

Meeting of February 6, 2017

South Portland City Council
Position Paper of the City Manager

Subject:

RESOLVE #7-16/17 – 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 \$100,058 in donations received to date be appropriated for the City’s defense against the lawsuit.

This will be the third appropriation funding the Clear Skies Ordinance Legal Defense Fund, along with the June 2015 appropriation totaling \$205,279 and August 2016 appropriation totaling \$694,288. The current appropriation totaling \$600,058, combined with the amounts previously stated, place total appropriations to the Reserve at \$1,499,625. To date, the City has expended \$859,568.90 and has recently received invoices totaling \$149,798.76 for December 2016. Through December 2016, total expenditures total \$1,009,367.66.

	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 Approved August 15, 2016	\$ 500,000	\$ 16,343	\$ 177,945	\$ 694,288
Subtotal	\$ 700,000	\$ 21,622	\$ 177,945	\$ 899,567
Resolve Proposed February 6, 2017	\$ 500,000	\$ 100,058	\$ -	\$ 600,058
Total to date including proposed	\$1,200,000	\$ 121,680	\$ 177,945	\$1,499,625
Expenditures to date -December 31, 2016				\$1,009,368
Available for future expenditures				\$ 490,257

Requested Action:

Council passage of RESOLVE #7-16/17.



Interim City Manager



CITY OF SOUTH PORTLAND

PATRICIA A. SMITH
Mayor

DON H. GERRISH
Interim City Manager

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

EMILY F. CARRINGTON
City Clerk

**IN CITY COUNCIL
RESOLVE #7-16/17**

District One
CLAUDE V. Z. MORGAN

District Two
PATRICIA A. SMITH

District Three
EBEN C. ROSE

District Four
LINDA C. COHEN

District Five
BRAD FOX

At Large
MAXINE R. BEECHER

At Large
SUSAN J. HENDERSON

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 One Hundred Thousand and Fifty-Eight Dollars (\$100,058) in donations received to date for attorneys’ fees and costs incurred in defending against the lawsuit referenced herein.

Fiscal Note: \$600,058

Date: February 6, 2017