



**Staff Report**

**File #:** 23-10  
**Version:** 1

**Date:** 1/9/2023  
**Item #:** 3.2a.

**TO:** Mayor and City Council  
**THROUGH:** Keith Stahley, City Manager  
**FROM:** Josh Eggleston, Chief Financial Officer

**SUBJECT:**

Transfer of fiscal year 2023 budget appropriations for a State of Oregon Land Use Board of Appeals attorney fee award.

Ward(s): All Wards  
Councilor(s): All Councilors  
Neighborhood(s): All Neighborhoods  
Result Area(s): Good Governance; Welcoming and Livable Community

**SUMMARY:**

On May 9, 2022, City Council voted to adopt the staff recommendation and affirm a Hearings Officer decision to deny a conditional land use permit for a multi-family apartment complex in a commercial zone. The State Land Use Board of Appeals (LUBA) reversed the City’s decision and ordered the City to pay attorney fees in the amount of \$47,384. A transfer from General Fund contingency is needed to create budget authority for this unanticipated expense.

**ISSUE:**

Shall City Council adopt Resolution No. 2023-1 authorizing a transfer of appropriations within the City’s fiscal year 2023 budget for attorney fees awarded by the Land Use Board of Appeals?

**RECOMMENDATION:**

Adopt Resolution No. 2023-1 authorizing a transfer of appropriations within the City’s fiscal year 2023 budget for attorney fees awarded by the Land Use Board of Appeals.

**FACTS AND FINDINGS:**

**General Fund**

FOR: Transfer from General Fund Contingency to pay LUBA-awarded attorney fees  
FROM: General Fund, Non Departmental, Contingency, 101-60961000-61110, \$47,390  
TO: General Fund, Non Departmental, Legal/Court Services, 101-60961000-52650, \$47,390

In September 2021, an application for a Conditional Use Permit to construct a 291-unit multi-family apartment complex on the 4900 block of State Street was submitted. In March 2022, the Hearings Officer denied the application. In May 2022, on appeal to the City Council, following staff's recommendation, affirmed the Hearings Officer's decision to deny the application. The applicant appealed to LUBA and the City's decision was overturned in August 2022.

LUBA found that "needed housing" regulations in state law required the City to apply only clear and objective standards, and the conditional use standards were not clear and objective, therefore the City erred in denying the application. Further, LUBA held that the City decision should be reversed, and that the City acted outside of the range of discretion afforded local governments in matters like this case. Therefore, the applicant was entitled to attorney fees related to the LUBA appeal.

Subsequent to LUBA's decision reversing the City's decision, City Council has passed amendments to the City's land use code prohibiting multifamily housing as a standalone use in those zones. The code amendment, however, now allows multifamily housing outright, provided that it is located in a mixed-use building, which is subject to other clear and objective standards.

The City was ordered to pay attorney fees in December 2022 and this action is necessary to create budget authority in the appropriate expense category to complete the payment.

**BACKGROUND:**

Oregon State budget law allows the City Council to approve transfers of appropriations within the limits established by the adopted budget to address unforeseen changes that were not known at the time of budget development.

Kali Leinenbach  
Senior Fiscal Analyst

Attachments:

1. Resolution No. 2023-1