

# Memorandum

## City of Lawrence

### City Attorney's Office

**TO:** David Corliss, City Manager

**FROM:** Maria Kaminska, Assistant City Attorney

**DATE:** August 29, 2013

**RE:** Recoupment Fees

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#### **I. Introduction**

The City Attorney's Office recommends passing [Ordinance No. 8898](#), which adds a subsection to the Court Costs ordinance, City of Lawrence, Kan., Code § 12-105 (July 1, 2013). The new section permits a Municipal Court Judge to order recoupment fees to help offset the city's expenses for: (1) public defender fees, and (2) jail fees assessed in municipal court. Each fee is discussed separately below.

#### **Public Defender Fees**

##### **a. Current spending for appointed legal services**

Courts have a Constitutional obligation to appoint legal counsel for indigent defendants who are financially unable to afford hiring an attorney, provided the judge believes the defendant may be incarcerated if found guilty. K.S.A. 12-4405 provides lockstep protection by requiring municipal court judges to appoint counsel. *See also* K.S.A. 22-4504 (providing guidance in determining whether a defendant is indigent).

In 2012, the City paid \$102,827.50 to a combination of vendors providing legal services for indigent defendants. Between January 1, 2013 to July 31, 2013, the City paid approximately \$51,818.39<sup>1</sup> for appointed counsel. No portion of this amount has been reimbursed because recoupment fees for legal services have never been ordered.

##### **b. Authorities supporting a public defender fee**

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<sup>1</sup>Douglas County District Court paid approximately the same amount last year. Sixty percent of criminal and traffic cases required appointed counsel, totaling approximately \$102,200,000 in expenses; 100% of juvenile offender cases required appointed counsel, totaling approximately \$10,200.00.

By statute, if a defendant is appointed counsel and convicted, he or she may be required to reimburse the city for all or part of the costs of counsel and other defense services.<sup>2</sup> K.S.A. 12-4509(g) provides:

In addition to or in lieu of any other sentence authorized by law, whenever a person is found guilty of the violation of an ordinance the judge may order such person to reimburse the city for all or a part of the reasonable expenditures by the city to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

The following is a sample of cities having some form of this reimbursement requirement upon conviction:

1. Salina (Sec. 23-3[f]) (identical language to K.S.A. 12-4509[g] above).
2. Topeka (2.110.610) [f]) (identical language to K.S.A. 12-4509[g] above); see also 2.110.010 (b)(3) ("If the defendant is convicted and, unless waived or reduced for good cause by the judge, court-appointed attorney fees shall be assessed by the court against a defendant in each case in which a municipal court judge appoints counsel for said defendant.").
3. Olathe (Charter Ord. 67[f]) ("A fee may be assessed against the defendant upon conviction in each case for which the Municipal Court Judge appoints counsel). The fee is \$100, as set by Resolution No. 05-1033, Section 6.<sup>3</sup>
4. Baldwin City (9-108[b]) ("As part of the court costs, the Municipal Court shall also assess to the Defendant, if convicted, the amount of attorney fees and costs expended by the City if the Defendant was represented by court-appointed counsel. In determining the amount and method of payment of such sum, the court shall take into account the financial resources of the Defendant, and the nature of the burden that payment of such sum will impose . . ."). The municipal court judge assesses the fee, which ranges from

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<sup>2</sup> Compare K.S.A. 22-4513, which permits a district court to order convicted defendants to reimburse appointed counsel costs unless the court finds they are financially unable. The fee may be later waived if the court finds the defendant is not willfully in default.

<sup>3</sup> Olathe reports that it has collected \$15,499.56 in public defender fees so far this year; \$26,368.00 in 2012; and \$27,000.00 in 2011. The amount goes into the City's general fund, which is used to pay the public defender.

\$200 on a first driving while suspended charge to \$500 for a trial, in accordance with uncodified guidelines.

5. Wichita (Sec. 1.04.210) (court must appoint counsel to indigent defendants and may order payment upon conviction; ordinance provides fee schedule for determining amount of compensation for appointed counsel).

Note that the City Attorney's Office recommends assessing a fee upon conviction *or* diversion, which would be a slight modification in the language of surrounding cities. But because appointed counsel often provides legal services to help an offender obtain diversion, the fee should likewise apply.

### **c. Conclusion**

Because the Municipal Court Judge is authorized to assess reimbursement costs, and because cities of comparable size authorize municipal judges to order reimbursement, it is the opinion of the City Attorney's Office that Lawrence should pass Ordinance No. 8898, which assigns in part a public defender fee to an indigent defendant appointed counsel by the Municipal Court Judge, and who is either found guilty or enters into a diversionary agreement with the city prosecutor. The language in the proposed ordinance provides the necessary discretion to the court for defendants who are unable to pay by requiring the court to consider the financial resources of a defendant, and permits the court to later waive the fee if the defendant is not willfully in default.

## **Jail Fees**

### **a. Current language for jail fees**

Jail fees were added to the City Code in 2007, and the Municipal Court Judge, like now, was required to assess daily jail fees. The current language was inserted in 2010 after being unanimously adopted on first reading and later appearing on the consent agenda without objection.

The current daily fee for an offender sentenced to jail is \$72.41 as established by the fine schedule. City of Lawrence, Kan., Code § 12-105 (July 1, 2013). Upon review of this ordinance, it is our recommendation that language be amended to allow judicial discretion in ordering fees.

### **b. Authority supporting a jail fee amendment**

The Kansas Supreme Court has previously considered the necessary elements for a valid reimbursement requirement. In *State v. Casady*, 289 Kan. 150 (2009), the court considered the validity of the BIDS fee statute, K.S.A. 22-4529, which required indigent defendants to pay a \$100 public defender fee upfront and before obtaining appointed counsel. The court upheld the statute's constitutionality because, in short, the district court had discretion both in assessing

the initial fee and in later reducing or waiving the previously assessed \$100 amount. *Casady*, 289 Kan. at 158.

The proposed amendment provides this discretion.

**c. Conclusion**

To comport with *Casady*, the City Attorney's Office recommends that the Court Costs ordinance be amended to provide the necessary discretion for the Municipal Court Judge. This discretion, as provided in the proposed language, contains the key requirement that the judge must consider the financial ability of the defendant to pay the daily jail fees, and permits the judge to later waive the fee if the defendant is not willfully in default.

**Action Requested:**

Adopt on first reading, Ordinance No. 8898, establishing discretion for a Municipal Court Judge to order recoupment fees for convicted defendants who have been appointed counsel and/or served jail time for which the City incurred costs.