

INFORMAL CITY COUNCIL MEETING
CITY OF COLORADO SPRINGS
APRIL 8, 2013

Present: President Hente, President Pro Tem Martin, Councilmembers Bennett, Czelatdko, Dougan, Herpin, Snider and Williams. Absent, Councilmember Leigh. Also present, Chief of Staff Neumann, City Attorney/Chief Legal Officer Chris Melcher, and Legislative Counsel Massey.

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1. **INFORMAL AGENDA CHANGES**

Due to technical difficulties, President Hente and Councilmembers agreed to begin with Item 8, Closed Executive Session, to provide time to resolve audio issues.

Item 8, Closed Executive, Session taken out of order.

City Attorney/Chief Legal Officer Melcher requested they recess to Closed Executive Session to render legal advice.

All present agreed to go into Closed Executive Session.

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2. **FORMAL AGENDA CHANGES/COMMENTS APRIL 9, 2013**

After the Closed Executive Session, President Hente directed the City Attorney and City Staff to bring forth an appropriation regarding Transit litigation for tomorrow's Formal Council meeting.

Council Administrator Cox stated that there had also been a request by staff to postpone the Public Hearing on Items 13A and 13B regarding Flying Horse. She explained this is an appeal and, as such, was not properly posted.

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3. **REVIEW OF MARCH 25, 2013, INFORMAL COUNCIL MEETING MINUTES**

City Clerk Johnson noted that in the list of those present Councilmember Williams was shown as absent. The Minutes will be revised to reflect Councilmember Williams' presence.

Councilmembers unanimously approved the Minutes with the change.

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4. **STAFF REPORTS**

A. Agenda Planner

Council Administrator Cox had nothing to add.

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5. **PRESENTATIONS**

A. **General Information**

None.

B. **Items for Future Action**

None.

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6. **OPEN LEGAL ITEMS**

A. ***Bryan Cozens & Kelly Prang v. City of Colorado Springs & Warren Stewart, Case No. 12CV5480***

Ms. Massey stated this first item is a recommendation of the Civil Action Investigation Committee to authorize the City to represent Warren Stewart as required by the Colorado Governmental Immunity Act.

There were no objections.

B. **Discussion regarding legal representation of persons subject to investigation by the Independent Ethics Commission**

Councilmember Dougan asked whether she should recuse herself from the discussion since she is currently a subject of an ethics investigation. City Attorney/Chief Legal Officer Melcher responded that since this was simply a discussion she could stay; however, he advised that she not ask questions nor participate in a vote.

City Attorney Employment Division Chief Tracy Lessig explained the recommendation that would allow a \$10,000 legal representation allowance for those qualified individuals subjected to an ethics investigation. She stated there would be a right of reservation before any fees would be paid should the investigation find there an ethics violation existed.

Councilmember Bennett asked why we do not have D&O insurance. Ms. Lessig replied that in the past there had been D&O insurance but there were exceptions in the policies that caused reconsideration of its value. Councilmember Bennett requested follow-up on this for future Council's consideration.

President Pro Tem Martin asked to clarify if one ethics complaint included many charges, would the \$10,000 payment apply to the full complaint or would it apply to individual charges? Ms. Lessig responded that it is currently setup per investigation.

Councilmember Snider asked if it were possible to be charged with a crime yet not be found in violation of the Code of Ethics? Ms. Lessig explained that this resolution was designed to protect people who were wrongfully accused of ethical violations; however, she reiterated, if found guilty of even one instance of an ethical violation, legal fees would not be paid.

Councilmember Czelatdko asked if this applies just to the legislative body? Ms. Lessig responded this would be applied to anyone under the jurisdiction of the Independent Ethics Commission which includes the Mayor, any appointee of the Mayor, any Boards and Commissions, and City Councilmembers.

Councilmember Czelatdko expressed concern about the limitation of the allowance. City Attorney/Chief Legal Officer Melcher explained the background on how the proposed amount was determined.

City Attorney Melcher further explained that when it comes to the question of what happens after an investigation, the IEC will conduct an investigation and render an advisory opinion to Council. It is then Council's duty to make the decision as to whether a violation has been committed or not; thus, Council sits as the tribunal, the decision making body on these matters. They are also the body that will decide if there is good cause for additional funds to be provided.

Councilmember Bennett asked if someone can forever file complaints that are frivolous against a Councilmember? Mr. Melcher answered that the City Code does not currently address this situation. He suggested the new Council may want to take a fresh look at the current structure of the City Code, the roles and responsibilities of the Independent Ethics Commission, and how it interrelates with Council. He added that currently there is no limit on the number of complaints that can be filed, no sanctions for filing a complaint publicly without complying with the confidentiality provision, and no sanctions for multiple frivolous complaints.

Council Administrator Cox readdressed Councilmember Czelatdko's concern that currently the Council Rules have no procedures for sanctioning members. She encouraged Council to commit to a timeline for updating the Ethics Code and the Council Rules of Procedure.

President Hente added that he and President Pro Tem Martin discussed with the City Attorney their concern that should a Councilmember commit an extremely

egregious ethics violation, Council has very limited options for dealing with it. Ms. Lessig replied that if it is a criminal activity that has occurred, it could be referred to the District Attorney's office. And also, if it is a matter of property that has been misused, a civil complaint could be filed.

Councilmember Williams noted that currently the resolution included coverage for Independent Contractors. Ms. Lessig clarified that Independent Contractors would not be allowed legal defense coverage under the terms of this resolution.

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7. **COUNCILMEMBER REPORTS AND OPEN DISCUSSION**

Councilmember Williams expressed her sense of satisfaction and accomplishment during her two years of service on City Council.

Councilmember Bennett invited current Councilmembers, as well as Councilmembers-elect, to the first meeting of the new Colorado Springs Health Foundation to be held on Thursday, April 11th, at 3:00 p.m. at City Hall, Pikes Peak Room.

Councilmember Czelatdko encouraged the continuation of Council work sessions. She believed these to be a worthwhile opportunity to work together, provide directions to staff, and to review the agenda in preparation for Council meetings and decisions going forward.

Councilmember Williams then stated that CDOT is going to be in Colorado Springs on Wednesday at 9:00 a.m. She described that they have been engaged in on-going negotiations to obtain \$95 million from CDOT from the \$1.5 billion that had been moved up from the legislative branch. She encouraged continued engagement and stated it would be a beneficial boost for the City and the Cimmaron/I-25 interchange.

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8. **CLOSED EXECUTIVE SESSION**

See action taken earlier in the meeting.

COUNCIL ADJOURNED AT 3:57 P.M.