



Legislation Text

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990434
SUBSTITUTE 2

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Substitute resolution directing the City Attorney to institute legal action against the paint and lead pigment industry to recover damages to the City and its residents caused by lead-based paint.

- Analysis -

This resolution authorizes and directs the City Attorney to enter into a contingent agreement with a law firm or firms to investigate bringing legal action on behalf of the City against the paint and lead pigment industry to recover damages to the City and its residents caused by lead-based paint and, if appropriate, to commence such a lawsuit. Any agreement entered into by the City Attorney to retain legal representation for the City in this matter shall be subject to Common Council approval. The resolution specifies criteria to be used to select the law firm or firms. The City Attorney is directed to report his findings and recommendations to the Common Council by January 19, 2000.

The resolution expresses the intent of the Common Council that, to the greatest extent possible, any lawsuit proceeds should be expended for the benefit of persons who have been harmed by lead poisoning, to eradicate lead paint hazards in Milwaukee and to recover past public expenditures made to reduce lead poisoning and assist its victims.

Whereas, The United States Department of Health and Human Resources considers lead poisoning to be one of the most common and serious environmental diseases in young children in the United States, a disease that causes serious developmental damage to the mind and body of young children and that is completely preventable; and

Whereas, This disease is especially prevalent in Milwaukee, where almost 23 percent of children aged one to 5 years suffer dangerously elevated lead blood levels, although such high blood levels are found nationwide in just 4.4 percent of young children; and

Whereas, Over 176,500 Milwaukee housing units contain lead-based paint; and

Whereas, The single most important source of lead poisoning in children is lead paint; and

Whereas, As early as 1904, lead-painted surfaces were recognized as a source of children's lead poisoning, and the Journal of the American Medical Association (JAMA) identified lead paint in 1933 as the primary source of lead poisoning in children; and

Whereas, Although the toxicity of lead paint has been scientifically documented and well-known to the paint and lead pigment industry since the beginning of this century, such paint continued to be sold and promoted as safe until its residential use was banned in 1978; and

Whereas, The majority of lead pigment used in paint was manufactured between the 1920s and 1950s by 7 companies, none of which have been held responsible for their actions; and

Whereas, The largest manufacturers of lead pigment in the twentieth century, or their successors, continue to be profitable businesses which had combined net assets of about \$30 billion in 1995; and

Whereas, Lawsuits against paint manufacturers have been brought by the state of Rhode Island and several cities, including Boston, Philadelphia and Baltimore; and

Whereas, Although the tragic legacy of lead paint on the permanently stunted bodies, minds and futures of many Milwaukee children can never truly be quantified, the presence of lead paint in Milwaukee has required the City government to spend millions of dollars to identify lead-affected children and provide them with medical and educational services, as well as to remediate lead paint hazards in the City, and such expenditures will necessarily continue for many years into the future; and

Whereas, A lawsuit by the City of Milwaukee against the lead paint industry could recover monetary damages to defray such City expenditures; and

Whereas, Such a legal action would, if successful, enable the City to spend the proceeds for the benefit of persons who have been harmed by lead poisoning and to eradicate the lead paint hazards that permit lead poisoning to continue in Milwaukee; and

Whereas, The City Attorney has recommended that, if the Common Council wishes to proceed with such a lawsuit, the City should retain outside counsel on a contingency basis to investigate and, if appropriate, commence the lawsuit; and

Whereas, The Deputy City Attorney has advised the Public Safety Committee that, within 3 months, the City Attorney's office could interview interested law firms, evaluate them according to specific criteria and provide the Common Council with a recommendation concerning

instituting a suit and identifying the law firm or firms that should be retained to pursue such a suit; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the City Attorney is authorized and directed to enter into an agreement with a law firm or firms on a contingency basis to investigate bringing legal action on behalf of the City against the paint and lead pigment industry to recover damages to the City and its residents caused by lead-based paint and, if appropriate, to represent the City in such a lawsuit; and, be it

Further Resolved, That any agreement entered into by the City Attorney to retain a law firm or firms to represent the City in this matter shall be subject to Common Council approval; and, be it

Further Resolved, That the City Attorney shall select the law firm or firms based on the following criteria:

1. The firm's experience in suing lead-based paint manufacturers.
2. The firm's capacity to handle time consuming, complex and innovative litigation.
3. The firm's offer of a contingency-agreement proposal favorable to the City.
4. The firm's demonstrated ability to adequately address the issues raised in the City Attorney opinion of October 6, 1999.
5. The firm's adequate malpractice insurance.
6. Such other criteria as the City Attorney finds prudent and appropriate.

; and, be it

Further Resolved, That the City Attorney is directed to report the findings and recommendations of his office concerning selection of a law firm or firms and filing of a lawsuit to the Common Council by January 19, 2000; and, be it

Further Resolved, That, although the proceeds from a successful lawsuit should compensate any outside law firm on an appropriate basis for its time and effort, the Common Council expresses its intent that any proceeds from a successful lawsuit should be expended to the greatest extent possible for the benefit of persons who have been harmed by lead poisoning, to eradicate the lead paint hazards that permit lead poisoning to continue in Milwaukee and to recover past public expenditures made to reduce lead poisoning and assist its victims.

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