

ORDINANCE NO. 046, 2014
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADDING A NEW SECTION TO THE CODE OF THE CITY OF FORT COLLINS
DEALING WITH THE SELECTION OF SPECIAL LEGAL COUNSEL
FOR THE CITY AND ESTABLISHING A PROCEDURE FOR CONSIDERING
WHETHER TO CONSENT TO POTENTIAL OR ACTUAL CONFLICTS
OF INTEREST ON THE PART OF SPECIAL COUNSEL

WHEREAS, Article VI of the City Charter states that the City Council may, upon the request of the City Attorney in special cases, employ special counsel if deemed necessary and advisable under the circumstances; and

WHEREAS, as the volume and complexity of the City's legal services needs have increased, the need for special counsel has also increased; and

WHEREAS, special counsel is needed in areas of special expertise such as water law, workers' compensation, bond issuances and others, and also for the handling of much of the litigation in which the City is involved; and

WHEREAS, in 1989, following a procurement process, the City Council adopted Resolution 1989-183, which specifies the law firms that are generally to be used by the City Attorney when outside legal services are needed in the areas of general liability, worker's compensation, bond issuances, and water and environment; and

WHEREAS, in addition, Resolution 1989-183 authorizes the City Attorney to select and utilize the services of other special legal counsel if deemed necessary or advisable because of extraordinary circumstances; and

WHEREAS, in 1992, the City Council adopted a second resolution, Resolution 1992-190, which established a process for selecting special legal counsel in situations where the City Attorney has to withdraw from representation of the City because of a conflict of interest; and

WHEREAS, that process calls for the use of other municipal attorneys pursuant to intergovernmental agreements when possible or, in the alternative, through the submission of names of other attorneys and background information to the City Council; and

WHEREAS, after reconsidering these processes, the City Council has concluded that it is in the best interests of the City for the City Council to authorize the City Attorney to select special counsel for the City in both of the foregoing situations as long as the necessary funds are appropriated and available and as long as the City Attorney notifies the City Council of such selections, so that the City Council can, in a particular situation, make the selection itself if it so chooses; and

WHEREAS, the City Council considers this process to be preferable to those established by Resolutions 1989-183 and 1992-190 and in the best interests of the City; and

WHEREAS, the City Attorney has recommended that the process for selecting special counsel be codified so that it is institutionalized and more transparent and the City Council agrees with that recommendation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Chapter 2, Article VII, Division 3 of the City Code is hereby amended by the addition of a new Section 2-583, which shall read in its entirety as follows:

Sec. 2-583. Selection of special counsel; consent to representation in situations involving actual or potential conflicts of interest.

(a) If the City Attorney, in his or her discretion, determines that the legal services needs of the City can best be met through the procurement of special legal counsel, the City Attorney is hereby authorized and directed to procure such services, provided that the funds needed for such procurement have been appropriated and are available for that purpose. In making such selection, the City Attorney shall consider the following:

(1) any recommendations of the officers or employees of the City whose duties and responsibilities may be most directly affected by such services;

(2) the qualifications, experience and areas of expertise of the law firms or attorneys under consideration;

(3) the support services and other personnel and resources available to such firms or attorneys;

(4) the willingness and ability of such firms or attorneys to work collaboratively with in-house counsel and the affected officers and employees of the City;

(5) the anticipated cost of the proposed services; and

(6) whether such services can be provided by another municipal attorney pursuant to an intergovernmental agreement approved by the Council.

(b) Before retaining the services of a law firm or attorney not previously used by the City within the preceding five (5) years, the City Attorney shall, no less than ten (10) calendar days prior to retaining the services of such firm or attorney, notify the Council and the City Manager in writing of the firm or attorney that has been selected and provide the Council with information regarding the qualifications of such firm or person, together with a description of the services to be provided, the anticipated cost of the proposed services, the term of the proposed service contract, and a summary of the City Attorney's reasons for the selection. Such information may be provided confidentially to the Council if the City Attorney determines that public disclosure of the information may compromise the purpose for which special counsel is to be retained.

If, within said ten-day period, the City Manager or three (3) or more Councilmembers request that the selection of special counsel for the purpose specified by the City Attorney be presented to the Council for its consideration, the matter shall be placed on the agenda for the next regular or special meeting of the Council, at which time the Council shall make the selection. If a selection of special counsel is scheduled for Council consideration under this provision, the City Attorney shall provide the Council, as part of the agenda materials for that agenda item, the names of at least three (3) attorneys or firms that, in the judgment of the City Attorney, are qualified to provide the kind of legal services to be procured, together with any additional background information that may assist the Council in making the selection.

(c) If the City Attorney determines that exigent circumstances require the immediate selection of special counsel, and that the delay caused by prior notification to the Council would be detrimental to the interests of the City, the City Attorney may immediately proceed with the procurement of such services; provided, however, that:

(1) the City Attorney shall forthwith provide notice to the Council of having made such selection and shall provide to the Council the information described in Subsection (b); and

(2) any contract entered into by the City with such special counsel shall be made contingent upon Council ratification of the selection if, within ten (10) calendar days after the delivery of such notice to the Council, the City Manager or three (3) or more Councilmembers request that the selection be reconsidered by the Council.

(d) In the event that special counsel retained by the City, or seeking to represent the City, has a conflict of interest that could possibly interfere with his or her independence or loyalty in representing the City, the City Manager may, upon the recommendation of the City Attorney and such other officers or employees of the City as the City Manager may deem appropriate, waive such conflict of interest if the City Manager determines that it would be in the best interests of the City to do so; provided, however, that at least five (5) working days prior to authorizing any such waiver, the City Manager shall notify the Council in writing of his or her intention to consent to the representation and shall provide the Council with a written explanation of the circumstances giving rise to the conflict of interest, the risks and benefits to the City of waiving the conflict of interest, and the reasons for the City Manager's decision. Such written explanation may be provided confidentially to the Council if the City Manager, in consultation with the City Attorney, determines that public disclosure of the information contained therein may be detrimental to the legal or financial interests of the City.

Introduced, considered favorably on first reading, and ordered published this 18th day of March, A.D. 2014, and to be presented for final passage on the 1st day of April, A.D. 2014.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 1st day of April, A.D. 2014.

Mayor

ATTEST:

City Clerk