bureau of Human Resources is the City's authorized representative for purposes of collective bargaining and the administration of labor agreements; and

WHEREAS, in November 2012 the City gave the Portland Police Association written notice of changes that may trigger a duty to bargain under state law as a result of an agreement between the City and the USDOJ ("Agreement"); and

WHEREAS, in November 2012 the Portland Police Association filed a grievance regarding the Agreement claiming most provisions in the Agreement could not be implemented without engaging in bargaining; and

WHEREAS, it appears a fundamental point in dispute is whether the City must bargain its policies regarding use of force; and

WHEREAS, under federal and state law, the City has a constitutional obligation to properly manage its employees' use of force and is exposed to liability and demands for equitable relief if it does not; and

WHEREAS, 42 U.S.C. Section 14141, a provision of the Crime Control Act of 1994, makes it unlawful for any governmental authority, or agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States;

WHEREAS, 42 U.S.C. Section 14141 authorizes the United States Attorney General to initiate a civil action to obtain equitable and declaratory relief to eliminate a violative pattern or practice when there is reasonable cause to believe a violation has occurred;

WHEREAS, on September 13, 2012, the USDOJ released a findings letter, announcing that it had found reasonable cause to believe the Portland Police Bureau was engaging in a pattern or practice of using excessive force in encounters involving people with actual or perceived mental illness; and

WHEREAS, USDOJ announced it had identified serious deficiencies in policies, training, and officer accountability measures that substantially contributed to the pattern or practice of excessive force.

WHEREAS, on December 17, 2012 the USDOJ filed a civil complaint alleging that the City, through its acts or omissions, has engaged in a pattern or practice of conduct of using excessive force against individuals with actual or perceived mental illness, and sought a declaration that the City engaged in an unconstitutional pattern or practice, an order that the alleged unconstitutional acts stop, and an order that the City adopt and implement policies and procedures to remedy the pattern or practice; and

WHEREAS, the USDOJ and the City negotiated a settlement to the federal lawsuit, the Agreement is pending approval in federal court; and

WHEREAS, the Portland City Council, the Commissioner of Police and the Chief of Police are accountable to the electorate of the City for their management of the Police Bureau's use of force; and

WHEREAS, the City has an interest in using all of the legal tools available to it to protect its interests; and

WHEREAS, the City when acting as a public employer may file unfair labor practice complaints under state bargaining law in order to clarify or enforce its legal rights and responsibilities; and

WHEREAS, Portland City Code 3.10.030(G) authorizes the City Attorney to institute legal proceedings for the City in any court or tribunal on direction by resolution of the Council;

NOW, THEREFORE, BE IT RESOLVED, the Bureau of Human Resources Director with the concurrence of the City Attorney are hereby authorized to commence legal proceedings to protect the City's interests under the Public Employee Collective Bargaining Act and the collective bargaining agreement between the City of Portland and the Portland Police Association, in connection with the USDOJ investigation, findings, civil complaint, and settlement agreement.

Adopted by the Council:

FEB 13 2013

Commissioner: Mayor Hales
Prepared by: Deputy City Attorney S Harper
Date Prepared: 2-6-13

LaVonne Griffin-Valade
Auditor of the City of Portland

By



Deputy

Agenda No.
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Title

Authorize the Director of the Bureau of Human Resources, with the concurrence of the City Attorney, to commence legal proceedings to protect the City's interests and rights under state collective bargaining law in connection with an investigation and resulting lawsuit filed by the United States Department of Justice ("USDOJ") regarding police practices. (Resolution)

INTRODUCED BY Commissioner/Auditor: Mayor Hales	CLERK USE: DATE FILED <u>FEB 08 2013</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Hales Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Novick	LaVonne Griffin-Valade Auditor of the City of Portland By: <u>[Signature]</u> Deputy
BUREAU APPROVAL Bureau: Human Resources Bureau Head: Anna Kanwit Prepared by: Deputy City Attorney Stephanie Harper Date Prepared: 2-6-13 Financial Impact Statement & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Council Meeting Date: 2-13-13	ACTION TAKEN:
City Attorney Approval <u>[Signature]</u>	

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