

RESOLUTION 18-15

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELLE ISLE, FLORIDA,
ADOPTING A POLICY GOVERNING REIMBURSEMENT OF PUBLIC OFFICERS AND
EMPLOYEES OF THE CITY FOR ATTORNEYS' FEES AND COURT COSTS; PROVIDING
FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.**

WHEREAS, the City Council finds that it is in the interests of the City, its residents, and the public welfare to adopt a policy governing when and under what circumstances public officers and employees of the City may request and receive reimbursement for attorneys' fees and court costs incurred in relation to an action arising out of performance of their official duties; and

WHEREAS, the authority and obligations of the City with respect to such reimbursement are prescribed and limited by statutes and the common law; and

WHEREAS, Section 111.07, Florida Statutes provides in relevant part:

Any agency of the state, or any county, municipality, or political subdivision of the state, is authorized to provide an attorney to defend any civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of any of its officers, employees, or agents for an act or omission arising out of and in the scope of his or her employment or function, unless, in the case of a tort action, the officer, employee, or agent acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

1 If any agency of the state or any county, municipality, or political subdivision of the state is
2 authorized pursuant to this section to provide an attorney to defend a civil action arising from a
3 complaint for damages or injury suffered as a result of any act or omission of action of any of its
4 officers, employees, or agents and fails to provide such attorney, such agency, county, municipality,
5 or political subdivision shall reimburse any such defendant who prevails in the action for court costs
6 and reasonable attorney's fees; and

7
8 **WHEREAS**, Section 286.011(7), Florida Statutes provides that, "Whenever any member of any board
9 or commission . . . is charged with a violation of this section and is subsequently acquitted, the board or
10 commission is authorized to reimburse said member for any portion of his or her reasonable attorney's
11 fees;" and

12
13 **WHEREAS**, in addition to the statutory provisions above, Florida courts have recognized the
14 common law doctrine whereby, "If a public officer is charged with misconduct while performing his [or her]
15 official duties and while serving a public purpose, the public has a primary interest in such a controversy and
16 should pay the reasonable and necessary legal fees incurred by the public officer in successfully defending
17 against unfounded allegations of official misconduct." *Ellison v. Reid*, 397 So. 2d 352, 354 (Fla. 1st DCA
18 1981); and

19
20 **WHEREAS**, a public officer's entitlement to attorneys' fees under the common law doctrine applies
21 to both civil and criminal proceedings and requires the public officer to demonstrate that 1) the action arises
22 out of or in connection with the performance of his or her official duties, and 2) the officer's underlying
23 actions are in a context serving a public purpose. *Maloy v. Board of County Com'rs of Leon County*, 946 So.
24 2d 1260 (Fla. 1st DCA 2007); and

1 **WHEREAS**, it is the intention of the City Council that the policy adopted in this Resolution implement
2 and be interpreted in accordance with the laws enunciated above and other relevant laws.

3
4 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLE ISLE, FLORIDA:**

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6 **SECTION 1: RECITALS.** The foregoing recitals are ratified and confirmed as being true and correct
7 and are hereby made a part of this Resolution.

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9 **SECTION 2: REIMBURSEMENT POLICY.** The City Council hereby adopts the following policy with
10 respect to reimbursement of City officers and employees for attorneys' fees and court costs (the "Policy"):

11
12 (a) **Reimbursement under F.S. 111.07:**

13
14 (1) In accordance with Section 111.07, Florida Statutes, the City is authorized to provide an
15 attorney to defend any civil action arising from a complaint for damages or injury suffered as a result of any
16 act or omission of action of any of its officers, employees, or agents for an act or omission arising out of and
17 in the scope of his or her employment or function, unless, in the case of a tort action, the officer, employee,
18 or agent acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard
19 of human rights, safety, or property.

20
21 (2) Further, if the City is authorized pursuant to this Policy to provide an attorney to defend a
22 civil action arising from a complaint for damages or injury suffered as a result of any act or omission of
23 action of any of its officers, employees, or agents and does not provide an attorney, the City shall reimburse
24 any such defendant who prevails in the action for court costs and reasonable attorney's fees.

1 (b) **Reimbursement under the Common Law:**

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3 (1) The City shall reimburse any of its public officers for reasonable attorneys' fees and court

4 costs incurred in successfully defending against any civil, criminal, ethics, or other similar proceeding,

5 including investigations, provided that 1) the proceeding arises out of or in connection with the performance

6 of the public officer's official duties, and 2) the public officer's underlying actions arise in a context that

7 serves a public purpose. Both of the foregoing prongs must be met for a public officer to be reimbursed.

8 For example, in the case of *Maloy v. Board of County Com'rs of Leon County*, 946 So. 2d 1260 (Fla. 1st DCA

9 2007), reimbursement was denied where even though a public officer successfully defended against ethics

10 charges arising in the context of his official duties, his underlying actions, i.e. having sexual relations with

11 staff members, did not serve a public purpose.

12

13 (2) Only public officers have a claim for reimbursement under this subparagraph (b), not

14 employees. In accordance with case law, "public officers are those persons to whom a portion of the

15 sovereign power has been delegated, whereas public employees neither hold nor are authorized to exercise

16 in their own right any sovereign power or any prescribed independent authority of a governmental nature."

17 *Lewis v. Evans*, 406 So. 2d 489 (Fla. 2d DCA 1981). The City's public officers include but are not limited to

18 members of the City Council and other official boards and commissions of the City.

19

20 (c) **Claimant must Prevail or Successfully Defend:** To be entitled to reimbursement under this

21 Policy, the employee or public officer seeking reimbursement must "prevail" or "successfully defend" in the

22 relevant proceedings. An employee or public officer prevails or successfully defends when 1) the action is

23 dismissed by the agency or person bringing the action without the employee or officer having been found

24 guilty of a violation; 2) the agency or court with jurisdiction over the action issues a decision finding the

25 employee or officer not guilty of a violation; or 3) in the case of a criminal, ethics, or other investigation by a

public agency, such agency determines not to bring charges or otherwise file a complaint against the

1 employee or officer. In the case of multiple charges or complaints, a person may be entitled to partial
2 reimbursement of attorneys' fees under this policy if he or she prevails or successfully defends against one
3 or more charges or complaints but not others, depending on the circumstances and provided that the
4 portion of the fees corresponding to such can be clearly established.

5
6 (d) **Documentation and Reasonableness of Fees:** The attorneys' fees, hours, and nature of
7 legal services provided must be clearly documented and reasonable. Attorneys' fees are reasonable if 1) the
8 fee reflects what is customarily charged by attorneys in Orange County for similar legal services, and 2) if
9 based on an hourly rate, the number of hours worked bears a reasonable relationship to the number of
10 hours that would typically be required by an attorney in Orange County to perform such legal services.

11
12 (e) **City Council Approval:**

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14 (1) Reimbursement of attorneys' fees and court costs under this Policy shall require approval by
15 the City Council prior to reimbursement.

16
17 (2) The City Council shall have discretion to approve payment of attorneys' fees and court costs
18 during or before the conclusion of the proceedings at issue if the City Council believes that the person
19 seeking reimbursement will ultimately be entitled to reimbursement under this Policy. However, in the
20 event that such person is ultimately determined not to be entitled to reimbursement under this Policy, he or
21 shall be required to reimburse the City for any funds received from the City.

22
23 (3) If the person seeking reimbursement is a member of the City Council, such member shall not
24 vote on the matter and shall recuse him/herself in accordance with Section 112.3143, Florida Statutes.

1 (f) **Procedure:**

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3 (1) Any person who believes that he or she will or may be entitled to attorneys' fees and court
4 costs under this Policy shall notify the City Manager in writing within 10 days of retention of an attorney.
5 Such notification shall include the reason for retention of the attorney and shall describe the fee
6 arrangement and rate.

7
8 (2) Within 30 days of the conclusion of the matter for which the person believes that he or she
9 is entitled to reimbursement of attorneys' fees and court costs, such person shall file a written request for
10 reimbursement with the City Manager containing the following:

- 11
- 12 • Name and address;
 - 13 • Description of the nature and results of the proceedings;
 - 14 • A description of each count, charge and/or allegation made or investigated;
 - 15 • The date(s) that the alleged violations are alleged to have occurred;
 - 16 • The case number or file number of the proceeding if such exists;
 - 17 • The person's position with the City at the time of the alleged violations;
 - 18 • A description of the reasons why the person believes that the request for reimbursement
 - 19 meets the criteria for reimbursement contained in this policy;
 - 20 • The name(s), address(es), and telephone number(s) of the attorney(s) representing the
 - 21 person in the relevant proceedings;
 - 22 • A description or copy of the fee arrangement between the person and his or her attorney(s);
 - 23 • A full accounting of all attorneys' fees incurred and all legal services rendered; and
 - 24 • Any other information requested by the City Manager or City Council.
- 25

1 The City Council shall consider a request for reimbursement within a reasonable time of receipt of the
2 written request and all information and documentation by the City Manager, including any additional
3 information or documentation that the City Manager or City Council may require.
4

5 **SECTION 3. SEVERABILITY.** If any section, subsection, sentence, clause, phrase, word or provision of
6 this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction,
7 whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct
8 and independent provision, and such holding shall not affect the validity of the remaining portions of this
9 Resolution.
10

11 **SECTION 4. CONFLICTS.** In the event of a conflict or conflicts between this Resolution or and any
12 other resolution or provision of law, this Resolution controls to the extent of the conflict, as allowable under
13 the law.
14

15 **SECTION 5. EFFECTIVE DATE.** This Resolution shall become effective immediately upon adoption by
16 the City Council of the City of Belle Isle, Florida.
17

18 **ADOPTED** this day of , 2018, by the City Council of the City of Belle Isle, Florida.

19 CITY COUNCIL

20 CITY OF BELLE ISLE

21 _____

22 ATTEST

Lydia Pisano, Mayor

23 _____

24 Yolanda Quiceno, City Clerk

APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY

STATE OF FLORIDA

COUNTY OF ORANGE

I, YOLANDA QUICENO, CITY CLERK OF BELLE ISLE, FLORIDA, do hereby certify that the above and foregoing Resolution 18-15 was duly and legally passed and adopted by the Belle Isle City Council in session assembled, at which session a quorum of its members were present on the _____ day of August 2018.

Yolanda Quiceno, City Clerk

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