

IMPACT STATEMENT

Legislation title: Authorize City Attorney to appeal judgment in Alan Lloyd Kessler v. City of Portland, Multnomah County Circuit Court No. 18CV43134

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Presenter name: Karen L. Moynahan

Purpose of proposed legislation and background information:

Resolution authorizes City Attorney to initiate appeal of judgment by Multnomah County Circuit Court enjoining the City from “charging excessive fees for routine email and document searches...” and ordering the City to recalculate fees paid by Plaintiff for a public records search based on, in part, the “lowest hourly rate charged by any department personnel who could be responsible for responding to the public records requests.” The City Attorney’s Office believes that the judgment is unclear and seeks clarification from the Court of Appeals as to the breadth and scope of the judgment. The judgment could have potentially significant impacts on the City’s authority to recover its actual costs in fulfilling public records requests as permitted by state statute and could subject the City to contempt proceedings by persons who have requested public records from the City and disagree with the hourly rates of City staff who process their requests. Additionally, Plaintiff seeks \$120,000 in attorney’s fees, so there is a monetary impact of the judgment as well.

Financial and budgetary impacts:

Pursuing this appeal would have no immediate financial or budgetary impacts. The legal work will be performed by lawyers and support staff within the City Attorney’s Office, using budgeted staff and resources.

Community impacts and community involvement:

This is a matter involving the City’s legal authority under the Oregon Public Records Act and the City’s desire to be transparent and compliant with the judgment and the law. The judgment is sufficiently unclear, with all due respect to the court, as to place the City at risk of noncompliance should it misinterpret the court’s rulings. Pursuing an appeal is not a subject of public involvement but is a matter for the Council’s consideration under Portland City Code 3.10.030.G. Time is of the essence as the City must file a Notice of Appeal in the Oregon Court of Appeals by February 7, 2020.

Budgetary Impact Worksheet

Does this action change appropriations?

- YES: Please complete the information below.
- NO: Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

Item 102: Eudaly Amendment

After discussing my concerns with the attorney's office yesterday and this morning, I would like to offer an amendment to be inserted after the first "Therefore be it resolved" to read:

"BE IT FURTHER RESOLVED the City is already taking steps to have a records-fee policy that ensures transparency, and thus the City should enter into settlement discussions during the pendency of the appeal to resolve the case."