



Staff Report

File #: 19-189

Version: 1

Date: 4/22/2019

Item #: 3.2b.

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

SUBJECT:

A transfer of appropriation authority for the purpose of paying an appellate attorney fees award.

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

Result Area(s): Good Governance.

ISSUE:

Shall the City Council adopt Resolution 2019-12 transferring \$120,000 of appropriation authority from the General Fund, Non Departmental, contingency to General Fund, Non Departmental, materials and services for the purpose of paying an appellate attorney fees award?

RECOMMENDATION:

Adopt Resolution 2019-12 transferring \$120,000 of appropriation authority from the General Fund, Non Departmental, contingency to General Fund, Non Departmental, materials and services for the purpose of paying an appellate attorney fees award.

SUMMARY:

In September 2018 the Oregon Court of Appeals issued a decision adverse to the City in *Pamplin Media Group v. City of Salem*, a case involving the denial of a public records request. In April 9, 2019, the Court of Appeals issued a supplemental judgment awarding Pamplin \$63,791.20 in appellate attorney fees and costs.

Oregon public records law provides for an award of attorney fees to individuals whose requests are denied, but then prevail on appeal. This requested transfer is intended to cover the amount necessary for the appellate attorney fee award and a potential trial court attorney fee award.

FACTS AND FINDINGS:

State law allows the City Council to approve transfers of appropriations within the limits established by the adopted budget to address unforeseen changes.

An appropriation for this expense was not included in the FY 2019 adopted budget as the outcome of the subject appeal was unknown at the time. Resolution 2019-12 provides the required appropriation authority in the Non Departmental cost center of the General Fund to pay the award.

BACKGROUND:

In this case, the *Woodburn Independent* (owned by the Pamplin Media Group) made a public records request for the "investigation/arrest report" for an incident that involved a juvenile victim of abuse. Pursuant to a state law provision that prohibits the release of reports of juvenile abuse, the City denied the request. Pamplin revised its request, and the City again denied it. Pamplin appealed the City's decision to the Marion County District Attorney, who denied Pamplin's appeal. Pamplin then filed an action in Marion County Circuit Court requesting that the court order the City to release the records. The trial court denied Pamplin's request. Pamplin then appealed that decision to the Oregon Court of Appeals, which held that the City was required under state law to release redacted portions of the arrest record, notwithstanding the state law relied on by the City. The City petitioned the Oregon Supreme Court for review of the Court of Appeals' decision, but the Supreme Court refused to grant review.

The case is now back before the trial court for final disposition.

Attachments:

1. Resolution 2019-12