

APPEAL DECLARATORY JUDGMENT AND PERMANENT INJUNCTION IN WALSH V. ENGE

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)

ADDRESS AND ZIP CODE

Email

NAME (print)	ADDRESS AND ZIP CODE	Email
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✓ Joe Walsh	7346 SE Duane	
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✓ DAVID KIE DAVIS/Multnomah County CopWATCH		multnomahcountycopwatch@gmail.com
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✓ Royce West		
✓ Charles Johnson		
✓ Lightning		

## IMPACT STATEMENT

**Legislation title:** Authorize the City Attorney to appeal the declaratory judgment and permanent injunction in *Joseph Walsh v. Bryant Enge, et al.* (Resolution).

**Contact name:** Harry Auerbach

**Contact phone:** 3-3122

**Presenter name:** Harry Auerbach

### **Purpose of proposed legislation and background information:**

The United States District court declared unconstitutional the City's ordinance, codified at PCC 3.15.020.B.5.b, which authorizes the exclusion of disruptive individuals from City office buildings, including from City Council chambers. The District Court held that excluding a person who disrupts a Council member prospectively, from a future meeting which that person has not yet disrupted, violates the individual's First Amendment rights. Members of the Council believe they cannot conduct the public's building in a safe and orderly manner if the Council cannot exclude a person who disrupts a Council session from one or more future Council sessions. This Resolution would authorize the City Attorney to challenge the declaratory judgment and permanent injunction issued by the District Court.

### **Financial and budgetary impacts:**

There will be minor out-of-pocket expenses for the appeal, primarily the docketing fee. Attorney time will be provided by in-house lawyers in the City Attorney's Office, for whom there is no incremental expense.

### **Community impacts and community involvement:**

This Resolution involves direction from the Council to its lawyers in the City Attorney's Office, based on privileged attorney-client communications, so there was no public outreach or input.

**Budgetary Impact Worksheet**

**Does this action change appropriations?**

- YES: Please complete the information below.
- NO: Skip this section

<b>Fund</b>	<b>Fund Center</b>	<b>Commitment Item</b>	<b>Functional Area</b>	<b>Funded Program</b>	<b>Grant</b>	<b>Sponsored Program</b>	<b>Amount</b>

## **RESOLUTION No.**

Authorize the City Attorney to appeal the declaratory judgment and permanent injunction in *Joseph Walsh v. Bryant Enge, et al.* (Resolution).

WHEREAS, The City of Portland is committed to open government, in which all people have a fair opportunity to participate in the meetings and decisions of the City Council, and

WHEREAS, In order to provide a forum in which that can happen, and in which the Council can fulfill its obligation to carry on the public's business in an orderly, safe and efficient manner, it is necessary for all those who attend or participate in Council meetings to do so in a respectful manner, without disrupting the Council's deliberations or putting the Council or members of the public in fear of their own safety, and

WHEREAS, Elected officials and employees in offices in City Hall and other City office buildings need to be able to carry on their functions without unduly disruptive behavior from members of the public visiting their offices, and

WHEREAS, After repeated experiences with people who have been unwilling or unable to conform their behavior to that necessary to allow the essential functions of City government to be performed, the Council adopted Section 3.15.020.B.5.b of the Portland City Code, which authorizes the Mayor or the Mayor's designee to exclude a person who engages in such disruptive behavior for any period of time, including permanently, and

WHEREAS, In *Joseph Walsh v. Bryant Enge, et al.*, No. 3:15-cv-01666-SI, the United States District Court has issued an Opinion and Order declaring that excluding persons from City Council meetings prospectively, for meetings other than the one at which their behavior was disruptive, violates the United States Constitution, and

WHEREAS, The District Court has entered a permanent injunction prohibiting the City of Portland from utilizing PCC 3.15.020.B.5.b to prospectively exclude persons from Council meetings, and

WHEREAS, It is in the public interest for the Council to provide an environment at its meetings that respects the rights of all persons to view and participate in Council meetings in an atmosphere free of disruption and fear,

NOW, THEREFORE, BE IT RESOLVED, the City Attorney or her designee is authorized to commence an appeal to the United States Court of Appeals for the Ninth Circuit, and to pursue it to its conclusion in any higher court, of the order and judgment entered in *Joseph Walsh v. Bryant Enge, et al.*, No. 3:15-cv-01666-SI, and, in furtherance or resolution of such appeal, 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:

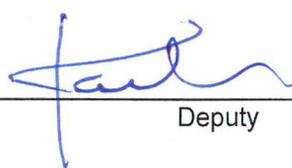
Commissioner: Dan Saltzman  
Prepared by: Harry Auerbach  
Date Prepared: January 4, 2016

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

By: \_\_\_\_\_  
Deputy

Agenda No.  
**RESOLUTION NO.**  
Title

Authorize the City Attorney to appeal the declaratory judgment and permanent injunction in *Joseph Walsh v. Bryant Enge, et al.* (Resolution).

<p><b>INTRODUCED BY</b> Commissioner/Auditor: <b>Dan Saltzman</b></p> <p><b>COMMISSIONER APPROVAL</b></p> <p>Mayor—Finance and Administration - Hales</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><b>BUREAU APPROVAL</b></p> <p>Bureau: City Attorney Bureau Head: Tracy Reeve</p> <p>Prepared by: Harry Auerbach Date Prepared: January 4, 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>January 13, 2016</b></p>	<p>CLERK USE: DATE FILED <u>JAN 05 2016</u></p> <p>Mary Hull Caballero Auditor of the City of Portland</p> <p>By:  Deputy</p> <p><b>ACTION TAKEN:</b> JAN 13 2016 <b>CONTINUED TO</b> JAN 27 2016 <b>9:30 A.M.</b> JAN 27 2016 <b>FAILED TO PASS</b></p>
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<b>AGENDA</b>
<p><b>TIME CERTAIN</b> <input type="checkbox"/></p> <p>Start time: _____</p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>
<p><b>CONSENT</b> <input type="checkbox"/></p>
<p><b>REGULAR</b> <input checked="" type="checkbox"/></p> <p>Total amount of time needed: <b>10 minutes</b> (for presentation, testimony and discussion)</p>

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	✓