



P O R T L A N D
CITY AUDITOR
Mary Hull Caballero

May 5, 2020

To: Mayor Ted Wheeler
Commissioner Chloe Eudaly
Commissioner Amanda Fritz
Commissioner JoAnn Hardesty

From: Auditor Mary Hull Caballero

Re: Respect and comply with the City Charter

It was with regret that I read Council's April 29, 2020, letter expressing surprise at the announcement that I was withdrawing my consent to continue housing the City's Hearings Office. Surprise would suggest that the notification, which I sent last August, came without warning; the truth is quite to the contrary. The public record shows that over the past six years, I have attempted to work with Council to fix the flawed approach to funding and staffing the Hearings Office. My efforts have not been successful, and I have withdrawn my consent as a last resort.

The City Charter outlines the Auditor's duties and makes the Auditor responsible for other duties "as assigned by the Council with the consent of the Auditor." The Hearings Office is not among the Auditor's Charter functions. Council created it to review City actions and decisions *on Council's behalf*. The Auditor's Office has provided it administrative support. We will end that responsibility on June 30, 2020.

We agree that the Auditor's Office has been a good home for the Hearings Office. I would be the first to argue that it ought to operate independently of the Bureaus whose decisions it has the power to overturn. I would also argue that the Hearings Office must be fully funded and staffed to operate effectively. The irony on full display here is that the Hearings Office's "role as a check on City power" is entirely dependent on your willingness to fund it. I cannot overstate the threat to independence that exists when the same people in charge of the Bureaus that are subject to my office's scrutiny and oversight also decide how much - or how little - funding my office receives.

I have attempted to work with Council offices to resolve the Hearings Office's unsustainable funding and staffing model. You correctly note that the Council approved or partially approved proposals for the Hearings Office in Fiscal Year 2015-16 and Fiscal Year 2016-17. However, your letter incorrectly implies that this funding should have enabled the Auditor's Office to sufficiently resource the Hearings Office. To provide important context:

- Council did approve \$56,088 in one-time funding for the Hearings Office in Fiscal Year 2015-16. These funds did not increase the Hearings Office budget; instead, they offset lost Hearings Office revenues that arose when Council, at the request of the Auditor's Office, prohibited Bureaus from charging community members exorbitant appeal fees to seek impartial reviews of City actions.
- The funding in Fiscal Year 2016-17 was likewise not an increase; it merely changed the source of some of the money for the Hearings Office and did not alleviate the administrative burden of using a complicated patchwork of funding agreements with individual bureaus that fluctuated from year to year.

Other incorrect or misleading assertions in your letter include:

- **Caseload trends:** While the number of cases overall have been steady in recent years – not decreasing -- Code enforcement and appeals cases have increased 23 percent annually on average. Demand for hearings for those types of cases depends on enforcement decisions by Bureaus and the willingness of community members to seek a hearing. That growth contributed to our decision to request that a half-time hearings officer position be made full-time. There are more than 100 appellate rights in City Code, and Council adds new regulatory requirements every year, so the trend likely will continue.
- **Historical underspending:** The causes of the underspending you referenced were addressed in our Fiscal Year 2019-20 budget presentation. The fact that one or more of the six divisions in the Auditor's Office does not spend its entire budget as planned in a given year does not entitle the Hearings Office to those funds.
- **Current year underspending:** I am particularly dismayed by your commentary on our current year underspending. I directed my office to comply with the Mayor's direction to stop non-essential spending because of the COVID-19 emergency. Our forecasted unspent sum mostly reflects that stoppage, including savings from positions that were vacant at the time of the City's hiring freeze and the suspension of planned projects and contract expenditures.

I have submitted six requested budgets since I took office in 2015. Three of them included proposals to stabilize funding for the Hearings Office. The fact is that the Auditor's Office operates in a budget environment controlled by the Mayor and Commissioners, who have a competing duty to fund their own elective offices and priorities. In my experience, any funding for the Auditor's Office beyond the base budget usually is granted only when Council has no other choice, such as when the settlement agreement with the U.S. Department of Justice calls for more resources for police accountability. We also are on better footing if a project aligns with the political interest of an individual Council member or when we can generate media attention to adverse budget decisions that threaten the independence of the Auditor's Office.

I have twice withdrawn consent to have the Hearings Office located in the Auditor's Office because Council declined to participate in solving the ongoing funding problem – first in 2016 and again in 2019. I reconsidered my decision in 2016 when an Office of Management and

Finance employee helped reconfigure some of the internal agreements required to fund the Hearings Office. We knew then that this was a temporary solution, but I was willing to work on a more permanent approach to help the Hearings Office withstand the vagaries of a workload outside of its control. My struggle to get the Hearings Office on solid footing was a symptom of a larger systemic problem with how the Auditor's Office overall is funded.

Last year, I proposed that Council adopt a budget pilot for the Auditor's Office. The concept for the pilot acknowledged the unique challenges and conflicts involved in setting the Auditor's budget in the commission-form of government. The pilot would have funded the Auditor's Office with a lump sum that increased modestly and predictably over five years, removed Council control over line-item decisions about the Auditor's budget priorities, and obligated the Auditor to spend below the limit.

I took the Mayor at his word when he said he supported the concept of the pilot. Commissioners Nick Fish and Chloe Eudaly also favored the concept. With the support of a majority of Council, my staff and I worked with the City Budget Office to refine the pilot, and I included it in the Fiscal Year 2019-20 Requested Budget for the Auditor's Office. As part of the proposal, I prioritized stabilizing the Hearings Office by moving a half-time hearings officer position to full-time at a cost of about \$99,000 for the additional salary and benefits. I also made the additional 0.5 full-time equivalent hearings officer an alternate, stand-alone request in case Council did not approve the pilot.

Council did not approve either option. That left me the choice of continuing to subsidize the Hearings Office with the time, attention, and resources of other divisions in the Auditor's Office or withdrawing my consent to have it remain within my responsibilities.

I informed Council members in an August 16, 2019, memo of my decision to no longer house the Hearings Office. In the memo, I asked that a project manager be assigned to begin work on finding a suitable location for the Hearings Office and implementing the transfer. No one took any meaningful action during the intervening eight months, despite multiple meetings and emails initiated by my office to get the process moving – and no one on City Council responded until last week.

This time, I will not reconsider my decision. The risks are more serious, and Council has not demonstrated that it will work with my office to find solutions. That said, I would welcome the opportunity to involve the Charter Review Commission in this discussion. Community members have long supported independence for the Auditor's Office because it affords the Auditor the protections needed to question authority and credibly report on the performance of the City.

In the meantime, I remain committed to an orderly transition. Chief Administrative Officer Tom Rinehart suggested months ago that the Office of Management & Finance might be able to provide administrative support for the Hearings Office, and that he was open to exploring next steps but needed authorization to do so. I am willing to discuss with CAO Rinehart an approach

to ensure a smooth transition for the Hearings Office that is mindful of the strains on his office during the COVID-19 emergency.

I want to stress that if Council does not properly resource the Hearings Office, Management and Finance will be saddled with the same operational challenges and risks that my office experienced, though given its size, it may be able to absorb them with less disruption than that experienced by the Auditor's Office. I am also hopeful that Management and Finance will be able to garner the Council support needed to fully fund and staff the Hearings Office.

I suggest the next steps for City Council are to:

1. Direct the City Budget Office not to put the Hearings Office in the Auditor's budget for the upcoming fiscal year. Placing the Hearings Office in the Auditor's budget without my consent would violate the Charter and undermine my ability to protect the Auditor's Office from Council interference.
2. Notify Auditor's Office Business Operations Manager Joshua McNeal **in writing** that the funding for the Hearings Office has been removed from the Auditor's budget.
3. Appoint the Chief Administrative Officer or a designee to oversee the transfer of the operations support for the Hearings Office to the Office of Management and Finance.