

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____

PRESENTED
REFERRED

June 6, 2017
Finance Committee,
CCEC, PSRC

Creating Sections 5.15 and 6.18 of the Madison General Ordinances to authorize the City to reimburse the legal fees of persons defending or prosecuting a claim before the Police and Fire Commission and repealing RES-16-00697, the City Police and Fire Chiefs Reimbursement Policy.

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Date: May 19, 2017

SPONSOR: Aids. Bidar-Sielaff & Rummel

DRAFTER'S ANALYSIS: This ordinance repeals the resolution passed last year regarding reimbursement of legal fees and costs for the police and fire chief in proceedings before the Police and Fire Commission (PFC) and replaces it with the standards in this ordinance. It provides for reimbursement of legal fees by the City when a member of either the police or fire department successfully defends a complaint before the PFC, and establishes standards for determining success in the proceeding.

This ordinance also provides that private persons who successfully prosecute actions before the PFC will have their fees reimbursed by the City. It similarly sets standards for measuring a successful prosecution.

The ordinance also provides that the Council may make adjustments in the fees to be paid if some claims are successful and others are not, including if the PFC finds a violation of standards but imposes no punishment. The ordinance does not affect reimbursement provisions in any agreements the City has with police or fire unions or employee associations, and it does not generally apply to court proceedings. In all instances where the ordinance or an agreement does not apply, the City retains its rights and obligations under state law to reimburse.

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 5.15 entitled "Reimbursement of Legal Fees Before the Police and Fire Commission" of the Madison General Ordinances is created to read as follows:

"5.15 REIMBURSEMENT OF LEGAL FEES BEFORE THE POLICE AND FIRE COMMISSION.

- (1) Purpose. This ordinance provides that the city shall reimburse legal fees and costs of persons appearing before the Police and Fire Commission (PFC). The Council finds that it is in the public interest and satisfies a public purpose to reimburse fees for city employees or officials who successfully defend their actions before the PFC. City employees and officials should not be required to place their personal assets at risk for complaints that are not successful. The Council finds it is in the public interest and satisfies a public purpose to reimburse fees and costs of private citizens who successfully bring complaints before the PFC against city employees or officials. When such complaints are brought by the Police Chief or Fire Chief, public funds are expended because the Chief is represented by the City Attorney. The public purpose is served in reimbursing private persons who successfully

Approved as to form:

prosecute violations by city employees before the PFC because the public benefits from knowledge of violations and discipline of those who commit violations. Many statutes provide for the reimbursement of fees of successful plaintiffs through fee-shifting provisions. There is no existing method of reimbursing private persons who successfully bring charges before the PFC, which is a disincentive to file a complaint that may be justified.

- (2) Actions Before the Police and Fire Commission.
 - (a) Agreements with Unions or Employee Associations. If the City and a union or employee association have an agreement governing the reimbursement of legal fees and costs for specified employees or officials, that agreement governs and this ordinance does not apply.
 - (b) Other City Employees or Officials. Any City employee or official not covered by sub. (a) who successfully defends a complaint before the Police and Fire Commission (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.
 - (c) Private Persons Bringing Charges. If a private person brings charges before the PFC and the complaint is successful, the City will reimburse the reasonable legal fees and costs incurred by the private individual. A complaint is successful if the charges are sustained or discipline is imposed. If the PFC finds that standards were breached but does not sustain the charge or impose discipline, the Council may make a reasonable adjustment in the reimbursement for such findings. Similarly, if the complaint is successful on some claims and not on others, the Council may make a reasonable adjustment in the fees and costs to be reimbursed.
- (3) Court Actions. This ordinance does not apply to any proceedings in court, reimbursement for which will continue to be considered under existing state law and any agreements with employee associations. If a court reverses or modifies any ruling of the PFC, the Council may consider such a decision in determining whether to reimburse for all proceedings before the PFC.
- (4) Request for Reimbursement. A separate resolution shall be introduced upon the conclusion of matters before the PFC, providing for reimbursement for any person under this ordinance. The separate resolution is needed to determine if the person qualifies under this ordinance and to appropriate the funds for reimbursement.
- (5) Authority. This ordinance is adopted pursuant to the authority granted under Wis. Stats. §§ 62.09(7)(e), 62.11(5) and 895.35. The Council is determining that it will reimburse under the circumstances set forth in this ordinance. In all circumstances not covered by this ordinance, the Council retains the rights to reimburse or not reimburse as provided by state law.”

2. Section 6.18 entitled “Reimbursement of Legal Fees Before the Police and Fire Commission” of the Madison General Ordinances is created to read as follows:

“6.18 REIMBURSEMENT OF LEGAL FEES BEFORE THE POLICE AND FIRE COMMISSION.
The Fire Department employees including the Fire Chief are covered by the reimbursement standards of Sec. 5.15, MGO.”

3. Resolution RES-16-00697 (Legistar # 44195), the City of Madison Police and Fire Chiefs Reimbursement Policy, is hereby repealed.