

SUBSTITUTE RESOLUTION NO.

~~Establish a policy to help prevent and investigate acts of terrorism, protect civil rights and civil liberties under United States and Oregon law, and promote Portland as an open and inclusive community~~
Regarding Portland Police Bureau cooperation with the Federal Bureau of Investigation for the purpose of combating terrorism.

WHEREAS, whether domestic- or foreign-based, it is the responsibility of the Federal Bureau of Investigation (FBI) to prevent, investigate, and respond to terrorism in the United States; and,

WHEREAS, Under federal criminal law, 18 USC 2331, “terrorism means activities that (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; and (B) appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping;” and,

WHEREAS, to assist it in its mission to prevent, investigate, and respond to terrorism, the FBI has established local Joint Terrorism Task Forces (JTTF) to share resources and coordinate among other federal, state, tribal and local governments; and,

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~~WHEREAS the 2010 U.S. Attorney General Guidelines for Domestic FBI Operations structure FBI activities into predicated investigations on the one hand and pre-investigative activity (or assessments) on the other. Assessments refer to the checking of leads. Predicated investigations are subdivided into “preliminary investigations” and “full investigations.” Preliminary investigations may be initiated on the basis of any allegation or information of possible criminal or national security threatening activity but more substantial factual predication is required for full investigations; and,~~

WHEREAS, the City of Portland and FBI have decided not to enter into a Memorandum of Understanding for the JTTF, but the City will be cooperating with the JTTF according to the terms of this Resolution; and,

WHEREAS, the Portland Police Bureau (PPB) is responsible for protecting the lives, property, and rights of all people, through collaborative partnerships with the community and other agencies; and,

~~WHEREAS, the demand for PPB services outstrip the available resources to provide them; and,~~

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WHEREAS, the City Council, the Commissioner-in-charge ~~Charge~~ of PPB and Police Chief must constantly reprioritize and rebalance the allocation of internal and external resources to respond to critical crime ~~prevent~~ prevention and law enforcement needs in the City; and,

WHEREAS, with its limited resources, the City recognizes the need for federal, state, and local agencies to coordinate and share information and resources; and,

WHEREAS, all PPB personnel are accountable to the Police Chief and Commissioner-in-Charge of PPB for carrying out the City's policies, lawfully assigned duties and responsibilities; and,

-BE IT RESOLVED, that it is the policy of the City simultaneously to help prevent and investigate acts of terrorism, protect civil rights and civil liberties under United States and Oregon law, and promote Portland as an open and inclusive community; and,

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BE IT -FURTHER RESOLVED, the Police Chief shall regularly consult with the FBI Special Agent in Charge (SAC) to determine which aspects of JTTF work could benefit from PPB participation and whether there are PPB resources available to be allocated; and,

BE IT FURTHER RESOLVED, the Police Chief may assign PPB officers ~~may be assigned~~ to work with the JTTF on an as-needed basis as determined by the Police Chief in consultation with the Commissioner-in-Charge of PPB; and,

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~~BE IT FURTHER RESOLVED, in addition to weekly briefings, and the Chief's participation in JTTF Executive Committee meetings, City Council expects PPB officers to work with the JTTF only with regard to full investigations, as defined in the U.S. Attorney General Guidelines for Domestic FBI Operation, including a terrorism-related or intelligence-related investigation, unless a critical incident or imminent terrorist threat, as determined by the FBI, exists; and,~~

BE IT FURTHER RESOLVED, in addition to regular briefings, and the Police Chief's participation in JTTF Executive Committee meetings, PPB officers shall work with the JTTF only on investigations of suspected terrorism that have a criminal nexus; in situations where the statutory or common law of Oregon is more restrictive of law enforcement than comparable federal law, the investigative methods employed by PPB officers working on JTTF investigations shall conform to the requirements of such Oregon statutes or common law; and,

BE IT FURTHER RESOLVED, the PPB officers who work with the JTTF shall notify the FBI SAC and Police Chief if ever the work PPB officers are asked to do would be a potential violation or violation of ORS 181.575 or ORS 181.850 and shall immediately report any actual violation to the Commissioner-in-Charge of the PPB; and,

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BE IT FURTHER RESOLVED, that PPB officers working with the JTTF shall seek legal advice from the City Attorney whenever the officer has any question about the application of Oregon law, including ORS 181.575 and ORS 181.850, or this Resolution to their work with the JTTF. Any consultation with the City Attorney will be undertaken consistent with the requirements for the handling of classified information and with the other legal restrictions on the dissemination of information. In the event disclosure of classified information is necessary for the City Attorney to provide appropriate advice, the Police Chief shall request the FBI SAC to authorize the City Attorney to receive such information pursuant to a non-disclosure agreement. If the City Attorney cannot obtain the necessary authorization to provide legal advice, the City Attorney shall notify the Police Chief and the Commissioner-in-Charge of PPB; and,

BE IT FURTHER RESOLVED, the Police Chief may assign PPB officers to work on JTTF investigations that comply with the requirements stated above regardless of whether or not the investigation is based in the City of Portland. On those occasions, all the terms of the resolution apply, including that the PPB officer's investigative methods must still conform to Oregon law; and,

BE IT FURTHER RESOLVED, to ensure access to information necessary to manage and supervise PPB officers, the Police Chief will seek clearance at the Top Secret/Secure Compartmentalized Information level, and the Commissioner-in-Charge of PPB will seek clearance at the Secret level; and,

BE IT FURTHER RESOLVED, the City understands that the FBI ~~Portland~~ SAC or designee needs the ability to direct the operational and day-to-day work of PPB officers who work with the JTTF. However, at all times, PPB officers who work with the JTTF remain in the chain of command and under the formal supervision of PPB; and,

BE IT FURTHER RESOLVED, that the Police Chief, by the end of January each year, shall provide a report with appropriate public information to the City Council and public on PPB's work with the JTTF, including any issues related to compliance with Oregon laws; and,

BE IT FURTHER RESOLVED, that within 30 days after any change in personnel in the positions of ~~PPB~~ Commissioner-in-Charge, ~~Chief of~~ of PPB, Police ~~Chief~~, FBI SAC for the Portland Field Office, or United States Attorney for Oregon, the Commissioner-in-Charge of PPB shall ensure that ~~these protocols are this Resolution is~~ understood by all; and,

~~BE IT FURTHER RESOLVED, in situations where the statutory or common law of Oregon is more restrictive of law enforcement than comparable federal law, the investigative methods employed by PPB officers shall conform to the requirements of such Oregon statutes or common law; and,~~

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~~BE IT FURTHER RESOLVED, the PPB officers who work with the JTTF shall notify the Portland FBI SAC and report to the Police Chief and the City Attorney, whenever there is a violation or any question as to whether work the PPB officers are asked to do complies with Oregon law including but not limited to ORS 181.575 and 181.850, City policies and SOPs. The Police Chief immediately shall notify the Commissioner in Charge of PPB of actual violations; and,~~

BE IT FURTHER RESOLVED, the Office of the City Attorney (~~City Attorney~~) is directed by the end of January each year to confer with the ~~Oregon Office~~office of the ~~Oregon~~ Attorney General and determine in writing whether or not based on any changes to federal laws, policies or rules, and any Oregon law, including ORS 181.575 and ORS 181.850, that PPB officers are precluded from legally working with the JTTF; and,

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BE IT FURTHER RESOLVED, that the City Council directs the Police Chief and Commissioner-in-Charge of PPB to request regular briefings from the ~~Portland~~FBI SAC, at least twice a year, on the work of the ~~JTTF~~ so that the Police Chief and the Commissioner-in-Charge of PPB will be familiar with terrorist threats in the Portland area and will, therefore, be better able to manage local public safety issues; and,

~~BE IT FURTHER RESOLVED, in the event of a terrorist related threat that would be of widespread local concern or present a substantial risk of injuries or deaths in the Portland area, the Portland FBI SAC or his/her designee will brief the Commissioner in Charge of PPB on the nature of the threat so that the Commissioner in Charge of PPB can fulfill his/her responsibilities to ensure appropriate preparedness and response steps are undertaken; and,~~

BE IT FURTHER RESOLVED, the Chief will assign a PPB supervisor to the JTTF at any time that a PPB officer is assigned to JTTF work; and,

BE IT FURTHER RESOLVED, PPB officers assigned to the JTTF shall attend annual training, to be conducted by the Office of the City Attorney, to ensure compliance with applicable state and federal law; and,

BE IT FURTHER RESOLVED, that the Portland Police Bureau shall adopt publicly available administrative policies and procedures consistent with this Resolution; and,

BE IT FURTHER RESOLVED, the provisions of this ~~resolution and Exhibit A~~Resolution are binding city policy and no element can be changed without an open public hearing and ratification by City Council; and,

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BE IT FURTHER RESOLVED, that Resolution No. 36315 is hereby superseded.

Adopted by the Council

Mayor Sam Adams
Commissioner

LAVONNE GRIFFIN-VALADE
Auditor of the City of Portland

By /S/

April , 2011

Deputy

EXHIBIT A

~~S.O.P. CIU-XX~~

~~SUBJECT:~~ ~~Criminal Intelligence Unit's (CIU) work with the FBI's Joint Terrorism Task Force (JTTF)~~

~~PURPOSE:~~ ~~Establish policy and procedure for assigning of CIU officers to JTTF.~~

~~PROCEDURE:~~ ~~PPB officers are expected to assist the FBI when assigned by the Police Chief to the Portland Joint Terrorism Task Force (PJTTF). These guidelines are established to provide additional operational clarity about PPB officers' work with the PJTTF.~~

POLICY:

~~In order to ensure the public safety and welfare of its residents, it is the policy of the City of Portland, Oregon ("Portland") to simultaneously achieve three goals:~~

- ~~(1) effectively prevent and investigate acts of terrorism;~~
- ~~(2) protect civil rights and civil liberties under United States and Oregon law; and~~
- ~~(3) promote Portland as an open and inclusive community.~~

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~~One of the FBI's primary missions is to coordinate all intelligence, investigative, and operational responses to terrorism in the United States. By being assigned to the PJTTF, PPB officers are not relieved of their responsibility to comply with Oregon law. In situations where the statutory or common law of Oregon is more restrictive of law enforcement than comparable federal law, the investigative methods employed by PPB officers shall conform to the requirements of such Oregon statutes or common law.~~

~~This SOP sets forth rules for Portland's work with the PJTTF and are binding City policy for PPB officers assigned to the PJTTF. All substantive changes to this SOP must be ratified by the City Council in an open public hearing.~~

I. Working with the Task Force

~~A. The Chief of Police ("Chief") may assign an officer or officers to work with the JTTF as needed, as determined by the Chief in consultation with the SAC and the Commissioner in Charge of the PPB.~~

~~B. The FBI Special Agent in Charge ("SAC") or designee will direct and supervise the operational and day to day work of PPB officers detailed to work with the PJTTF.~~

II. Supervision and Oversight

~~The Chief will maintain careful supervision and oversight over PPB officers assigned to the PJTTF, including but not limited to the following steps:~~

~~A. The Chief will attend JTTF Executive Committee meetings to ensure that the he/she is apprised of the work of PPB officers assigned to the JTTF. The Chief will also arrange with the FBI SAC regular briefings, at least twice per year, for the Commissioner in Charge of the PPB.~~

~~B. The Chief will assign a PPB supervisor to the PJTTF at any time that an officer is assigned to the PJTTF.~~

~~C. PPB officers assigned to the JTTF must at all times comply with all Oregon laws, including but not limited to ORS 181.575 and 181.850, and City policies and SOPs. This restriction applies even when, from time to time, PPB officer or officers assigned to PJTTF work on specific cases or investigations outside of the Portland Office FBI district.~~

~~D. PPB officers who work with the JTTF shall notify the Portland SAC and report to the Police Chief and the City Attorney, whenever there is a violation or any question as to whether work the PPB officers are asked to do complies with Oregon law, including but not limited to ORS 181.575 and 181.850, City policies and SOPs, and the Police Chief immediately shall notify the Commissioner in Charge of PPB of actual violations.~~

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~~E. PPB officers assigned to the JTTF must keep the Chief reasonably informed on a regular basis about the nature and extent of their involvement with the JTTF.~~

~~F. The Chief, by the end of January each year, is required to provide a non-classified summary status report to the City Council and public on the nature of PPB's work with the JTTF. Accordingly, PPB officers and supervisors assigned to the JTTF should be prepared to provide the Police Chief an annual summary of their work with the JTTF.~~

~~III. Training and Legal Advice~~

~~A. PPB officers assigned to the JTTF shall attend annual training, to be conducted by the City Attorney, to ensure compliance with applicable state and federal law.~~

~~B. PPB officers working with the JTTF shall seek legal advice from the City Attorney any question as to whether work the PPB officers are violates Oregon law including ORS 181.575 and 181.850, City policies and this SOP. Any consultation with the City Attorney will be undertaken consistent with the requirements for handling of classified information and with other legal restrictions on the dissemination of information. In the event disclosure of classified information is necessary for the City Attorney to provide appropriate advice, the Chief shall request the FBI SAC to authorize the City Attorney to receive such information pursuant to a non-disclosure agreement. If the City Attorney cannot obtain the necessary authorization to provide legal advice, the City Attorney shall notify the Chief and the Commissioner in Charge of the PPB.~~

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