

LRB-RESEARCH AND ANALYSIS SECTION

PUBLIC SAFETY COMMITTEE

ITEM 6, FILE # 061338

FEBRUARY 15, 2007

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File 061338 is a resolution reserving and appropriating up to \$282,000 from the 2007 Special Purpose Account-Damages and Claims Fund for the purpose of funding an additional Milwaukee Police Department officer recruit class in 2007.

Background

Damages and Claims Fund-Special Purpose Account (SPA)

1. Generally, court money judgments, settled litigation and other settled claims against the City are paid from the Damages and Claims Fund-Special Purpose Account.
2. Budgetary calculations for the Damages and Claims Fund SPA include consideration of past experience and estimates of risk and exposure based upon known claims and litigation. The numbers and types of claims that may arise in the future are unpredictable as is the potential course of litigation.
3. On several occasions over the last decade the amount of claims and awards against the Damages and Claims SPA has exceeded the balance available. On such occasions, resolutions have authorized the transfer of funds from the Common Council Contingent Fund.

Police Officer Recruit Classes

4. The 2007 Adopted Budget includes funds to reduce the average of police officer vacancies by approximately 40 from 2006 levels. It was anticipated that two recruit classes of from 50 to 55 candidates would be conducted in 2007 in order to achieve this lower vacancy rate. These classes were initially planned for mid-year (likely June) and the end of the year (likely December).
5. The number of officer vacancies in 2007 is now projected to be potentially higher due to smaller than expected recruit classes in 2006 and a greater than expected number of separations from employment. The rate of new vacancies during the last 6 pay periods of 2006 was 7 per pay period, nearly twice the expected rate.
6. It appears likely that new officer recruit classes will be scheduled earlier than anticipated and will likely begin in May or June and in August. This would allow for scheduling a 3rd class toward the end of the year.

Discussion

Damages and Claims

1. An unencumbered amount of \$1,061,569 was carried over from 2005 to 2006 in the Damages and Claims Fund SPA.
2. The 2006 Budget included an amount of \$1.875 million in the Damages and Claims Fund SPA.

3. The total in settlements, judgments and claims to be paid by the City in 2006 was \$1,087,274 according to reports filed by the Office of the City Attorney.
4. The Office of the Comptroller reports that an amount of \$1,723,445 remained in the Damages and Claims Fund SPA on December 31, 2006. This amount may be subject to adjustment. It is likely, however, that an amount greater than \$1.7 million will be available for carryover.
5. The 2007 Adopted Budget provides an amount of \$3.875 million in the Damages and Claims SPA, an increase of \$2.0 million from the amount budgeted in 2006. This was due to damages and claims of more than \$4.0 million awarded by the U.S. District Court for the Eastern District of Wisconsin in the case of *Alexander, et al v. City of Milwaukee, et al.* At the time the 2007 Budget was adopted, the *Alexander* litigation was pending on appeal to the U.S. 7th Circuit Court of Appeals through the end of 2006. The Circuit Court issued a ruling on the appeal on January 18, 2007, sending the matter back to District Court for new calculations of damages and claims.

Following a jury trial in March 2005, the plaintiffs were initially awarded \$2,198,500 in compensatory and punitive damages against the City. In addition, the Court awarded \$1,540,483 in economic damages. On August 29, 2005 the Court entered judgments totaling \$3,738,983. On February 3, 2006, the Court awarded attorney fees and costs to plaintiffs in the sum of \$427,701. The total of all damages, punitive awards, attorney fees and costs was \$4,167,684. A money judgment is generally subject to interest accumulation from the time the judgment is rendered.

The Circuit Court of Appeals affirmed the judgment of the district court with respect to liability, but reversed the District Court with regard to damages. The Circuit Court declined to award attorney fees or other costs of the appeal to any party.

Unless appealed further or settled, the issue of damages will be reheard by the District Court. The Court will likely take new evidence on compensatory damages related to the probability that police lieutenants would have been promoted to captain absent discrimination. The Court has been instructed to include calculations of the value of lost flextime and overtime in calculating compensatory damages; such calculations were not considered in the initial award. The Court of Appeals also instructed the District Court to consider the frequency of new captain position vacancies in determining when each of the 17 plaintiffs would have a promotional opportunity unimpeded by discrimination.

Recalculations of the probability of promotion and the likely date of an unimpeded chance at promotion will most likely lead to a reduction of the award of compensatory damages. Calculations that include lost flextime and overtime opportunities will likely result in an increase in the compensatory damages.

The Court of Appeals noted that the amount of punitive damages may have been affected by erroneous instructions to the jury on compensatory damages. The Court directed reconsideration of the apportionment of punitive damages to take into account the culpability of each individual defendant; the initial award of punitive damages was equally apportioned among the Fire and Police Commissioners and the Chief of Police. It is not clear whether reconsideration of punitive damages will result in a change in actual damages awarded. In fact, the Court noted that the punitive damages were low in comparison to other awards. Therefore, if the punitive damage issue is completely retried, the amount of exposure may be greater.

Assuming that the case is not settled, and the District Court recalculates an award of damages, there may be an award of additional attorney fees as well as interest on the new judgment that could be retroactive to the time of the initial award.

Recalculations of compensatory and punitive damages in *Alexander* appear to offer an opportunity for reducing the amount ultimately paid by the City. However, exposure to a new award for attorney fees, punitive damages and interest has the potential for maintaining or even increasing the amount above the initial award.

4. Exposure of the Damages and Claims SPA and the City is affected by litigation on appeal and the amount of new claims and cases that have been filed but have not yet been concluded or resolved. The most recent comprehensive summary of major matters either in litigation or where litigation is known to be under consideration are contained in a letter dated May 15, 2006 from the City Attorney to auditors. Subsequently, a case has been brought in federal court in the matter of *Jude v. City of Milwaukee*.

The possibility exists that these matters may result in total settlements and awards that exceed the amounts available in the Damages and Claims Fund SPA.

Officer Recruit Class

7. Given the higher than anticipated number of vacancies at the start of 2007, beginning a second class of police officer recruits earlier than planned should not require additional funding beyond the amounts budgeted for police Department salaries and fringe benefits.
6. According to figures provided by the Department of Administration-Budget and Management Office, the addition of 50 recruits in December of 2007 (following the graduation of the first class of 2007 recruits) would cost \$163,000 in salaries for 2 pay periods, \$55,658 in fringe benefits, and a total of \$62,500 in equipment and supplies.

Summary of Fiscal Impact

1. The total amount of budgeted and potential carryover funds available in the Damages and Claims Fund SPA for reservation, appropriation and expenditure in 2007 will likely exceed \$5.5 million.
2. Reasonably anticipated exposure of the Damages and Claims Fund SPA to amounts payable for settlement of claims and litigation and for satisfaction of monetary damage awards suggests that the SPA is adequately funded.
3. The addition of a class of 50 recruits for 2 pay periods at the end of 2007 will cost \$219,358 in salaries and fringe benefits and \$62,500 in equipment and supplies.

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