

ORDINANCE No.

Create Portland Utility Board to strengthen oversight functions for City's water, sewer and stormwater services (Ordinance; repeal and replace Code Chapter 3.123)

The City of Portland ordains:

Section 1. The Council finds:

1. The City's two public utilities, the Portland Water Bureau (PWB) and Bureau of Environmental Services (BES), are run by dedicated professional staff who maintain a safe and reliable water supply, manage stormwater runoff, and treat wastewater.
2. The City of Portland is committed to providing quality utility services at a fair value, and to serving its ratepayers with the highest levels of transparency and accountability.
3. PWB and BES are funded by ratepayer dollars, rather than the general fund as with other City bureaus. The bureau's long-term planning process, including twenty-year systems plans, five-year capital improvement plans and budgets, annual budgets, rate-setting process, and debt financing require an engaged and well-informed oversight body.
4. In August 1994, the Council created the Portland Utility Review Board (the PURB) to provide utility oversight. Ordinance No. 168053. In February 2003, the Council substantially revised the PURB by repealing and replacing the entirety of City Code Chapter 3.123. Ordinance No. 177275.
5. In April 2014, Mayor Hales and Commissioner Fish pledged to establish a Blue Ribbon Commission to explore possible reforms of the utility bureaus.
6. In June 2014, the Mayor and Commissioner Fish established the Utility Oversight Blue Ribbon Commission (BRC) and named former U.S. Attorney Dwight Holton as Chair. BRC members were charged with identifying potential oversight and accountability reforms for PWB and BES.
7. The BRC undertook an extensive and thoughtful review of the public utilities. The BRC determined that water, sewer, and stormwater rates are influenced by multiple factors, including maintaining and operating an aging system, complying with state and federal mandates, and expanding the system to accommodate future growth.
8. The BRC submitted a final report to Council in December 2014. In its report, the BRC recommended that the Council establish the Portland Utility Board (PUB) as a new, dedicated oversight body with expanded functions from those currently provided by the PURB and the Budget Advisory Committees for PWB and BES

during budget development. The BRC further recommended that the PUB regularly advise Council regarding operations of the two utility bureaus, while recognizing that the City Council is ultimately responsible for setting rates, determining capital improvement plans and budgets, annual plans and budgets, and debt financing decisions.

9. The BRC recommended that the PUB be actively involved in “upstream” deliberations on utility bureau budgets, capital spending, policies, and programs:
 - With the bureaus during development of their requested budgets;
 - With the Commissioner-in-Charge following submittal by the bureaus of their requested budgets and prior to the Commissioner submitting requested budgets to the Mayor;
 - As invited parties to utility rate review presentations and City Council work sessions that occur following submittal of requested budgets;
 - With the Mayor as part of development and release of the Mayor’s budget; and
 - As invited parties to the City Council budget adoption process.
10. The BRC also recommended that the Commissioner(s)-in-Charge of the Water Bureau and the Bureau of Environmental Services seek an audit and/or independent review to evaluate the effectiveness of the PUB and its oversight work no sooner than July 1, 2017 and no later than June 30, 2020.
11. It is the Council’s intention that the PUB will be funded through interagency agreements between the City Budget Office (CBO), PWB and BES, with CBO overhead allocated equally in billings between the two utility bureaus. Funding should be sufficient to support the PUB in conducting its business, including supporting committees and task forces, citizen involvement, education, and communications. The CBO will assign a minimum of two full-time, senior-level staff to the public utilities. One full-time equivalent staff will support the ongoing CBO utility budget analysis. One full-time staff will be dedicated to and directed by the PUB, with hiring and administrative management by the CBO Director.
12. The PUB shall adopt by-laws that accord with the requirements of PCC 3.123.090 within six (6) months of the board being duly constituted.
13. The Council accepts the BRC’s recommendations described above and adopts the City Code amendments and binding City policies set forth in this ordinance.

NOW, THEREFORE, the Council directs:

- a. Title 3 of the City Code, Administration, is hereby amended by substituting Chapter 3.123, Portland Utility Board, as set forth in Exhibit A attached to this Ordinance for existing Chapter 3.123, Portland Utility Review Board.

- b. Notwithstanding the provisions of new City Code 3.123.050, to ensure staggered membership turnover, three of the initial Board appointments will be for a term of one year, three of the initial Board appointments will be for a term of two years and three of the initial Board appointments will be for a term of three years. Subsequently to the initial Board appointments, all Board appointments will be for three year terms as established in City Code 3.123.050.

Section 2. The policies set forth in Section 2 of this Ordinance sets forth binding City policy which the Auditor's office shall cause to be placed in the Portland Policy Documents in accordance with City Code Chapter 1.07, Documentation of Rules and Policies.

- a. The Portland Utility Board will serve as the Budget Advisory Committee for the Portland Water Bureau and the Bureau of Environmental Services, acting in accordance with the guidelines for public involvement in these bureau's Budget Advisory Committee processes as established by Resolution No. 36960, BCP-ADM-4.05.
- b. The Citizens' Utility Board will continue to provide outside independent review of the Portland Water Bureau and the Bureau of Environmental Services on behalf of residential ratepayers, as provided in Resolution No. 37051. While both the Portland Utility Board and Citizens' Utility Board will strive towards collaboration and coordination, they are intended to provide two independent sources of utility analysis and oversight for the public and the Council.
- c. The Planning and Sustainability Commission, as established by City Code 33.710.040, shall consider and develop recommendations for the Council regarding establishing or modifying the rates and charges for solid waste collection.

Passed by the Council:

Commissioner Nick Fish
Prepared by: Jim Blackwood/Sonia Schmanski
Date Prepared: May 20, 2015

Mary Hull Caballero
Auditor of the City of Portland
By

Deputy

EXHIBIT A

Chapter 3.123

PORTLAND UTILITY BOARD

Sections:

- 3.123.010 Created - Purpose.
- 3.123.020 Scope.
- 3.123.030 Membership.
- 3.123.040 Appointments - Composition.
- 3.123.050 Terms.
- 3.123.060 Standing Committees.
- 3.123.070 Staffing.
- 3.123.080 Meeting Schedule.
- 3.123.090 By-Laws.
- 3.123.100 Annual Report and Work session.

3.123.010 Created - Purpose.

A Portland Utility Board is hereby created. The Board's purpose is to advise the City Council, on behalf of and for the benefit of the citizens of Portland, on the financial plans, capital improvements, annual budget development and rate setting for the City's water, sewer, and stormwater services. The Board will advise Council on the establishment of fair and equitable rates, consistent with customer needs, legal mandates, existing public policies, operational requirements, and the long-term financial stability and viability of the utilities.

3.123.020 Scope.

- A. The Portland Water Bureau and the Bureau of Environmental Services use multi-year financial planning to prioritize programs and to project operating and capital costs associated with policies and programs, and to estimate overall rate impacts. The Board will fully participate in the bureaus' financial planning and budgeting processes. The Board will work with the bureaus to develop long-term, 20-year mission plans. The bureaus update their financial plans throughout the year to reflect significant changes in revenues or requirements, and revise the plans annually. The Board will review the proposed financial plans and revisions, and submit its findings and recommendations to the Council as part of the City's annual financial planning process. The Board will actively monitor bureau spending through the fiscal year and be briefed on final fiscal year accounting including status of debt load and rate stabilization funds. The Board will monitor bureau and City Council responses to and implementation of audits, in consultation with the Commissioner(s)-in-Charge. The Board will monitor City Council budget amendments, capital improvement plans (CIP) and implementing actions throughout the fiscal year. The Board will participate in evaluating the performance

of the bureaus. The bureaus will engage with the Board throughout the fiscal year when developing budgets. The Board may serve, at the Mayor's pleasure, as an advisor in the development of Mayor's budgets for the Portland Water Bureau and the Bureau of Environmental Services.

- B.** The Board will periodically consult the bureaus and the Commissioner(s)in-Charge on strategic communications, public education and involvement, as well as review audits and other reports. The Board will identify and report to the Commissioner(s)-in-Charge, the Mayor or the Council on important issues and challenges for the Portland Water Bureau and the Bureau of Environmental Services. The Board will monitor the bureaus' efforts to achieve equity in the provision of services throughout the City.
- C.** Participate in the rate design process: The Board will report on proposed rate changes to the Council during the annual budget hearings and development processes for water, sanitary sewer, and stormwater. The Board shall report on other city activities or proposed policies with significant impacts to water, sanitary sewer, and stormwater rates.
- D.** When the bureaus form other advisory groups on utility matters such as facility or project specific concerns, the Board and its staff will exchange information with these other advisory groups to coordinate policy advice to the Council and the bureaus.
- E.** Relationship to other interested parties: The Board's primary responsibility and duties are to advise the Council, and its deliberations and recommendations shall be directed to Council accordingly. The Board may also share the results of its deliberations and recommendations delivered to Council with interested individuals and groups including neighborhoods, business associations, and public interest groups.

3.123.030 Membership. The Board shall have nine permanent members. Board members shall be appointed by the Mayor in consultation with the Commissioner(s)-in-Charge of the bureaus, and confirmed by the Council. In consultation with the Commissioner(s)-in-Charge, the Mayor shall appoint the Chair of the Board. Five members shall constitute a quorum of the Board. Board members serve without compensation, except they may receive from their employer their regular salary during time spent on Board matters.

3.123.040 Appointments - Composition.

- A.** General Criteria. All members must reside in or work predominantly in the city of Portland and have an interest in water, sewer, stormwater, and watershed health issues, such as system development and maintenance, service delivery, service costs and impacts on low-income households, economic development, public health, conservation, green infrastructure or the environment. In making Board

appointments, the Mayor and Council shall strive to have a Board which reflects the diversity of the Portland community. Preferred appointees should have a range of qualified professional and academic expertise, and community volunteer experience. Appointees will include a current employee in a represented bargaining unit with the Portland Water Bureau or the Bureau of Environmental Services. Skills that will serve the new Board well include: technical knowledge of water, stormwater, and sewer utility operation and issues, accounting, civil engineering, conservation, environmental sciences, health sciences, public administration, urban planning, or utility economics, financial and capital improvement analysis, ecosystem science, environmental protection, political process, group process, and communications.

- B.** Restrictions. No individual with any direct financial interest in either city utility other than as a rate-paying customer or as an employee of the utility bureaus.

3.123.050 Terms.

- A.** Board members will be appointed to serve for a term of 3 years. The terms of each member shall run from the date of the City Council's confirmation of the member's appointment, or such other date as the Council may establish.
- B.** The Board may make recommendations to the Mayor regarding the reappointment of existing members. Notwithstanding the limitations of this Section, a Board member may continue to serve until his or her replacement is appointed.
- C.** If any member of the Board is absent more than three regularly scheduled meetings of the Board during any 12 month period, without having notified the Chair in advance of such absence, such member shall be deemed to have resigned from the Board. The member's position shall thereafter be vacant and subject to appointment by the Mayor.
- D.** The Mayor may remove any member of the Board at his or her discretion for due cause, including but not limited to malfeasance or neglect of duties.

3.123.060 Standing Committees.

- A.** The Board may at any time establish standing committees of at least three individuals to address specific issues related to the Board's purpose.
- B.** The Board may designate more specific roles and responsibilities for any standing committee in the Board by-laws.

3.123.70.1 Staffing

- A.** The City Budget Office will provide staffing for the Board, with logistical and

topic-related support from the Portland Water Bureau, the Bureau of Environmental Services, and other bureaus or agencies as may be needed. Staffing should be experienced and skilled in financial analysis, utilities, and government operations within the context of environmental stewardship.

- B.** Commissioner(s)-in-Charge liaisons to the two utility bureaus shall serve as a resource to the Board and attend its meetings.

3.123.080 Meeting Schedule.

The Board shall meet at least once monthly on a regular date established by the Board. Additional meetings may also be scheduled during annual budget and rate review periods as determined by the Board Chair. The Board Chair, with assistance from the Board's staff, will develop meeting agendas in consultation with others including Board members, the utility bureaus, and the Commissioner(s)-in-Charge.

3.123.090 By-Laws.

The Board shall adopt by-laws to govern its procedures within the purposes of this Chapter that shall not conflict with any portion of this Chapter and which are subject to the prior review and approval of the Mayor, with approval as to legal sufficiency by the City Attorney. These by-laws shall include specifications concerning selection and tenure of standing committee chairs, division of responsibilities, attendance policies, meeting schedules, as well as communications between the Board and City agencies, the media and the general public, and any other appropriate matters. As an initial action, the PUB will establish operating procedures that define expectations for member participation and roles and address transparency in its deliberations, public information and participation, and equity.

3.123.100 Annual Report and Work session.

- A.** Annually, the Board shall prepare and submit to the Council a report summarizing the work performed by the Board during the previous year. The Board shall submit the annual report within the first 3 months following the beginning of each fiscal year for the utility bureaus. The annual report shall include, but need not be limited to, a summary of issues reviewed and analyzed; a list of briefings and reports received from staff, outside experts and other informed parties; a summary of recommendations forwarded to the Council; and a summary of Council action on the recommendations.
- B.** The Board's report will be presented to the Council in a work session. In addition, the Board will present a work plan outline for the next year and seek input from the Council on potential next steps.