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RESOLUTION NO. 2015-73

A RESOLUTION OF WELLINGTON, FLORIDA'S COUNCIL
ADOPTING A POLICY FOR REIMBURSEMENT OF
ATTORNEYS' FEES AND COSTS INCURRED BY CITY
OFFICIALS, ADVISORY BOARD MEMBERS AND
EMPLOYEES IN SUCCESSFULLY DEFENDING ETHICS
COMPLAINTS.

WHEREAS, from time to time municipal public officials, advisory board members and employees are required to retain the services of a private attorney to defend against complaints brought pursuant to the State Code of Ethics or the Palm Beach County Code of Ethics; and

WHEREAS, numerous municipalities and Palm Beach County have adopted policies authorizing reimbursement of attorneys' fees and costs incurred in successfully defending ethics complaints filed against public officials, advisory board members and employees; and

WHEREAS, the Village Council desires to adopt a reimbursement policy for its public officials, advisory board members and employees.

NOW, THEREFORE, BE IT RESOLVED BY WELLINGTON, FLORIDA'S COUNCIL that:

SECTION 1. The foregoing recitals are hereby affirmed and ratified.

SECTION 2. The Wellington Council hereby adopts the reimbursement policy attached to this resolution as Exhibit A.

SECTION 3. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this 24th day of September, 2015.

ATTEST:

WELLINGTON

By: Awilda Rodriguez
Awilda Rodriguez, Clerk

By: Bob Margolis
Bob Margolis, Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: Laurie Cohen
Laurie Cohen, Village Attorney

REIMBURSEMENT POLICY FOR DEFENDING ETHICS COMPLAINTS

AUTHORITY

This Reimbursement Policy is authorized by Resolution No. R2015-73

POLICY STATEMENT

It is the policy of the Village Council to have a method in place for processing requests for reimbursement of attorney's fees and costs expended in successfully defending ethics complaints. This policy applies to present and former Village public officials, employees, agents and board appointees.

PURPOSE

To establish a policy for reimbursement of present and former Wellington public officials, advisory board members, employees, and agents for reasonable attorneys' fees and costs incurred in successfully defending or prevailing in an action concerning the Florida Code of Ethics and the Palm Beach County Code of Ethics. This policy is intended to apply prospectively.

SECTION 1. DEFINITIONS

- A. **Reasonable Attorney's Fees** shall mean fees earned by an attorney or attorneys licensed to practice law in the State of Florida, based on the customary hourly rate charged in Palm Beach County Florida, for similar work performed by private non-appointed attorneys within the County.
- B. **Successfully Defend or Prevail** shall mean the dismissal, the finding of not guilty, a verdict in favor of the persons covered herein, or a letter of instruction issued in lieu of the finding of a violation. A failure to successfully defend or prevail against one or more counts, charges and/or allegations shall not affect the application of the policy to other counts, charges and/or allegations which were successfully defended or against which the officer or employee prevailed.

SECTION 2. REIMBURSEMENT OF ATTORNEY'S FEES AND COSTS

Subject to Section 6, the Village Council shall reimburse present and former Village officials, public officers, employees and agents, including appointees of boards and committees, for the reasonable attorney's fees and costs incurred by them after successfully defending or prevailing in actions concerning the Florida Code of Ethics, chapter 112, part III, *Florida Statutes*, or the Palm Beach County Code of Ethics, as either may be amended from time to time provided that such actions arose out of and in connection with their official duties and serves a public purpose. The decision to make payment shall be subject to final approval by the Village Council and appropriate budget allocation.

SECTION 3. REQUEST FOR REIMBURSEMENT

Any person who believes that he or she is entitled to payment for reasonable attorney's fees and costs pursuant to the provisions of this policy shall first notify the Village through its Attorney in writing, within ten (10) days of retaining private counsel. Notification shall include the reason for retention of the private attorney, and shall include a copy of the fee agreement or engagement letter. Thereafter, should fees and costs exceed \$10,000, such person shall immediately notify the Village Attorney in writing that the threshold has been exceeded and shall establish good cause therefore.

At the conclusion of the matter, the person requesting reimbursement shall file a written request for reimbursement of such fees or costs with the Village attorney. This request shall set forth the following information:

- A. The name and current address of the person making the request;
- B. A description of the entity that conducted the investigation or proceeding;
- C. Case number or file number, if known or available;
- D. A description of each count, charge, or allegation made or investigated;
- E. The date(s) that the incidents are alleged to have occurred;
- F. The person's office or position of employment with the Village on the dates described in paragraph E above;
- G. The reasons why such person believes that the request meets the criteria set forth in this policy, and reasons why his or her fees and costs should be reimbursed by the Village
- H. The name, address and telephone number of the attorney or attorneys who represented such person against the counts, charges or allegations described in paragraph D above;
- I. A copy of the fee arrangement or agreement between the person and his or her attorney, the amount of attorney's fees and costs paid for defense against the counts, charges, or allegations described in paragraph D above; and
- J. Such other information as the Village Council or the Village Attorney may reasonably require.

SECTION 4. NOTICE

The Village Council shall be advised by the Village Attorney of receipt of a written request for reimbursement of attorney's fees and costs, as set forth in Section 3 above. The Village Attorney may request such additional relevant information from the applicant as deemed necessary to a full evaluation of the claim

SECTION 5. INSURANCE

Prior to presenting any request for reimbursement of Attorney's fees and costs, the Village Attorney shall determine whether coverage for such amounts is afforded by any policy of insurance carried by the Village. Only those sums not paid by any policy of insurance carried by the village shall be presented to Council.

SECTION 6. DISCIPLINE AND TERMINATION PROCEEDINGS

This policy does not address or pertain to employee discipline or termination proceedings. In the event such discipline or termination proceedings occur concurrently with the issues or proceedings described above, such discipline or termination proceedings shall not affect the application of this policy to the above described non-discipline or non-termination issues or proceedings.

SECTION 7. RIGHT TO REPRESENTATION FOR OFFICIAL DUTIES

This policy is in addition to and is not intended to replace all common law rights of public officials and employees to legal representation at the public expense for litigation arising out of the performance of their official duties while serving a public purpose.

SECTION 8. APPLICABILITY TO PROCEEDINGS FILED PRIOR TO EFFECTIVE DATE

This policy shall apply to alleged ethics violations filed in any judicial or administrative tribunal on or after the date of adoption of this Policy.

Council

Anne Gerwig, Mayor
Michael Drahos, Vice Mayor
John T. McGovern, Councilman
Michael J. Napoleone, Councilman
Tanya Siskind, Councilwoman

Manager

Paul Schofield

Village Attorney

Laurie Cohen

November 13, 2018

David Cominsky
Property & Liability Manager
P.O. Box 538135
Orlando, FL 32853-8135

RE: Request for Reimbursement of Legal Fees – Anne Gerwig

Dear Mr. Cominsky:

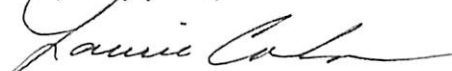
Please allow this correspondence to serve as a claim on behalf of Mayor Anne Gerwig of the Village of Wellington for reimbursement of legal fees incurred by her related to an ethics complaint brought against her.

It is my understanding that the Village of Wellington's insurance policy with the Florida League of Cities may cover these fees. The policy requires that the individual seeking reimbursement be a public official and receive a favorable outcome on the ethics claim. Both of these conditions have been met for the claim being submitted.

I have enclosed copies of the Public Report showing no probable cause and copies of statements for legal services rendered in connection with the Complaint.

Should you require any additional information or documentation, please do not hesitate to contact me.

Very truly yours,


Laurie S. Cohen

LSC:mp
Enclosures

Cc: Mayor Anne Gerwig

DATE FILED

OCT 24 2018

**BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS**

COMMISSION ON ETHICS

In re ANNE GERWIG,

Respondent.

Complaint Nos. 16-139 & 16-158
(cons.)

PUBLIC REPORT

Based on the preliminary investigation of these complaints and on the recommendation of the Commission's Advocate, the Commission on Ethics finds that there is no probable cause to believe Respondent, while serving as the Mayor of the Village of Wellington, Florida, violated Section 112.313(3), Florida Statutes, by acting in her official capacity to purchase services from a business that she owns with her husband, Alan Gerwig and Associates, Inc.; finds that there is no probable cause to believe the Respondent violated Section 112.313(6), Florida Statutes, by using her position to obtain additional work for a business entity operated by a business associate of her husband; and finds that there is no probable cause to believe Respondent violated 112.313(7)(a), Florida Statutes, by having a conflicting employment or contractual relationship with an entity doing business with or regulated by the Village of Wellington, as alleged in the complaints. In addition, based on the investigation, the Commission rejects the recommendation of its Advocate and finds that there is no probable cause to believe Respondent violated Section 112.3143(3)(a), Florida Statutes, by voting on matters which would inure to her special private gain or the special private gain of any principal by whom she and her husband's company, Alan Gerwig and Associates, Inc., is retained and/or by failing to file a public record in a memorandum disclosing the nature of her conflict of interest, as alleged in the complaints.

Accordingly, these complaints are dismissed with the issuance of this public report.

ORDERED by the State of Florida Commission on Ethics meeting in executive session on
Friday, October 19, 2018.

October 24, 2018
Date Rendered


Guy W. Norris
Chair, Florida Commission on Ethics

GWN/cmk

cc: Mr. Emmett Mitchell, IV and Mr. Richard E. Coates, Attorneys for Respondent
Mrs. Elizabeth A. Miller, Commission Advocate
Mr. Robert Margolis and Mr. Bart Novack, Complainants