

**RESOLUTION NO. 41-13**

**A RESOLUTION APPROVING THE PAYMENT OF LEGAL EXPENSES FOR ETHICS COMPLAINTS UNDER THE CITY CODE OF ETHICS.**

WHEREAS, City Council adopted the Code of Ethics by Ordinance No. 07-59 on April 10, 2007, creating the Independent Ethics Commission for the purpose of rendering recommendations and advisory opinions on ethical issues; and

WHEREAS, the Independent Ethics Commission has jurisdiction to investigate complaints and make recommendations to City Council regarding ethics complaints involving an elected official, an appointee including members of boards, committees, and commissions appointed by City Council, the President of Council or the Mayor, or an independent contractor; and

WHEREAS, City Council has determined that elected officials, appointees including members of boards, committees, and commissions appointed by City Council, the President of Council and the Mayor should be represented by legal counsel at the City's expense subject to a full reservation of the City's right to reimbursement for all legal expenses if the subject is found to have committed a violation of the City's Code of Ethics.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Any elected official, appointee including members of boards, committees, and commissions appointed by City Council, the President of Council or the Mayor, who is the subject to an investigation as a result of a complaint(s) brought before the Independent Ethics Commission pursuant to the City Code of Ethics § 1.3.101 et seq., upon the Independent Ethics Commission's finding that it has jurisdiction over the complaint(s) and that the complaint(s) is non-frivolous, is entitled to independent legal representation of their choice at the City's expense, subject to the limitations herein. The amount of legal expenses paid for by the City shall not exceed ten thousand dollars (\$10,000.00) per investigation unless good cause is shown to exceed this limit. City Council shall have sole discretion to determine whether good cause exists to extend the payment of legal expenses beyond the ten thousand dollar (\$10,000.00) limit. No decision with regard to legal expenses may be appealed or challenged.

Section 2. The term "legal expenses" shall include attorney fees, witness fees, stenographer fees, investigator fees, and other direct costs in connection with defending the individual against an ethics complaint.

Section 3. Requests for payment of legal expenses shall be submitted to the City and, once verified, paid within ten (10) days, subject to the monetary limitations of Section 1.

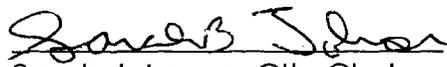
Section 4. Before the City shall pay any such legal expenses, the subject party shall acknowledge in writing the City's full reservation of right to reimbursement for all legal expenses if the subject is found to have committed a violation of the City's Code of Ethics.

Section 5. Within thirty (30) days of the expiration of exhaustion of all rights to appeal any final decision by City Council concerning the ethics complaint, a subject party found to have committed a violation of the City's Code of Ethics shall be required to reimburse the City for all legal expenses paid by the City for the subject's defense.

DATED at Colorado Springs, Colorado this 9<sup>th</sup> day of April, 2013.

  
\_\_\_\_\_  
Scott Hente, Council President

ATTEST:

  
\_\_\_\_\_  
Sarah Johnson, City Clerk



**FORMAL AGENDA ITEM**

**COUNCIL MEETING DATE:** April 9, 2013

**TO:** President and Members of City Council

**CC:** Mayor Steve Bach

**VIA:** Laura Neumann, Chief of Staff\Chief Administrative Officer

**FROM:** City Attorney's Office

**Subject Title:** Resolution Approving the Payment of Legal Expenses for Ethical Complaints Under the City Code of Ethics.

**SUMMARY:**

The proposed, attached resolution addresses the payment of attorneys' fees for persons subject to investigation by the Independent Ethics Commission.

**PREVIOUS COUNCIL ACTION:**

Closed executive legal discussion of this item was held on March 25, 2013. At subsequent open informal on March 25, 2013, Council President Hente announced that the Council had reached on consensus on the matter. Additional discussion was heard on this matter at the Informal Council Meeting on April 8, 2013.

**BACKGROUND:**

The City Council passed the City Code of Ethics by Ordinance No. 07-59 on April 10, 2007. The City Code of Ethics created the Independent Ethics Commission ("IEC"). The IEC approved its Rules of Procedure on November 15, 2007. The Rules were approved by City Council by Resolution No. 257-07 on December 11, 2007. Prior to this proposed resolution, City Council has never addressed the payment of legal fees for those subject to IEC investigation.

The function of the IEC is to investigate complaints alleging violations of the City Code of Ethics, render advisory opinions on ethical issues, and make recommendations to City Council regarding IEC complaints. The IEC's jurisdiction is limited to complaints and requests for advisory opinions involving an elected official, an appointee including members of boards, committees and commissions appointed by City Council, the President of Council or the Mayor, or an independent City contractor.

The IEC may only consider matters arising under the Code of Ethics which occurred within twelve (12) months of receiving the written complaint. If the IEC determines a complaint within its jurisdiction is non-frivolous, it may then conduct an investigation. Once an investigation is

completed, the IEC issues a recommendation to City Council. City Council then takes appropriate action.

Currently, no provision exists in the City Charter, City Code, City Council's Rules of Procedure, Utilities Board Policy Governance, or Utilities Board Bylaws that addresses payment for legal representation of public officials subject to an IEC investigation and potential adjudication of charges. The resolution is designed to avoid the chilling effect and financial burden that public officials face when defending against an ethical complaint.

**FINANCIAL IMPLICATIONS:**

The proposed Resolution would entitle any elected official, appointee including members of boards, committees, and commissions appointed by City Council, the President of Council or the Mayor, who is the subject of an investigation as a result of a complaint(s) brought before the IEC pursuant to the City Code of Ethics § 1.3.101 et seq. to the payment of legal expenses. This entitlement is triggered only after the IEC makes a finding that it has jurisdiction and that the complaint(s) is non-frivolous. The amount of legal expenses shall not to exceed ten thousand dollars (\$10,000.00) per investigation unless good cause is shown and approved by City Council to exceed this limit.

Because the number of potential covered investigations is unknown and showings of good cause for additional payments are permitted, a precise financial impact cannot be stated.

The provision of legal fees is subject to recoupment. Before the City shall pay any such legal expenses, the subject party shall acknowledge in writing the City's full reservation of right to reimbursement for all legal expenses if the subject is found to have committed a violation of the City's Code of Ethics.

**RECOMMENDATIONS:** The City Attorney's Office recommends City Council approve the proposed resolution.

**ALTERNATIVES:** City Council could choose not to approve the proposed Resolution.

**BOARD/COMMISSION RECOMMENDATION:** None.

**STAKEHOLDER PROCESS:** N/A

**PROPOSED MOTION:** Move approval of the Resolution as presented.

**ATTACHMENT:** Proposed Resolution Approving the Payment of Legal Expenses for Ethical Complaints Under the City Code of Ethics.