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 Reviewed and Approved by Mike May, City Attorney  
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**Comparing the legal authority and obligations related to reimbursement of employee legal costs incurred at the Police and Fire Commission in existing Statute, a City of Madison Resolution and the proposed Madison General Ordinance.**

Source	Language	Explanation
Statute 62.09(7)e	Whenever a city official in that official's official capacity is proceeded against or obliged to proceed before any court, board or commission, to defend or maintain his or her official position, or because of some act arising out of the performance of that official's official duties, and that official has prevailed in such proceeding, or the council has ordered the proceeding discontinued, the council may provide for payment to such official such sum as it sees fit, to reimburse the official for the expenses reasonably incurred for costs and attorney fees.	The statute indicates that the Council has the discretion to reimburse officials an amount "it sees fit" for legal expenses related to their position or official duty. Court cases confirm that when the Council is operating solely under the statute, it has wide discretion to pay all, some or none of the fees. <i>Curry v. City of Portage</i> , 195 Wis. 35 (1928); <i>Murray v. City of Milwaukee</i> , 252 Wis. 2d 613 (Ct. App. 2002).
Statute 895.35	Whenever in any city, town, village, school district, technical college district or county charges of any kind are filed or an action is brought against any officer thereof in the officer's official capacity, or to subject any such officer, whether or not the officer is being compensated on a salary basis, to a personal liability growing out of the performance of official duties, and such charges or such action is discontinued or dismissed or such matter is determined favorably to such officer, or such officer is reinstated, or in case such officer, without fault on the officer's part, is subjected to a personal liability as aforesaid, such city, town, village, school district, technical college district or county may pay all reasonable expenses which such officer necessarily expended by reason thereof. Such expenses may likewise be paid, even though decided adversely to such officer, where it appears from the certificate of the trial judge that the action involved the constitutionality of a statute, not theretofore construed, relating to the performance of the official duties of said officer.	The statute reaffirms that a local government body may pay all reasonable expenses incurred by an officer facing a legal action related to performance of one's duties. This statute allows for such expenses to be paid if the charges are discontinued/dismissed, determined favorably, or the officer is reinstated. Some labor agreements cite this section of the Wisconsin Statutes.
Resolution 16-00697 Legistar File 44195	Whenever a city official in that official's official capacity is proceeded against or obliged to proceed before any court, board or commission, to defend or maintain his or her official position, or because of some act arising out of the performance of that official's official duties, and that official has prevailed in such proceeding, or the council has ordered the proceeding discontinued, the council may provide for payment to such official such sum as it sees fit, to reimburse the official for the expenses reasonably incurred for costs and attorney fees. WHEREAS, the City Attorney cannot represent the Police or Fire Chiefs or any officers or firefighters named as respondents in complaints before the Police and Fire Commission (PFC), as set forth in Formal Opinion 2016-001; and WHEREAS, the City has for many years provided in agreements with police officers and firefighters that the City will pay the attorneys fees and costs of defense in actions before the PFC, provided the respondent prevailed in such action (see, for example, Art. XVII. A. 2. of the Collective Bargaining Agreement with the MPPPOA); and WHEREAS, the Common Council finds that it is necessary and appropriate to provide the same protection to the Police and Fire Chiefs of the City, as permitted under sec. 62.09(7)(e), Stats. NOW, THEREFORE, BE IT RESOLVED, that the Common Council commits to providing the police chief and the fire chief the same protections provided to other police officers and firefighters facing complaints at the PFC, and to exercise its discretion under sec. 62.09(7)(e), Wis. Stats., to reimburse the chiefs for the reasonable costs and fees incurred, if the chief prevails in the proceedings; and BE IT FURTHER RESOLVED, that upon conclusion of any such proceedings, an additional resolution will be presented to the Council with the chief's request for reimbursement and proposing payment of such reasonable costs and fees, if the chief prevails in the proceedings. Resolution adopted by the Madison Common Council 9/20/2016.	The resolution commits the Common Council to provide reimbursement for costs incurred by the Police and Fire Chiefs related to PFC complaints in the event the Chief "prevails". The Chiefs are hereby provided the "same protections" provided to other police officers. "Prevail" is not defined in the resolution, although some of the labor agreements, especially the MPPPOA agreement referenced in the resolution, are explicit as to when a party has prevailed and is to be reimbursed.
Creating Sections 5.15 and 6.18 of the Madison General Ordinances Legistar File 47423	Any City employee or official not covered by sub. (a) [agreements with unions or employee associations] who successfully defends a complaint before the PFC will have their reasonable legal costs reimbursed by the City. A City employee or official is successful if he or she is exonerated, if the charges are dismissed (for any reason) or if the complaint is otherwise withdrawn or discontinued. If the City employee or official is successful as defined herein, but the PFC found some violation of a legal standard (such as a code of conduct) by the City employee or official, the Council may make a reasonable adjustment in the reimbursement for such findings. Similarly, if the employee or official is successful on some charges but not others, the Council may make a reasonable adjustment in the fees and costs to be reimbursed.	The proposed ordinance commits the Common Council to reimburse legal costs for city employees not covered by union/association contracts if and only if the charges are dismissed, the individual is exonerated or the complaint is withdrawn/discontinued. The ordinance also clarifies that the amount reimbursed may be adjusted if there are violations of some legal standards or if the official is successful on some charges, but is unsuccessful on others. This language affirms the Council's discretion to adjust reimbursement based on the results of the proceedings and provides clarity related to success and partial success at the PFC.