

**\*\*\*ATTACHMENTS\*\*\***

**CITY OF SHEBOYGAN**

**REQUEST FOR FINANCE AND PERSONNEL CONSIDERATION**

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**ITEM DESCRIPTION:** R.O. No. 67-18-19. Ricky Van der Vaart v. City of Sheboygan

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**REPORT PREPARED BY:** Thomas D. Cameron, Assistant City Attorney

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**REPORT DATE:** July 5, 2018

**MEETING DATE:** July 9, 2018

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**FISCAL SUMMARY:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

**STATUTORY REFERENCE:**

Wisconsin Statutes: N/A  
Municipal Code: N/A

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**BACKGROUND / ANALYSIS:**

Mr. Van der Vaart was terminated and then re-hired after a hearing before the Salary and Grievance Committee. After he was rehired, he filed a complaint with the Wisconsin Department of Workforce Development Equal Rights Division, arguing that he was discriminated against because of a disability. The compliant sought two days of holiday pay, health insurance reimbursement, and attorney fees (incurred for both the City's grievance process and the Equal Rights Division process). The City had agreed to provide health insurance reimbursement even before he filed his complaint. During the Equal Rights Division process the City paid the two days of holiday pay.

Multiple attempts to settle attorney fees issue were unsuccessful.

**STAFF COMMENTS:**

Following briefing, the Administrative Law Judge ordered that the City pay approximately \$17,500 in attorney's fees, which was less than half of the \$39,000 requested by counsel for Mr. Van der Vaart. The City has made this payment, and complied with all requirements set forth in the Administrative Law Judge's decision.

**ACTION REQUESTED:**

Motion to file.

**ATTACHMENTS:**

- I. R.O. No. 67-18-19
- II. Ricky Van der Vaart v. City of Sheboygan, ERD # CR201502953

II

4.7

R. O. No. 67 - 18 - 19. By ASSISTANT CITY ATTORNEY. July 2, 2018.

Submitting, as a matter of record, a copy of the Wisconsin Department of Workforce Development Equal Rights Division's decision in the matter of Ricky Van der Vaart v. City of Sheboygan, ERD # CR201502953, which was issued on May 9, 2018, and became final on May 30, 2018. The City has complied with the Compliance Report requirements set forth in the decision.

Finance + Personnel

\_\_\_\_\_  
Assistant City Attorney

Department of Workforce Development  
Equal Rights Division  
HEARING & MEDIATION SECTION  
819 N 6th St Rm 723  
Milwaukee WI 53203-1687  
Telephone: (414) 227-4385  
FAX: (414) 227-4981  
TTY: (414) 227-4081  
(TTY-Hearing Impaired Callers)

STATE OF WISCONSIN  
  
Department of Workforce Development

Scott Walker, Governor  
Raymond Allen, Secretary

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## CERTIFICATION

I, Karen Pierce, Legal Assistant for the Hearing & Mediation Section of the Equal Rights Division, hereby certify that the attached copy of the decision in the matter of Ricky Van Der Vaart v. City of Sheboygan, ERD #CR201502953 issued on May 9, 2018 is an exact copy of the original decision on file with the Equal Rights Division.



Karen Pierce  
Hearing & Mediation Section  
Equal Rights Division

**received**  
5-14-18

Department of Workforce Development  
Equal Rights Division  
HEARING & MEDIATION SECTION  
819 N 6th St Rm 723  
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Scott Walker, Governor  
Raymond Allen, Secretary

Ricky Van Der Vaart  
6666 South 12<sup>th</sup> Street  
Sheboygan WI 53081  
Complainant

vs.

City of Sheboygan  
828 Center Avenue #204  
Sheboygan WI 53081  
Respondent

**NOTICE OF APPEAL RIGHTS**

**REVIEW BY THE LABOR AND  
INDUSTRY REVIEW COMMISSION**

Re: ERD Case No. CR201502953  
EEOC Case No. 26G201602953

The attached decision is a final decision. Any party who is dissatisfied with the attached Decision and Order of the Administrative Law Judge (or with earlier non-final decisions which could not be appealed until a final order was entered) may file a written petition for review by the Labor and Industry Review Commission.

The Petition for Review must be received by the Equal Rights Division within twenty-one (21) days from the date of the decision, or the decision will become final.

The Petition for Review should be mailed, faxed or brought to the Equal Rights Division at one of these addresses:

Equal Rights Division  
Hearing & Mediation Section  
819 North Sixth Street, Room 723  
Milwaukee, Wisconsin 53203  
FAX: (414) 227-4981

Equal Rights Division  
Hearing & Mediation Section  
201 East Washington Ave., Room A100  
PO Box 8928  
Madison, Wisconsin 53708  
FAX: (608) 267-4592

Petitions filed by facsimile transmission shall be considered filed on the next business day if they are received after 4:30 pm or on a day when the offices are closed. (Sec. DWD 218.25(1)(b), Wis. Admin. Code)

A copy of the Petition for Review should be mailed to each of the other parties.

Dated and Mailed:

cc: Complainant  
Respondent, Attn: Thomas Cameron, Asst. City Attorney  
Anthony J. Resimius, Attorney for Complainant  
EEOC

Attachment

**STATE OF WISCONSIN  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
EQUAL RIGHTS DIVISION**

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Ricky Van Der Vaart  
6666 S 12TH ST  
Sheboygan, WI 53081,

Complainant.

Vs.

**DECISION**  
ERD CASE NO. CR201502953  
EEOC CASE NO. 266201602953

City of Sheboygan  
828 Center Ave #204  
Sheboygan, WI 53081,

Respondent.

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Procedural History.

On October 23, 2015, the Complainant filed a complaint with the Equal Rights Division (ERD) alleging that the Respondent violated the Wisconsin Fair Employment Act, sections 111.31-111.397, Stats., by terminating him on the basis of his disability, which he described as a "back condition."

The complaint referenced and incorporated the findings of an Independent Hearing Officer (IHO) who had conducted a hearing on Mr. Van Der Vaart's grievance before the Salaries and Grievance Committee of the Sheboygan Common Council. The IHO made a finding that the complainant was a person with a disability as defined under the Wisconsin Fair Employment Act, that a reasonable accommodation existed and that the City of Sheboygan had failed to show that the accommodation created a hardship. The IHO recommended reinstatement of Mr. Van Der Vaart and back pay, which recommendation the City adopted.

The ERD complaint requested relief in the form of health and dental benefits in the amount of \$1,911.12, vacation pay in the amount of \$560.64 and attorney's fees from December 31, 2014, forward.

On December 9, 2016, an Equal Rights Officer issued an initial determination which found that there was probable cause to believe that the Respondent had violated the Wisconsin Fair Employment Act by discriminating against the complainant in the terms and conditions of employment due to disability and terminating the complainant's employment due to disability.

The matter was then referred to an administrative law judge for a hearing on the merits of the complaint.

Prior to hearing, both parties agreed that the respondent had since paid the health and dental benefits and vacation pay. The respondent stipulated to a finding of discrimination. Both parties agreed that the sole issue to be decided by the administrative law judge was the propriety and/or amount of attorneys' fees to be awarded to complainant's counsel.

Complainant's position is that he is entitled to attorneys' fees from December 31, 2014, through the filing of briefs associated with the ERD case for a total sum of \$39,067.

Respondent's position is that complainant is entitled to no attorneys' fees prior to the filing of the ERD complaint (in other words, no fees for any work related to the grievance before the Salaries and Grievance Committee of the Sheboygan Common Council). Furthermore, the respondent objects to many of the detailed billings after the ERD complaint was filed, ultimately conceding that attorneys' fees of "approximately \$9,000" are justified for complainant's counsel.

#### Entitlement to Attorneys' Fees

Both parties agree with the principle that a complainant who prevails in a discrimination case filed with the Equal Rights Division is entitled to an award of reasonable attorneys' fees, a principle adopted by the Wisconsin Supreme Court in *Watkins vs. LIRC*, 117 Wis. 2d 753, 345 N.W.2d 482(1984).

The first issue to be resolved in this case, however, is whether the complainant is entitled to attorneys' fees for representation of the complainant at an ancillary proceeding in which issues similar to those litigated through the ERD process were heard.

The issue of whether a complainant is entitled to attorney's fees for prosecuting what amounts to a discrimination case in a forum other than one recognized as a forum which allows for a prevailing complainant to be awarded attorneys' fees was addressed in *Duello vs. Board of Regents*, 176 Wis. 2d 961 (1993). Theresa Duello was represented by counsel in proceedings before the University of Wisconsin-Madison's Committee on Faculty Rights and Responsibilities (CFRR) challenging the University of Wisconsin-Madison Medical School's Department of Anatomy's decision not to renew her employment contract which she alleged was due to sex discrimination. The dispute was ultimately settled, and Duello sought to recover the attorney's fees she incurred in the CFRR proceedings.

The Wisconsin Supreme Court ultimately determined that Duello was not entitled to attorney's fees for representation before the Committee on Faculty Rights and Responsibilities:

[W]e conclude that the language and reasoning of the *Carey* opinion [*New York Gaslight Club, Inc. vs. Carey*, 447 U.S. 54 (1980)], as well as public policy, control our decision in this case that Duello is not entitled to recover her attorney's fees for the optional state administrative proceedings before the CFRR [Committee on Faculty Rights and Responsibilities]. *Carey* specifies that Title VII allows the recovery of attorney's fees only for those administrative proceedings which claimants are required to invoke before filing a court action.

*Duello vs. Board of Regents*, 176 Wis. 2d 961(1993)

The Wisconsin Labor and Industry Review Commission (LIRC) has similarly disallowed requested attorneys' fees for work not associated with the actual Equal Rights case for which there was a pending fee petition. In *Racine Education Association vs. Racine Unified School District*, LIRC, 1/17/89], LIRC disallowed a request for fees for work not directly associated with the Equal Rights case:

[T]he respondent correctly points out that reimbursement for time spent corresponding with the United States Equal Employment Opportunity Commission should be disallowed, as this relates to the complainant's federal claim and not to her claim before the commission... The commission agrees.

In fact, the Commission in the above case eliminated any fee request which could not directly be tied to work on the Equal Rights case;

[T]here are several items for which the complainant requests payment that must be disallowed. For example, the \$183.71 amount dubbed "previous balance" cannot reasonably be considered related to work on the petition for review and must be disallowed.

LIRC similarly disallowed attorney fee requests in *Leroy Fields vs. Cardinal TG Co.* (LIRC, 2/16/2001) which were not related to the ERD claim:

Next, the commission disallows the entry for April 4, 2000, which reads, "Phone call with Attorney Dawn Harris re: EEOC contact; Review file re: damages issues for conciliatory agreement; legal research re: caps on damages; confer with RLI re: same (.25)." Clearly anything involving the complainant's federal claim is not reimbursable through these proceedings.

LIRC reached the same conclusion in *Venneman vs. UW-LaCrosse*, (LIRC, 12/17/09):

The respondent also objects to .6 hours of the 1.5 hours requested by co-counsel for February 2009 as being attributed to telephone calls and communication with the EEOC and unrelated to this proceeding. Venneman's complaint was cross-filed with the EEOC. In *Fields v. Cardinal TG Co.* (LIRC, 02/16/01), the commission held that attorney's fees or costs involving the complainant's federal claim is not reimbursable through the proceedings before the ERD.

Caselaw in Wisconsin has consistently held that attorney's fees are not recoverable for work not directly involving a complainant's claim in an Equal Rights proceeding. As such, the attorney's fees requested by Mr. Vander Vaart for representation at his grievance proceeding cannot be awarded.

It should be noted that there was nothing preventing the complainant from filing an ERD claim simultaneously with his grievance proceeding and having the two proceedings track together. The complainant's election to proceed with the grievance matter first was his personal choice.

As a result, all legal work not associated with work related to the ERD case must be disallowed. In this case, all billing entries beginning with October 22, 2015 (the day before the ERD complaint was filed) are considered associated with the ERD case.

### Attorney's Fees for Work on ERD Claim

In calculating reasonable attorney fees, the most useful starting point is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This figure is commonly referred to as the "lodestar" figure. *Hensley v. Eckerhardt*, 461 U.S. 424, 31 FEP Cases 1169 (1983). A reasonable fee is calculated according to the prevailing market rates in the relevant community. It is anticipated that, along with the fee petition, the attorney requesting payment will submit affidavits from other attorneys in the locality establishing that the requested rates are in line with those prevailing in the community for similar services for lawyers of comparable skill, experience and reputation. An hourly rate determined based on such affidavits is normally deemed to be reasonable.

The attorney fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates. *Olson vs. Philips Plating* (LIRC, 2/11/92).

The complainant's attorneys submitted detailed billing statements for their work on the case. These included billing notations from Attorney Anthony J. Resimius (AJR on the billing statements), Attorney Kyle Borkenhagen (KGB on the billing statements) and Attorney Lili Behm (LCB on the billing statements).

Attorney Resimius earned his J.D. in 2002 and billed at a rate of \$260 per hour for 2015, \$275 for 2017 and \$300 per hour in 2018.

Attorney Borkenhagen earned his J.D. in 2010 and billed at a rate of \$175 per hour in 2016, \$250 per hour for 2017, and \$275 per hour for 2018

Attorney Behm earned her J.D. in 2015 and billed at a rate of \$200 per hour.

In reviewing the detailed billing statements for complainant's counsel, there appears to be a various entries in which are duplicative in that they represent interoffice discussions between attorneys about the case for which both attorneys submitted bills, or in which multiple attorneys performed the identical action and both billed for the same action. For example, on February 22, 2017, Attorneys Resimius and Borkenhagen discussed the case and mediation and both billed .5 hours. On November 6, 2017, Attorneys Behm and Resimius both reviewed the scheduling order and both billed for this activity.

LIRC took the following approach with respect to duplicative attorneys' fees in *Geen vs. Stoughton Trailers*, (LIRC, 8/8/2008):

While one approach would be to equally reduce the hours of each attorney, the commission concludes that in this situation it is more appropriate to simply allow the hours claimed by Attorney Haber for May 19 and May 21 and to disallow the hours sought by Attorney Schwartz for those dates.

In other words, LIRC took the approach of *allowing* the billing of one attorney where a unnecessary duplication of attorney services took place and *disallowing* the other attorney's fees.

Following this precedent, the following time entries are therefore eliminated or reduced;

02/02/2016	KGB	.20 hours	35.00
04/20/2016	KGB	1.10 hours	192.50
12/13.216	CLP	.30 hours	30.00
02/21/2017	KGB	.50 hours	125.00
02/22/2017	KGB	.50 hours	125.00
04/03/2017	KGB	.30 hours	75.00
04/04/2017	KGB	.20 hours	50.00
06/02/2017	AJR	.20 hours	60.00
06/02/2017	KGB	.30 hours	75.00
06/09/2017	AJR	.20 hours	60.00
06/23/2017	KGB	.20 hours	50.00
09/28/2017	KGB	.10 hours	25.00
10/18/2017	LCB	1.40 hours	280.00
11/6/2017	AJR	.30 hours	90.00
11/07/2017	KGB	.40 hours	100.00
11/08/2017	AJR	.30 hours	90.00
11/09/2017	KGB	.10 hours	25.00
11/10/2017	LCB	.70 hours	140.00
11/16/2017	CLP	.10 hours	10.00
11/20/2017	LCB	1.0 hours	200.00
11/21/2017	KGB	.20 hours	50.00
11/22/2017	LCB	.20 hours	40.00
11/28/2017	LCB	.50 hours	100.00
12/05/2017	KGB	.40 hours	100.00

12/07/2017	LCB	3.1 hours	620.00 (reduction)
12/13/2017	CLP	.10 hours	10.00
12/13/2017	LCB	.10 hours	20.00
12/18/2017	KGB	.70 hours	175.00
12/19/2017	LCB	.60 hours	120.00
12/22/2017	KGB	.10 hours	25.00
01/04/2018	LCB	.40 hours	80.00 (reduction)
01/08/2018	KGB	1.40 hours	385.00
01/12/2018	LCB	.90 hours	180.00
02/20/2018	KGB	.40 hours	110.00

There is also the issue of Attorney Behm coming into the case and having to spend time reviewing the file and getting "up to speed" on the matter, all of which time was billed, even though there were already two attorneys on the case and the two attorneys already on the case had "reviewed the file" and attendant materials. A reduction or elimination of such fees is appropriate. *Vallo v. Great Atlantic & Pacific Tea Co.*, 16 F.E.P. 967, 969-71 (W. D. PA July 7, 1997) (a fee reduction is appropriate where there is overlapping work when new lawyers take over a case in mid-stream).

As a result, these entries are eliminated:

10/20/2017	LCB	1.10 hours	220.00
10/23/2017	LCB	.60	120.00

Finally, an excessive amount of time was spent by Attorney Behm on the fee petition, which consists of affidavits, a copy of a transcript, detailed billing and a history of the case. Attorney Behm compiled 19 hours on the fee petition through February 20, 2018, Attorney Borkenhagen added 2.3 hours on the fee petition and Attorney Resimius added 1.0 hours for a total of 22.3 hours on a document that is comprised mostly of documents that were either photocopied or printed up by accounting. As a result, the following entries are eliminated:

02/21/2018	LCB	5.5 hours	1,1000.00
02/22/2018	LCB	5.6 hours	1,120.00

### Enhancement of Attorney's Fee Award

Complainant's counsel requests a 50% increase in attorney's fees based upon the outcome that it achieved for the complainant. In this regard, LIRC has stated that no enhancement for risk is appropriate unless the applicant for fees is able to show that without such a risk adjustment, the complainant would have faced substantial difficulties in finding counsel in the local or other market. *Olson vs. Phillips Plating* (LIRC, 2/11/92). There has been no showing that the complainant would have faced substantial difficulties in obtaining counsel for representation in his case.

LIRC has also found a multiplier to the amount of attorney's fees award to be appropriate where a novel or difficult issue presented itself in the case *Toonen vs. Brown County*, (LIRC, 10/31/86). The facts of this case did not present a particularly unique or challenging set of circumstances.

In addition, it is noteworthy that, by the time the ERD complaint was filed, the complainant had already been reinstated, had already been issued backpay from the respondent and had been promised health/dental payment upon the submission of certain documentation. The reality was that the case was all but over by the time the ERD case was filed.

Under the circumstances, an enhancement of the attorney's fees cannot be justified.

### Summary

When the complainant filed his ERD complaint, he had already been reinstated to his job with back pay via the grievance procedure. The only remaining issues were health/dental payment, which was resolved shortly after the ERD complaint was filed, and the payment for holiday pay, which was also resolved.

The substantive legal matters that were handled by counsel during the ERD complaint consisted of a mediation and a fee petition.

With the finding that no legal fees were payable through the ERD claim for work prior to October 22, 2015, and with reduction or elimination of fees as explained above, the final amount of attorneys' fees to be awarded to complainant's counsel is determined to be \$17,491.50.

Based upon the Stipulation of the Parties, the Administrative Law Judge makes the following

### CONCLUSIONS OF LAW

- 1.) Ricky Van der Vaart was an employee of the City of Sheboygan.
- 2.) The City of Sheboygan is an employer for purposes of the Wisconsin Fair Employment Act.
- 3.) Ricky Van Der Vaart is a person with a disability as that term is used for purposes of the Wisconsin fair Employment Act.

4.) Ricky Van der Vaart established by a preponderance of the evidence that that the City of Sheboygan discriminated against him in the terms and conditions of employment by failing to accommodate his disability in violation of the Wisconsin Fair Employment Act.

5.) Ricky Van der Vaart established by a preponderance of the evidence that that the City of Sheboygan discriminated against him by terminating his employment on the basis of his disability in violation of the Wisconsin Fair Employment Act.

Based upon the Stipulation of the Parties and the Conclusions of Law, the Administrative Law Judge enters the following

**ORDER**

1.) The Respondent shall cease and desist from discriminating against the Complainant on the basis of his disability.

2.) The Respondent has made the Complainant whole for all lost wages and benefits incurred as a result of its unlawful discrimination against the Complainant and no further backpay shall be awarded.

3.) The Respondent shall pay the complainant's reasonable attorney's fees and costs incurred in pursuing this matter in the amount of \$17,491.50. A check in that amount shall be made payable to the law firm of RohdeDales and delivered to the firm.

5.) Within 30 days after the date that this Order becomes final, the Respondent shall submit a compliance report to the Equal Rights Division detailing the actions that it has taken to comply with this. The compliance report shall be directed to the attention of Administrative Law Judge Amanda Tollefsen, 819 N. 6<sup>th</sup> St., Room 725, Milwaukee, WI 53203. It should be noted that for every day that the Respondent fails to comply with a final order, a daily forfeiture of not less than ten dollars nor more than one hundred dollars may be imposed pursuant to Wis. Stats. 111.395 and 103.005(11) and (12).

Dated in Milwaukee, Wisconsin: \_\_\_\_\_

MAY 09 2018

  
\_\_\_\_\_  
John C. Gelhard  
Administrative Law Judge

C.C.  
Complainant  
Respondent  
Atty Anthony Resimius  
Atty Thomas D. Cameron  
EEOC

**CITY OF SHEBOYGAN**

**REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** Res. No. 50-18-19 by Alderpersons Rindfleisch and Bohren. A Resolution to authorize a transfer of appropriations in the 2018 Budget.

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**REPORT PREPARED BY:** Nancy Buss, Finance Director

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**REPORT DATE:** July 3, 2018

**MEETING DATE:** July 9, 2018

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**FISCAL SUMMARY:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

**STATUTORY REFERENCE:**

Wisconsin Statutes: N/A  
Municipal Code: N/A

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**BACKGROUND / ANALYSIS:**

The Fire Department received a contribution from Alliant Energy Foundation for fire fighting supplies. The transfer will establish the \$1,000 increase in the General Fund Fire Department 2018 budget.

The Fire Department received a contribution from Sheboygan County to recalibrate equipment. The transfer will establish the \$1,040 increase in the General Fund Fire Department 2018 budget.

The Common Council approved Gen. Ord. No. 5-18-19 authorizing a change in the zoning classification of vacant land located on North 15<sup>th</sup> Street from Class Urban Commercial to Class Urban Residential. The change in zoning will allow for residential development in the area. The Planning Department is working with Ehlers and Associates Inc to establish a tax incremental district. The transfer will establish the appropriation in the 2018 Capital Project budget for planning services.

**STAFF COMMENTS:**

WI State Statutes requires no funds may be expended and no liabilities incurred by the city or any department unless authorized. The resolution will establish the appropriation in the 2018 budget for the contracts.

**ACTION REQUESTED:**

Motion to recommend the Common Council approve Res. No. 50-18-19 by Alderpersons Rindfleisch and Bohren authorizing a transfer of appropriations in the 2018 budget.

**ATTACHMENTS:**

- I. Res. No. 50-18-19.

III

5.6

Res. No. 50 - 18 - 19. By Alderpersons Rindfleisch and Bohren.  
July 2, 2018

A RESOLUTION to authorize a transfer of appropriations in the 2018 Budget.

RESOLVED: That the Finance Director be and is hereby authorized and directed to make the following transfers of appropriations in the 2018 Budget for the purposes of:

Establish appropriation for contribution from Alliant Energy Foundation for Fire Department fire-fighting supplies.

<u>FROM</u>	<u>TO</u>	<u>AMOUNT</u>
General Fund Contributions 10122100-467101	General Fund Fire Department Supplies 10122100-530500	\$1,000

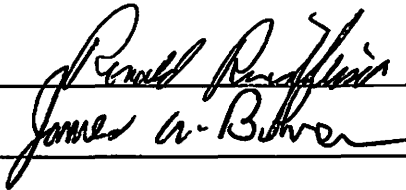
Establish appropriation for contributions from Sheboygan County for Fire Department to recalibration equipment.

<u>FROM</u>	<u>TO</u>	<u>AMOUNT</u>
General Fund Contributions 10122100-467101	General Fund Fire Department Safety Equipment 10121100-530256	\$1,040

*Finance + Personnel*

Establish appropriation to enter into contract for TIF 19 planning.  
The advance will be repaid with interest from future increment.

<u>FROM</u>	<u>TO</u>	<u>AMOUNT</u>
General Fund Advance to TIF 19 101-253000	TIF 19 Capital Project Fund Contractor Services 42961100-521900	\$11,600

  
\_\_\_\_\_  
  
\_\_\_\_\_

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the  
Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_.

Dated \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, City Clerk

Approved \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, Mayor

**CITY OF SHEBOYGAN**

**REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** Modify the Table of Organization for the Department of Public Works

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**REPORT PREPARED BY:** Sandy Rohrick, Director of Human Resources and Labor Relations

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**REPORT DATE:** July 3, 2018

**MEETING DATE:** July 9, 2018

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**FISCAL SUMMARY:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

**STATUTORY REFERENCE:**

Wisconsin Statutes: N/A  
Municipal Code: Chapter 82

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**BACKGROUND / ANALYSIS:**

A recent evaluation of staffing and support needs took place at the Wastewater Treatment Plant due to a recent retirement. The greatest needs at this time include engineering support in the mapping of wastewater flow throughout the city of Sheboygan.

**STAFF COMMENTS:**

This action supports both the current needs of the department and maintains the identified 2018 and projected 2019 budget.

**ACTION REQUESTED:**

Motion to approve the G.O. N. 6-18-19, modifying the Table of Organization for the Department of Public Works, removing the Process Systems and Operations Coordinator, and replacing the position with an Engineering Technician.

**ATTACHMENTS:**

- I. GO No. 6-18-19 identifying changes to the Department of Public Works
- II. Job Description: Engineering Technician

~~X~~

7.1

Gen. Ord. No. 6 - 18 - 19. By Alderperson Rindfleisch. July 2, 2018.

AN ORDINANCE amending the supplement to Section 82-33 of the Sheboygan Municipal Code so as to amend the positions in the Department of Public Works, Wastewater Treatment Division, and the Engineering Division in the Department of Public Works Table of Organization.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. The supplement to Section 82-33 of the Sheboygan Municipal Code on file in the City Clerk's office, entitled "List of Classes and Class Specifications," is hereby amended so that Section B. 5 and B.6. is amended as follows:

Class Title	Class Grade	NO. of Employees
B. DEPARTMENT OF PUBLIC WORKS		
<b>Delete:</b>		
5. Process Systems and Operations Coordinator	MW5	01
6. Engineering Division Engineering Technician	K	01
<b>Add:</b>		
6. Engineering Division Engineering Technician	K	02

*Frances Personnel*

Section 2. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance and attached revised job descriptions shall be in effect from and after its passage and publication.

  
\_\_\_\_\_

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dated \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, City Clerk

Approved \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, Mayor



## Job Description

**Job Title:** Engineering Technician

**Department:** Public Works

**Date Issue:** 06/2018

**Reports To:** City Engineer

**Classifications:** Non – Exempt

**Wage:** Salary Grade K

## Position Summary

Under general direction, performs a variety of responsible semi-professional engineering tasks of a complex nature which require a high sense of responsibility and initiative to work independently without supervision and to work from oral and written instructions.

## Essential Duties & Responsibilities

1. Serves as chief of field crew as needed and acts as instrument man.
2. Completes final drawings consistent with engineering determinations and with a minimum check for technical adequacy.
3. Drafts and prepares plans and drawings used in construction of sewers, curbs and gutters, and street work from field notes, rough sketches, old drawings, and oral instructions to put designs, plans, and specifications into acceptable form.
4. Works in close support with the design engineer to develop the details of form and relationship of components, and recommends and makes routine design changes where necessary.
5. Makes special plans, traces, profiles, and sections for public works projects, and performs special drawings, drafting projects, detailed investigations and studies for other departments.
6. May maintain file records and reports, answer public inquiries, interpret drawings and plans when requested, and figure special assessment charges.
7. Inspects the work of private contractors and City work forces and provides documentation of this construction, including lab tests.
8. Helps coordinate with the winter snow removal.
9. Performs other related work as required.

## **Qualification Requirements**

Working knowledge of basic departmental procedures, policies, practices, and related municipal codes.

Proficiency in mathematics, reading charts, graphs, and construction plans.

High level of accuracy and proficiency in interpreting and compiling legible records and data and ability to collate and summarize data and prepare reports.

Working knowledge of surveying principles and ability to interpret plat field notes.

Ability to establish and maintain effective working relationships with the public, contractors, and other departments. Possession of a valid Wisconsin Motor Vehicle Operator's license in good standing and an insured automobile for use on the job.

## **Experience**

The following is a list of preferred experience:

- Experience in conventional and robotic total stations and global positioning systems (preferably Leica and/or Trimble)
- Experience in data collection and data collection software (preferably Leica and/or Trimble)
- Experience in construction laser levels
- Experience in Civil 3D
- Experience in Municipal government and public works projects a plus
- Experience in Collecting/editing/processing GPS data
- Experience in editing, creating, analyzing, and updating both spatial and non-spatial data
- Proficiency with Esri GIS software suite (ArcMap/Pro, Catalog, etc.)
- Knowledge of SQL database and enterprise geodatabase design and management
- Familiarity with schemas and/or data dictionaries

## **Education**

Associate's Degree in Civil Engineering Technology or closely related field is required.

## DRAFT

### Job Description

<b>Job Title:</b>	<b>Engineering Technician</b>	<b>Department:</b>	Public Works
<b>Date Issue:</b>	06/2018	<b>Reports To:</b>	City Engineer
<b>Classifications:</b>	Non – Exempt	<b>Wage:</b>	Salary Grade K

### Position Summary

Under general direction, performs a variety of responsible semi-professional engineering tasks of a complex nature which require a high sense of responsibility and initiative to work independently without supervision and to work from oral and written instructions.

### Essential Duties & Responsibilities

1. Serves as chief of field crew as needed and acts as instrument man.
2. Completes final drawings consistent with engineering determinations and with a minimum check for technical adequacy.
3. Drafts and prepares plans and drawings used in construction of sewers, curbs and gutters, and street work from field notes, rough sketches, old drawings, and oral instructions to put designs, plans, and specifications into acceptable form.
4. Works in close support with the design engineer to develop the details of form and relationship of components, and recommends and makes routine design changes where necessary.
5. Makes special plans, traces, profiles, and sections for public works projects, and performs special drawings, drafting projects, detailed investigations and studies for other departments.
6. May maintain file records and reports, answer public inquires, interpret drawings and plans when requested, and figure special assessment charges.
7. Inspects the work of private contractors and City work forces and provides documentation of this construction, including lab tests.
8. Helps coordinate with the winter snow removal.
9. Performs other related work as required.

## **Qualification Requirements**

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## **Education**

Associate's Degree in Civil Engineering Technology or closely related field is required.

**CITY OF SHEBOYGAN**

**REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION**

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**ITEM DESCRIPTION:** R.O. No. 305-17-18 (R.C. No. 300-17-18) is a claim from Acuity Insurance on behalf of Heather and David Andrews for alleged vehicle damages. R.O. No. 304-17-18 (R.C. No. 299-17-18) is a claim from State Farm Insurance on behalf of Robert Littlefield for alleged damages to his vehicle. R.O. No. 337-17-18 is a claim from Mr. Scott Stoelb for alleged property damages. R.O. No. 28-18-19 is a claim from Mr. David McNabb for alleged damages to his vehicle. R.O. No. 29-18-19 is a claim from Mr. David Umberger for alleged damages to his vehicle. R.O. No. 43-18-19 is a claim from Mr. Dylan Martens for alleged damages to his vehicle.

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**REPORT PREPARED BY:** Laurie Suhrke, Auditor/Analyst

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**REPORT DATE:** June 26, 2018

**MEETING DATE:** July 9, 2018

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**FISCAL SUMMARY:**

**STATUTORY REFERENCE:**

Budget Line Item: N/A  
Budget Summary: N/A  
Budgeted Expenditure: N/A  
Budgeted Revenue: N/A

Wisconsin Statutes: N/A  
Municipal Code: N/A

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**BACKGROUND / ANALYSIS:**

City staff has reviewed the following claims:

Claim No. 32-17 was received on February 20, 2018 from Acuity Insurance, 2800 South Taylor Drive, Sheboygan, WI 53081 on behalf of Heather and David Andrews, 1630 North 2<sup>nd</sup> Street, Sheboygan, WI 53081. The claim is for \$4,272.06 in alleged damages to the Andrews' vehicle.

Claim No. 33-17 was received on March 5, 2018 from State Farm Insurance, PO Box 106172, Atlanta, GA 30348 on behalf of Robert Littlefield, 317 Hidden Ridges Court, Combined Locks, WI 54113. The claim is for \$572.22 in alleged damages to Mr. Littlefield's vehicle.

Claim No. 43-17 was received on April 2, 2018 from Scott Stoelb, 1124 Logan Avenue, Sheboygan, WI 53081. The claim is for \$120.00 for property damage allegedly caused by a tree that fell.

Claim No. 03-18 was received on May 8, 2018 from David McNabb, 214 Bonnie Lane, Kewaskum, WI 53040. The claim is for \$2,350.00 for alleged damages to Mr. McNabb's vehicle.

Claim No. 04-18 was received on May 11, 2018 from David Umberger, 704 Union Avenue, Sheboygan, WI 53081. The claim is for \$221.00 for alleged damages to Mr. Umberger's vehicle.

Claim No. 07-18 was received on May 22, 2018 from Dylan Martens, 1937 Iowa Avenue, Sheboygan, WI 53081. The claim is for \$67.50 for alleged damages to Mr. Martens' vehicle.

**STAFF COMMENTS:**

Per Res No. 64-17-18 the City staff has reviewed and denied the following claims: Claim No. 43-17 Scott Stoelb, Claim No. 03-18 David McNabb, Claim No. 04-18 David Umberger, and Claim No. 07-18 Dylan Martens.

Per Res No. 64-17-18 the City staff has reviewed and settled the following claims: Claim No. 32-17 Acuity Insurance on behalf of Heather and David Andrews in the amount of \$3,204.05 and Claim No. 33-17 State Farm Insurance on behalf of Robert Littlefield in the amount of \$572.22.

**ACTION REQUESTED:**

Motion to recommend the Common Council file R.O. No. 337-17-18, R.O. No. 28-18-19, R.O. No. 29-18-19, and R.O. No. 43-18-19 as the claims have already been denied pursuant the authority granted by the Common Council in Res No. 64-17-18.

Motion to recommend the Common Council file R.O. No. 305-17-18 (R.C. No. 300-17-18) and R.O. No. 304-17-18 (R.C. No. 299-17-18) as the claim has already been settled pursuant the authority granted by the Common Council in Res No. 64-17-18.

**ATTACHMENTS:**

- I. R.O. No. 305-17-18 (R.C. No. 300-17-18)
- II. R.O. No. 304-17-18 (R.C. No. 299-17-18)
- III. R.O. No. 337-17-18
- IV. R.O. No. 28-18-19
- V. R.O. No. 29-18-19
- VI. R.O. No. 43-18-19

II

4.7

R. O. No. 305 - 17 - 18. By CITY CLERK. March 5, 2018.

Submitting a claim from Acuity Insurance for alleged damages to their insured vehicle, owned by Heather and David Andrews, that occurred on January 16, 2018.

*Finance +  
Personnel  
of new council*

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CITY CLERK

IV

5.25

R. C. No. 300 - 17 - 18. By FINANCE AND PERSONNEL COMMITTEE.  
April 4, 2018.

Your Committee to whom was referred R. O. No. 305-17-18 by City Clerk submitting a claim from Acuity Insurance for alleged damages to their insured vehicle, owned by Heather and David Andrews, that occurred on January 16, 2018; recommends referring to Finance and Personnel Committee of the new council.

*Finance Personnel  
2018 2019*

James A. Bohy  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dated \_\_\_\_\_ 20\_\_\_\_, \_\_\_\_\_, City Clerk

Approved \_\_\_\_\_ 20\_\_\_\_, \_\_\_\_\_, Mayor

II

4.6

R. O. No. 304 - 17 - 18. By CITY CLERK. March 5, 2018.

Submitting a pending claim from State Farm Mutual Automobile Insurance Company for alleged damages to their insured (Robert Littlefield) on February 11, 2018.

*Finance  
Personnel  
Finance + personnel  
of new Council*

\_\_\_\_\_  
CITY CLERK

VI

5.24

R. C. No. 299 - 17 - 18. By FINANCE AND PERSONNEL COMMITTEE.  
April 4, 2018.

Your Committee to whom was referred R. O. No. 304-17-18 by City Clerk submitting a pending claim from State Farm Mutual Automobile Insurance Company for alleged damages to their insured (Robert Littlefield) on February 11, 2018; recommends referring to Finance and Personnel Committee of the new council.

*Finance + Personnel  
2018-2019*

*James A. Bly*  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Dated \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, City Clerk

Approved \_\_\_\_\_ 20\_\_\_\_. \_\_\_\_\_, Mayor

II

4.1

R. O. No. 331-17-18. By CITY CLERK. April 16, 2018.

Submitting a claim from Scott Stoelb for alleged damages to the gutters on his house when a neighbor's tree fell on it during a windstorm.

*Finance +  
Personnel  
2018-2019*

\_\_\_\_\_  
CITY CLERK

II

3.1

R. O. No. 28 - 18 - 19. By CITY CLERK. May 21, 2018.

Submitting a claim from David McNabb for alleged damages to his vehicle when it struck a low hanging branch of a tree in the median.

*Finance +  
Personnel*

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CITY CLERK

II

3.2

R. O. No. 29 - 18 - 19. By CITY CLERK. May 21, 2018.

Submitting a claim from David Umberger for alleged damages to front right alignment of his vehicle from street conditions on North 6<sup>th</sup> Street.

Final Oct  
Personnel

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CITY CLERK

II

3.8

R. O. No. 43 - 18 - 19. By CITY CLERK. June 4, 2018.

Submitting a claim from Dylan Martens for alleged damages to the tire of his vehicle when he drove over nails by the construction site between 8<sup>th</sup> Street and New Jersey Avenue.

*Finance +  
Personnel*

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CITY CLERK