

South Portland City Council  
***Position Paper of the City Manager***

***Subject:***

**RESOLVE #3-16/17 – Transferring \$500,000 from unassigned fund balance to the “Clear Skies Ordinance Legal Defense Fund” within the Litigation-Legal Reserve Fund, and providing additional funding for litigation defense costs. Passage requires majority vote.**

***Position:***

The City maintains reserves for contingencies and various capital funding purposes, including a reserve for non-routine legal issues. By order dated August 18, 2014, the City Council established the “Clear Skies Ordinance Legal Defense Fund” within the Litigation-Legal Reserve Fund. The City’s Finance Director has recommended that additional funding be provided to the “Clear Skies Ordinance Legal Defense Fund” within the Litigation-Legal Reserve Fund.

The “Clear Skies Ordinance Legal Defense Fund” within the Litigation-Legal Reserve Fund is being used to fund the City’s defense against the lawsuit related to Ordinance #1-14/15 adopted by the City Council on July 21, 2014, which lawsuit is entitled *Portland Pipe Line Corp., et al. v. City of South Portland, et al.*, U.S. Dist. Ct. (D. Me.) Civil Action No. 2:15-cv-00054-JAW. Due to the nature and extent of the lawsuit, the City has hired special legal counsel with a preeminent energy and environmental practice, including an environmental litigation practice, to defend the City and its Code Enforcement Director in this lawsuit. It is recommended that this fund be additionally funded by a transfer and appropriation of \$500,000 from unassigned fund balance. It is also recommended that \$16,343 in donations received to date be appropriated for the City’s defense against the lawsuit.

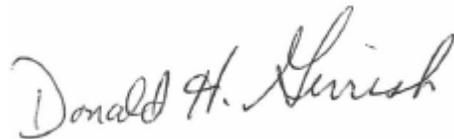
Additionally, the City budgeted additional funds within its’ fiscal year ending June 30, 2016 Corporation Counsel budget with the anticipation that any unspent funds could be used as additional funding for this lawsuit. The City’s fund balance policy allows unspent legal budgets to be transferred to the Litigation reserve. The City Finance Director anticipates that there will be \$177,945 available and that said amount should be transferred to the Clear Skies Ordinance Legal Defense Fund.

In June of 2015, the City Council provided funding for the Clear Skies Ordinance Legal Defense Fund totaling \$205,279. Together with the above amounts totaling \$694,288 the Reserve will have funding totaling \$899,567. Through June 30, 2016 the City has expended \$ 374,763.81 and recently received invoices totaling \$123,307.25 for July 2016. Through July 2016 total expenditures total \$518,512.57.

	Fund <u>Balance</u>	<u>Contributions</u>	<u>Operations</u>	<u>Total</u>
Resolve Approved June 15, 2015	\$200,000	\$5,279	\$ -	\$ 205,279
Resolve Proposed August 15, 2016	\$500,000	\$16,343	\$177,945	\$ 694,288
Total	\$800,000	\$21,622	\$177,945	\$ 899,567
Expenditures to date -July 31, 2016				\$ 518,513
Available for future expenditures				\$ 381,054

***Requested Action:***

Council passage of RESOLVE #3-16/17.

  
 Interim City Manager



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE  
Mayor

DON H. GERRISH  
Interim City Manager

EMILY F. CARRINGTON  
City Clerk

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

**IN CITY COUNCIL  
RESOLVE #3-16/17**

District One  
CLAUDE V. Z. MORGAN

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District Two  
PATRICIA A. SMITH

\_\_\_\_\_

District Three  
EBEN C. ROSE

\_\_\_\_\_

District Four  
LINDA C. COHEN

\_\_\_\_\_

District Five  
BRAD FOX

\_\_\_\_\_

At Large  
MAXINE R. BEECHER

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At Large  
THOMAS E. BLAKE

**RESOLVED**, that the City hereby transfer Five Hundred Thousand Dollars (\$500,000) from unassigned fund balance to the “Clear Skies Ordinance Legal Defense Fund” within the Litigation-Legal Reserve Fund and appropriate said amount for attorneys’ fees and costs incurred in defending against the lawsuit related to Ordinance #1-14/15 adopted by the City Council on July 21, 2014, which lawsuit is entitled *Portland Pipe Line Corp., et al. v. City of South Portland, et al.*, U.S. Dist. Ct. (D. Me.) Civil Action No. 2:15-cv-00054-JAW; and

**BE IT FURTHER RESOLVED**, that the City hereby appropriate Sixteen Thousand Three Hundred and Forty-Three Dollars (\$16,343) in donations received to date for attorneys’ fees and costs incurred in defending against the lawsuit referenced herein, and

**BE IT FURTHER RESOLVED**, that the City hereby transfers from unexpended Corporation Counsel Contracted Services Legal operating funds One hundred seventy-seven thousand, Nine Hundred Forty-Five Dollars (\$177,945) and hereby for attorneys’ fees and costs incurred in defending against the lawsuit referenced herein.

Fiscal Note: \$694,288

Date: August 15, 2016