

BILL NO. 1137

ORDINANCE NO. 1051

Sponsor: Councilman Taylor

AN ORDINANCE OF THE CODE OF ORDINANCES OF THE CITY OF
BLACK JACK, MISSOURI CONSENTING TO DEFENSE OF THE CITY PURSUANT TO A
RETAINER AGREEMENT BETWEEN CURTIS, HEINZ, GARRETT & O'KEEFE, P.C.,
JOHN F. MULLIGAN, JR. AND HOWARD PAPERNEER AS COUNSEL AND THE ST. LOUIS
COUNTY MUNICIPAL LEAGUE IN CONNECTION WITH LITIGATION BROUGHT
AGAINST THE CITY BY KIMBLE ET AL.

WHEREAS, the City desires to consent to a Retainer Agreement between Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr. and Howard Paperner as counsel and the St. Louis County Municipal League in connection with litigation brought against the City by Kimble, et al.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK JACK, ST. LOUIS COUNTY, MISSOURI AS FOLLOWS:

SECTION 1: The City consents to being defended pursuant to the Retainer Agreement in the form attached hereto as Exhibit A, and the Mayor is authorized to execute the Consent To Representation form attached hereto as Exhibit B on behalf of the City and the City Clerk is authorized and directed to attest thereto if required. The Retainer Agreement and Consent as executed shall be in substantially the form of Exhibits A and B, with such changes therein as shall be approved by the officers of the City executing same, consistent with the provisions and intent of this Ordinance and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor and his or her designated representatives are hereby authorized and directed to take any and all actions necessary, desirable, convenient or proper in order to carry out the intent of this Ordinance, the matters herein authorized, and the rights and duties of the City under the Retainer Agreement.

SECTION 2: Emergency Clause. Considering the need to have legal representation to protect the City's interest and the fact that responsive pleadings are due in the near future, this ordinance is passed as an emergency measure, and the City Council does, by the vote which this ordinance is passed, hereby declare an emergency exists, which makes it imperative that this ordinance should become effective forthwith in order that the public health, welfare and safety might most effectively be provided for, pursuant to Section 78.220 RSMo.

SECTION 3: This Ordinance shall become effective upon its passage and approval as provided by law.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BLACK JACK,
ST. LOUIS COUNTY, MISSOURI, THIS 2nd DAY OF APRIL, 2013.

Norman C. McCourt, Mayor

ATTEST:

Karen E. Robinson, MRCC/CMC
City Clerk

APPROVED THIS 2nd DAY OF APRIL, 2013.

APPROVED AS TO LEGAL FORM:

Sheldon K. Stock, Special Counsel

RETAINER AGREEMENT

The St. Louis County Municipal League (hereinafter “The League”) hereby retains Curtis, Heinz, Garrett & O’Keefe, P.C., John F. Mulligan, Jr., and Howard Paperner as Counsel to represent and defend member cities (1) that are not being provided defense by their respective insurers in the matter of *Kimble et al v. Jefferson City, et al.* now pending in the U.S. District Court for the Western District of Missouri (“the Litigation”); and (2) consent to such representation, as well as any other member cities that elect such representation. The League understands that Curtis, Heinz, Garrett & O’Keefe, P.C., John F. Mulligan, Jr., and Howard Paperner will provide representation pursuant to a Co-Counsel Agreement, a copy of which is attached hereto. Curtis, Heinz, Garrett & O’Keefe, P.C., John F. Mulligan, Jr. and Howard Paperner agree to provide services to The League and its members competently and diligently, to exercise professional judgment, and to respond promptly to reasonable requests for information about the matters covered by this Agreement.

The Litigation will include any substantially similar matter that may be re-filed in state or federal court by the same plaintiffs’ attorneys upon dismissal of the current matter. Aside from the foregoing, The League understands that no other claims, lawsuits or matters are covered by this Retainer Agreement. Further, The League understands that it may notify Curtis, Heinz, Garrett & O’Keefe, P.C., John F. Mulligan, Jr., and Howard Paperner if it becomes aware of additional claims and causes of action against any of its members, and that Curtis, Heinz, Garrett & O’Keefe, P.C., John F. Mulligan, Jr., and Howard Paperner shall have the authority to, but are not obligated to, defend such additional claims identified by The League.

The League understands that each of its members retain direction and control of the representation as to their respective interests, while The League retains the ability to monitor and coordinate the overall representation of its members pursuant to this agreement, all in accordance with the limitations of the rule of professional conduct including but not limited to Rule 4-5.4.

ATTORNEYS’ FEES/COSTS

The League agrees it will pay attorneys’ fees to Curtis, Heinz, Garrett & O’Keefe, P.C., John F. Mulligan, Jr., and Howard Paperner as follows:

The League agrees to pay fees equal to the time value of services based upon the amount of time devoted to the Litigation measured in increments of 1/10 of an hour multiplied by the applicable hourly rates of the involved attorneys, paralegals and clerks. Time devoted to the Litigation shall include all efforts, including but not limited to court appearances, document preparation, planning, coordination, supervision, meetings, telephone calls, correspondence, e-mail, and travel. The hourly rates are as follows:

Curtis, Heinz, Garret & O’Keefe, P.C. Partners and John F. Mulligan, Jr. and
Howard Paperner - \$250.00/hr.

Curtis, Heinz, Garrett & O’Keefe, P.C. Associates - \$150.00/hr.

Counsel are not able to quote a precise fee to The League, given the nature of the matter, the uncertainty of when and how it will be resolved, the unpredictable impact of other parties and lawyers, and other factors. However, Counsel recognize and agree to cooperate with the attorneys defending other cities in the Kimble matter in order to make the representation efficient and cost-effective.

In the event municipalities that are not members of The League also engage the professional services of Counsel regarding the Litigation, separate from the engagement hereunder, the fees billed to The League and such other non-member municipalities shall be apportioned based upon the respective amounts claimed in the initial demand letters submitted in connection with the Litigation against the group of League-member municipalities represented and such other separate non-member municipalities.

The League will pay all amounts owed within thirty days of the date of each billing statement. Interest shall accrue and be paid at the rate of nine percent (9%) per year, or the maximum lawful rate, whichever is less, on all amounts not paid within thirty days of the date of the billing statement. The League also agrees to pay all costs incurred in collecting any amounts not paid on a timely basis.

The League further agrees that Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and Howard Paperner may divide attorneys' fees pursuant to the provisions of the Co-Counsel Agreement.

The League understands that Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and Howard Paperner may have to pay certain costs in order to properly represent The League in these matters. These costs may include, but are not limited to, filing fees, fees for service of process and subpoenas, expert witness fees, consultant fees, accountant and auditor fees, data processing fees, stenographer fees, computer research fees, computer programming fees, travel and lodging expenses, copying charges, settlement administration fees, notice costs, and all other charges associated with an investigation, litigation and/or settlement. The League agrees to reimburse Counsel for such costs. Whenever practicable, Counsel will try to get the opposing parties to repay for these costs as part of the services provided hereunder.

SETTLEMENT

No settlement of claims against a City will be made without the City's approval. The League does not have rights as to settlement approval; but should be informed of any proposed settlement and have the right to confer with or advise cities regarding such matters.

TERMINATION

The League understands that it is free at any time to discharge Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and/or Howard Paperner from representing its members by a signed, written letter executed by a duly authorized representative. However, if The League chooses to discharge Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and Howard Paperner, counsel are under no obligation to find a replacement or to continue representation of member cities.

The League agrees that Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and/or Howard Paperner may, upon giving advance written notice, seek to terminate their involvement in these matters for any reason, including if (a) the representation requires taking a position contrary to the rules of professional conduct, or (b) The League or its members employ counsel who interferes in, disagrees with, does not defer to, or obstructs the handling of these matters by Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and/or Howard Paperner, or (c) The League or its members fail to cooperate with Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and/or Howard Paperner in any manner whatsoever. If Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and/or Howard Paperner terminate their involvement under any of these circumstances, they shall retain the right to recover their costs and fees for their services from The League.

PUBLICITY

The Litigation is a matter of public interest. The League understands that Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and/or Howard Paperner may make recommendations to it and its members concerning such publicity. Based on the public need to know the law and the facts of the Litigation, The League agrees to reasonably cooperate with such efforts.

MISCELLANEOUS

The League recognizes that no result has been guaranteed by Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., or Howard Paperner and that this Retainer Agreement is not based upon any such promise or anticipated result. The League further acknowledges that its members are exclusively responsible for all liability, or potential liability, awarded against them by a court as part of the Litigation and that, by undertaking to represent The League pursuant to this Retainer Agreement, Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and Howard Paperner assume no such joint and/or individual liability.

This Agreement constitutes the entire agreement between the parties with regard to the subject matters contained herein, and all prior and contemporaneous negotiations and understandings between the parties shall be deemed merged into the Agreement. No waiver, modification or amendment of the terms of this Agreement shall be valid or binding unless in writing, signed by all parties, and then only to the extent set forth in such written waiver, modification or amendment, and subject to any required Court approval.

The parties may execute this Agreement in counterparts and execution in one or more counterparts shall have the same force and effect as if all parties had signed the same instrument. If any provision of this Agreement is held by a court of competent jurisdiction to be void, voidable, unlawful or unenforceable, the remaining portions of this Agreement will remain in full force and effect.

This Agreement shall be governed by and construed according to the laws of the State of Missouri, regardless of any contrary choice-of-law provisions.

ST. LOUIS COUNTY MUNICIPAL LEAGUE
By And Through Its Authorized Representative

CARL LUMLEY, President, By And On
Behalf Of Curtis, Heinz, Garrett & O'Keefe,
P.C.

JOHN F. MULLIGAN, JR.

HOWARD PAPERNEER, PC
By Howard Paperner, President

CITY CONSENT TO REPRESENTATION

The undersigned City consents to being defended and represented pursuant to the foregoing agreement by Counsel in the Litigation and shall be bound by and comply with its terms and conditions. The representation shall be limited to claims applicable to 2010.

The City agrees to make full and honest disclosures to Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and Howard Paperner of all facts relevant to these matters, including any new facts that may arise. The City further agrees to notify Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and Howard Paperner within ten (10) days if it retains or employs additional counsel to monitor, participate in, negotiate, or provide legal services in connection with the Litigation, or otherwise engages counsel to act upon any of the matters covered by the Agreement.

The City understands that it has the responsibility to keep Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and Howard Paperner informed of any significant changes in its circumstances. The City will promptly inform Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and Howard Paperner if it should receive any settlement offers, documents or other communications directly from the claimants in the Litigation, their attorneys, or any third-parties in regard to these matters. The City understands that, as its counsel, Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and Howard Paperner are to participate in all such communications with regard to these matters, and that they are the only counsel authorized to negotiate or act on its behalf with regard to these matters.

The City also understands that its employees and representatives may have to appear in court, to attend depositions, to produce documents and/or to provide information, and it will assist and cooperate with Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and Howard Paperner to the fullest extent possible in their representation of The City's interests in these matters.

The City also understands that the claims against it are also brought against other cities and that in making any decisions concerning the claim(s), Counsel and The City must consider, in addition to The City's own interests, the interests of such other cities. In the event The City enters into a settlement that is not recommended by Counsel, or withholds support from or otherwise objects to a group settlement that is recommended by Counsel, The City recognizes that Curtis, Heinz, Garrett & O'Keefe, P.C., John F. Mulligan, Jr., and/or Howard Paperner reserve the right to withdraw as counsel if they believe the terms of the proposed settlement do not adequately address the interests and claims of the other cities, or the actions of the City undermine, interfere with or otherwise prevent a group settlement believed to be fair and reasonable by Counsel.

THE CITY OF BLACK JACK, MISSOURI,
By and Through its Authorized Representative