

Briefing – City Council request for Representation when wrongfully accused of violating Ethics Code:

A Council member recently was the subject of a non-sustained allegation at the City Ethics Commission. The member utilized an attorney at their own expense to defend themselves against the allegation. They indicated a desire for the City pay for the defense of City Officials who are the subjects of non-sustained allegations at the Ethics Commission. Several members of City Council have identified with their concerns and requested such coverage.

The City currently indemnifies officers and employees for their cost of defending against “claims or damages arising out of the course and scope of employment” as long as they were “were done in good faith and without malicious or felonious intent”. See Corpus Christi City Code § 39-14(b). Such indemnity does **not** apply to ethics allegations because they are merely advisory in nature, without monetary sanction. City provision of indemnity for internal ethics allegations would require a change to the City Code. Some cities provide for reimbursement of defense costs against ethics allegations.

San Antonio – The City of San Antonio has a similar provision to Corpus Christi in its Code of Ordinances, which provides reimbursement of attorney's fees by complainants for frivolous complaints. However, it also have an extended process for determining what is considered frivolous, including a show cause hearing involving the complainant. See San Antonio City Code Sec. 2-83(f) and (g).

Dallas - The City of Dallas allows for city officials or employees charged in a complaint to employ independent outside counsel so long as they are approved by the city attorney. The City will pay the reasonable and necessary fees incurred after review by the ethics commission. If the Ethics Commission finds that a violation occurred, the city official or employee will reimburse the City for the fees and expenses. See Dallas City Code Chapter 12A, Art. VII Sec. 12A-48(b).

Austin - The City of Austin, generally, does not have a legal defense for city officials in relation to Ethics Complaints. If, however, a city official reasonably believed the conduct charged was not prohibited by the City's Code of Ethics and acted in reasonable reliance upon a public opinion rendered by the city attorney, the city attorney shall be authorized to represent the official or employee before the commission, or to employ and pay private counsel to represent the official or employee before the commission. See Austin City Code Sec. 2-3-42.

Arlington - The City of Arlington's Code of Ordinances contains a provision related to reimbursement of reasonable legal fees and expenses in defending an Ethics complaint upon a finding by the City Council that the public interest will be served. The City Attorney is charged with determining what constitutes reasonable fees and expenses for the representation of the complaint. See Arlington City Code Art. XII, Sec. 12.08(H)(2).

Fort Worth - The City of Fort Worth does provide the respondent with legal counsel of their choosing for Ethics complaints provided that fee arrangements are first approved by City Council. See Fort Worth City Code Sec. 2-248.

The Cities of **Houston** and **El Paso** do not contain similar cost provisions within their code of ordinances.

The Cities of **Arlington** and **El Paso** do provide for a review by the City Attorney prior to forwarding on to the Ethics Commission.

City Code requires Ethics Commission to review proposed changes to the Code of Ethics. Therefore, the Ethics Commission was provided with proposed changes to Corpus Christi City Code Sec. 2-330.

- Provision for representation of a City Official by an outside attorney provided by City.
- Provisions for cost-control of attorneys provided by City:
 - approved list provided by the City Attorney.
 - repayment obligation for sustained allegations
 - an initial review for legal sufficiency and form by the City Attorney's office of Ethics Complaints, prior to forwarding to the Ethics Commission.

Recommendation of Ethics Commission:

2-330(e) If the commission determines such party's complaint or defense was groundless, legal fees incurred by the complainants, the commission, and the party complained against, in an amount determined reasonable by the commission may be awarded against the unsuccessful party. "Groundless" means: (1) without basis or fact; or (2) not warranted by law or reasonably arguable interpretation thereof. The complainants shall not be liable for such fees if the commission has determined grounds exist for a hearing. The city will pay reasonable fees for legal of the respondent through conclusion of a commission hearing provided by the City Attorney, subject to the city's right to and/or stipend deductions of the respondent in the event the violation has occurred.

Ethics Commission did not recommend following added language:

(e) (1) The city attorney shall conduct a preliminary review of the complaint within 7 business days after receipt and issue determination whether the complaint (i) is sufficient as to form and (ii) alleges sufficient facts which, if true, could constitute a prima facie violation of the Rules of Conduct. The city attorney shall provide the commission, the city secretary, the complainant and the respondent with written notice of such determination.

(e) (2) The complaint will be dismissed upon determination that the complaint does not comply with (e) (1) (i) and (e) (1) (ii), subject to complainant's right to appeal such dismissal to the commission within 10 business days of dismissal. This appeal must be in writing, sworn, and state the grounds for the appeal. The complainant shall provide the appeal to the city secretary, who will then forward a copy to the commission, the city attorney and the respondent within 3 business days of receipt.

(e) (3) The respondent shall have at least 10 business days to submit a written response to the commission after a preliminary determination of the city attorney that the complaint complies with (e) (1) (i) and (e) (1) (ii), or