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# 191679

Emergency Ordinance

## **\*Authorize settlement and payment of attorney's fees and costs in Michael Kessler v. Ted Wheeler, Mayor of City of Portland, and City of Portland for amount not to exceed \$166,893 (Multnomah County Circuit Court Case 22CV41219)**

Passed

The City of Portland ordains:

Section 1. The Council finds:

1. In July of 2020, Michael Kessler ("Kessler") submitted a public records request for text messages to and from the Mayor. Kessler proceeded to make an additional 24 substantially similar requests over the next 28 months. The City provided responsive records, archived in the City's text message retention system, Smarsh, and text messages archived during the Enterprise Mobility Management (EMM) enrollment process.
2. On December 3, 2022, Kessler filed a lawsuit alleging, among other things, that the City unduly delayed a complete response to his requests.
3. It is in the City's best interest to resolve the lawsuit prior to trial.
4. Resolution of the lawsuit prior to trial constitutes a compromise of disputed claims and is not an admission of liability.
5. The parties agreed, subject to Council approval, to resolve the lawsuit on the following terms:
  - a. The City shall reimburse Kessler for the fees paid to the City for the requested records, his costs in initiating a lawsuit against the City, and an additional sum of \$5,000.00, for a total amount of \$6,893.00.
  - b. The City shall pay Kessler reasonable attorney fees as ordered by the court, in an amount not to exceed \$160,000.00.

Introduced by

[Mayor Ted Wheeler](#)

Bureau

[City Attorney](#)

Contact

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Senior Deputy City Attorney

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Requested Agenda Type

Regular

Date and Time Information

**Requested Council Date**

April 10, 2024

**Time Requested**

15 minutes


6. The City Attorney's Office recommends the payment of \$166,893.00 as a compromise from the full demand to resolve the matter without further legal proceedings.

NOW, THEREFORE, the Council directs:

- A. The City Attorney's Office is hereby authorized to enter into and execute a settlement agreement, in a form substantially similar to Exhibit A attached hereto, as well as payment of the monies and implementation of other terms referenced therein.
- B. The Mayor and the Auditor are hereby authorized to draw and deliver a check in the amount of \$6,893.00, plus the court-ordered attorney fees, for a total amount not to exceed \$166,893.00, made payable to Alan Kessler. Council authorizes payment of these amounts from the Legal Priorities Reserve Fund.

Section 2. The Council declares that an emergency exists in order to avoid undue and costly delay in settling this matter; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

## Documents and Exhibits

 [Exhibit A \(https://www.portland.gov/sites/default/files/council-documents/2024/exhibit-a-775940.pdf\)](https://www.portland.gov/sites/default/files/council-documents/2024/exhibit-a-775940.pdf) 784.92 KB

An ordinance when passed by the Council shall be signed by the Auditor. It shall be carefully filed and preserved in the custody of the Auditor (City Charter Chapter 2 Article 1 Section 2-122)

Passed by Council  
April 10, 2024

Auditor of the City of Portland  
Simone Rede

## Impact Statement

### Purpose of Proposed Legislation and Background Information

This ordinance approves the settlement negotiated between the parties and caps attorney's fees demanded as a result of the lawsuit for declaratory and other relief brought in *Kessler v. Wheeler and City of Portland*, Case No. 22CV41219, and related to a request for public records involving text messages sent or received by the Mayor and retained by the City.

## Financial and Budgetary Impacts

This legislation will have no impact on City revenue.

Total cost to the City to settle this matter will not exceed \$166,893.00. The source of the funding will be the Legal Priorities Reserve Fund.

## Community Impacts and Community Involvement

This settlement is in furtherance of the City's goals of transparency and accessibility of public records, and compliance with public records requests. This Ordinance resolves a lawsuit involving the Office of the City Attorney. No community involvement or input was sought regarding this ordinance. The Office of the City Attorney has concluded that it is not appropriate to have community involvement in settlement negotiations regarding lawsuits against the City.

## 100% Renewable Goal

N/A

## Budget Office Financial Impact Analysis

This ordinance authorizes the settlement and payment of \$166,893 in attorney's fees for the Kessler case. Funding for the payment will come from the Legal Priorities Reserve fund.

## Agenda Items

289 Regular Agenda in [April 10-11, 2024 Council Agenda](https://www.portland.gov/council/agenda/2024/4/10)  
(<https://www.portland.gov/council/agenda/2024/4/10>)

Passed

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Yea

Mayor Ted Wheeler Yea