



Legislation Details (With Text)

File #: O-360-20 **Version:** 1 **Name:**
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On agenda: 9/22/2020 **Final action:** 9/22/2020
Title: Authorizing the expenditure of \$207,500 from the Risk Management Fund to settle the plaintiff's attorney fee claim in the litigation captioned *Drewes Farm Partnership v. City of Toledo*, Case No. 3:19-cv-00434-JZ, N.D. Ohio, Western Division; authorizing an additional expenditure in an amount not to exceed \$35,000 from the Risk Management Fund to the law firm of Spengler Nathanson for the provision of professional assistance on behalf of the City of Toledo in the above-referenced litigation; and declaring an emergency.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Audio: Agenda Reveiw 9/1/2020, 2. Audio: City Council 9/8/2020

| Date | Ver. | Action By | Action | Result |
|-----------|------|--------------|--------|--------|
| 9/22/2020 | 1 | City Council | | |
| 9/22/2020 | 1 | City Council | | |
| 9/8/2020 | 1 | City Council | | |

LEBOR

Law Department

Dale Emch (x2384)

(Revised)

Authorizing the expenditure of \$207,500 from the Risk Management Fund to settle the plaintiff's attorney fee claim in the litigation captioned *Drewes Farm Partnership v. City of Toledo*, Case No. 3:19-cv-00434-JZ, N.D. Ohio, Western Division; authorizing an additional expenditure in an amount not to exceed \$35,000 from the Risk Management Fund to the law firm of Spengler Nathanson for the provision of professional assistance on behalf of the City of Toledo in the above-referenced litigation; and declaring an emergency.

SUMMARY & BACKGROUND:

Voters participating in a special election held on February 26, 2019, passed a petition-driven amendment to the City of Toledo Charter titled Lake Erie Bill of Rights. On February 27, 2019, Drewes Farm Partnership filed a lawsuit against the City of Toledo in the U.S. District Court, Northern District of Ohio, Case No. 3:19-cv-00434-JZ, N.D. Ohio, Western Division. The lawsuit generally alleged that the Charter amendment was unconstitutional and violated Ohio and federal law. On February 27, 2020, the Court ruled that the citizen-initiated Charter amendment was unconstitutional and invalid in its entirety. In such federal cases, the Court can award reasonable attorney fees and costs to the prevailing party. Accordingly, Drewes Farms Partnership sought an award of legal fees and costs. The parties engaged in a mediation on August 19, 2020, and reached a proposed settlement on the attorney fee issue in the amount of \$207,500, contingent upon Council approval. The proposed settlement also includes the dismissal with prejudice of the motion for attorney fees and costs.

Additionally, this ordinance seeks authorization of an additional \$35,000 to pay Spengler Nathanson for legal fees incurred by the City of Toledo as well as the fees and costs necessary to conclude the litigation and fee claim.

NOW, THEREFORE, Be it ordained by the Council of the City of Toledo:

SECTION 1. That an expenditure in the amount of \$207,500 is authorized from the Risk Management Fund, Account Code 7095-12000-1157001STDSTD, to settle the attorney fee claim for plaintiff's counsel Vorys, Sater, Seymour and Pease, LLP, in the case of *Drewes Farm Partnership v. City of Toledo*, Case No. 3:19-cv-00434-JZ, N.D. Ohio, Western Division.

SECTION 2. That an additional expenditure in an amount not to exceed \$35,000 is authorized from the Risk Management Fund, Account Code 7095-12000-1157001STDSTD, for payment to the law firm of Spengler Nathanson for past and future legal fees and case expenses incurred by the City of Toledo in the case of *Drewes Farm Partnership v. City of Toledo*, Case No. 3:19-cv-00434-JZ, N.D. Ohio, Western Division.

SECTION 3. That the Director of Finance is authorized to draw her warrant or warrants against above listed account code for the amounts referenced in Sections 1 and 2, respectively, in payment of the authorized obligations upon presentation of proper vouchers.

SECTION 4. That this Ordinance, being an emergency measure, shall take effect and be in force from and after its passage. The reason for the emergency lies in the fact that this ordinance is necessary for the immediate preservation of public peace, health, safety and property, and for further reason that this ordinance must immediately be effective so the City may meet its obligations of the attorney fee settlement and to promptly pay its own obligations incurred in the case of *Drewes Farm Partnership v. City of Toledo*.

Vote on emergency clause: yeas _____, nays _____.

Passed: _____, as an emergency measure: yeas _____, nays _____.

Attest: _____
Clerk of Council

President of Council

Approved: _____

Mayor

I hereby certify that the above is a true and correct copy of an Ordinance passed by Council

_____.

Attest: _____
Clerk of Council