



Cover Memorandum/Staff Report

File #: 23-1286

Agenda Date: 9/18/2023

Item #: 10.B.1.

TO: Mayor and Commissioners
FROM: Lynn Gelin, City Attorney
DATE: September 18, 2023

ADOPTION OF CITY COMMISSION POLICY CONCERNING REIMBURSEMENT AND RECOVERY OF ATTORNEY'S FEES AND COSTS FOR ETHICS COMPLAINTS THAT HAVE BEEN DISMISSED.

Recommended Action:

Motion to Adopt City Commission Policy Concerning the Reimbursement and Recovery of Attorney's Fees and Costs For Dismissed Ethics Complaints.

Background:

Florida Courts have long recognized a common law right of public officials and employees to legal representation at public expense to defend themselves in litigation arising from the course and scope of their official duties. In fact, the Code of Ordinances already provides for indemnification for:

(A) City officials or employees who are personally liable for the payment of any claims arising out of a civil action, settlement or judgment, or the expenses, costs and awards of attorney's fees arising therefrom, shall be entitled to indemnification from the City (except to the extent the City's insurance coverage provides payment) where the claim resulted from activities: (1) which were done in good faith; (2) in which the City has an interest; (3) which were within the course and scope of employment or in the course of performance of public duties of the persons so acting; and (4) were not willful, wanton or malicious. See Section 31.17, "Indemnification," City of Delray Beach Code of Ordinances. This policy merely formalizes a procedure to effectuate the intent of Section 31.17.

By way of process, within 30 days of successfully defending an ethics complaint, any person who believes they are entitled to repayment of their reasonable attorney's fees and costs shall notify the City Attorney in writing. The statement shall include information that reasonably sets for the nature of the violations and fees incurred in the defense. Thereafter, the City Attorney will prepare an agenda item for the City Commission's consideration of the request. If a finding is made that the conduct arose out of the performance of the individual's respective duties and serves a public purpose (for example, not to advance the individual's own, private interests), the Commission may (1) request additional relevant information, (2) postpone the request, or (3) approve the request and determine the appropriate amount of attorney's fees and costs.

Lastly, this Policy provides the ability for the City to recover fees and costs pursuant to Florida Statute 112.317(7), if it appears that the person filing the complaint has done so with a malicious intent to injure the reputation of the officer/employee by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact to a violation of FS 112.

This Policy will be reviewed by the City Commission every 5 years and will be updated periodically to maintain current statutory references.

City Attorney Review:

Approved as to form and legal sufficiency.