


**CITY MANAGER'S OFFICE MEMORANDUM
#6-2022**

DATE: Jan. 10, 2022
TO: Honorable Mayor Meredith Leighty and City Council Members
FROM: Heather Geyer, City Manager 
SUBJECT: Council Member Legal Fee Reimbursement Policy

PURPOSE

To consider a proposed policy regarding reimbursement of Council member legal fees.

BACKGROUND

City Council directed City Attorney Corey Hoffmann to draft a policy regarding the reimbursement of Council member legal fees. The proposed policy provides an overview of when the City may reimburse a member of City Council for payment of legal fees incurred as a result of actions that occur within the scope of the City Council member's activities as a City Council member that are not otherwise covered by the City's insurance policy. The proposed policy is intended to cover only limited situations in which a City Council member may require legal representation or incur legal fees as a direct result of serving as a City Council member. The policy does not apply when the need for legal services is unrelated to activities as a City Council member or where legal fees are otherwise coverable by the City's insurance policy.

Defendant Situation

The proposed policy sets forth the following conditions by which the City would provide legal representation when a Council member is a defendant (pages 1 and 2 of the proposed policy):

1. The claim against the City Council member arose from an act or omission that occurred in the course and scope of that member's duties as a City Council member
2. The defense of sovereign or governmental immunity is not available under the Colorado Governmental Immunity Act to bar the claim against the City Council member
3. The City's insurance policy does not otherwise provide coverage for the lawsuit or claim
4. The City Council member has not compromised or settled the claim without the consent of the City
5. The City Council member has notified the City in writing about the claim or lawsuit within 15 days after being provided notice of such claim or lawsuit
6. The City Council member has not knowingly failed to notify the City of the incident or occurrence which led to the claim within a reasonable time after such incidence or occurrence if such incidence or occurrence could reasonably have been expected to lead to a claim

The City would not provide legal representation when the act or omission committed by the City Council member was willful or wanton as defined in the policy (pages 2 and 3 of the proposed policy).

Plaintiff Situation

The proposed policy sets forth the following conditions under which the City would reimburse legal fees when the City Council member is the plaintiff:

The City would only reimburse legal fees when as a direct result of serving as a Council member:

1. The City Council member filing the claim or lawsuit was subject to:
 - a. Harassment
 - b. Threats of bodily or mental injury, or to the City Council member's family
 - c. Threats of harm to the City Council member's property interests
2. The City Council member reasonably fears the harassment or threats will result in actual bodily or mental injury to their person, family members, or the member's personal or real property, OR such harassment or threats actually results in such injury
3. In response to such reasonable fears or in response to actual injury, the City Council member files a claim or lawsuit seeking protection or reimbursement from such injury
4. The City's insurance policy does not otherwise provide coverage for the lawsuit or claim
5. The City Council member provides notice, as soon as practical, of their intention of filing a claim.

Cost Limits

The City may pay the legal fees and associated costs of legal representation under this policy for the reasonable costs of defense and/or representation. The City Council may determine to limit the total amount of legal fees to be reimbursed pursuant to this policy, and any expenditures extending beyond the current year shall be subject to annual appropriation.

BUDGET/TIME IMPLICATIONS

This item is for informational purposes only.

STAFF RECOMMENDATION

Staff recommends City Council provide direction on the proposed policy.

STAFF REFERENCE

If Council members have any questions, please contact City Manager Heather Geyer at hgeyer@northglenn.org or 303.450.8706.

ATTACHMENT

1. Draft Council member legal fee reimbursement policy

CITY OF NORTHGLENN
COUNCIL MEMBER LEGAL FEE REIMBURSEMENT POLICY

1. BACKGROUND AND PURPOSE. This Policy provides an overview of when the City of Northglenn may reimburse a member of the City Council for the payment of legal fees incurred as a result of actions that occur within the scope of the City Council member's activities as a City Council member that are not otherwise covered by the City's insurance policy.

2. SCOPE. This Policy is intended to cover only the limited situations in which a City Council member may require legal representation or incur legal fees as a direct result of serving as a City Council member. This Policy does not apply when the need for legal services is unrelated to service as a City Council member, or where legal fees are otherwise coverable by the City's insurance policy.

For example, this Policy covers situations where a City Council member is sued in an individual capacity for acts or omissions taken in the course and scope of their service as a City Council member and which is not subject to the protections provided by the City's insurance policy, or when a City Council member must take legal action to protect themselves or their family members, such as filing a protective order, as a direct result of their participation on City Council.

3. DEFINITIONS. For purposes of this Policy, the following terms shall have the following meanings:

"Course and Scope" means acting within the specified duties of a City Council member pursuant to the City of Northglenn Home Rule Charter, the City of Northglenn Municipal Code, and/or applicable state and/or federal law.

"Willful and Wanton" means conduct purposely committed which the member must have realized as dangerous, done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others.

4. CONDITIONS UNDER WHICH CITY WILL PROVIDE LEGAL REPRESENTATION WHEN COUNCIL MEMBER IS A DEFENDANT. As a condition of being a City Council member, the City may provide—subject to the conditions of this Policy—legal representation that may be reasonably necessary to defend a claim or lawsuit filed against such City Council member resulting from any conduct, act, or omission made in the course and scope of that City Council member's service to the City Council.

A. Conditions. The City will only provide legal representation when:

1. The claim against the City Council member arose from an act or omission that occurred in the course and scope of that member's duties as a City Council member;

2. The defense of sovereign or governmental immunity is not available under the Colorado Governmental Immunity Act to bar the claim against the City Council member;

3. The City's insurance policy does not otherwise provide coverage for the lawsuit or claim;

4. The City Council member has not compromised or settled the claim without the consent of the City;

5. The City Council member has notified the City in writing about the claim or lawsuit within 15 days after being provided notice of such claim or lawsuit; and

6. The City Council member has not knowingly failed to notify the City of the incident or occurrence which led to the claim within a reasonable time after such incidence or occurrence if such incidence or occurrence could reasonably have been expected to lead to a claim.

B. Willful and Wanton Behavior. In no event shall the City provide legal representation when the act or omission committed by the City Council member was willful or wanton. The City Council, with advice from the City Attorney, with the subject City Council member recusing themselves, shall make the determination if the act or omission was willful or wanton.

C. Outside Counsel. The City may pay the legal fees and associated costs of legal representation under this Policy for the reasonable costs of defense and/or representation. The City Council may determine to limit the total amount of legal fees to be reimbursed pursuant to this Policy, and any expenditures extending beyond the current year shall be subject to annual appropriation.

5. CONDITIONS UNDER WHICH CITY WILL REIMBURSE LEGAL FEES WHEN CITY COUNCIL MEMBER IS THE PLAINTIFF. As a condition of being a City Council member, the City may provide—subject to the conditions of this Policy— reimbursement of legal fees incurred by such City Council member who files a claim or lawsuit against a third-party when the claim or lawsuit becomes necessary to protect the health and safety of such member, the health and safety of the member's family, or the protection of the member's personal/real property that becomes necessary within the scope of service as a member of the City Council.

A. Conditions. The City will only reimburse legal fees when, as a direct result of serving as a council member, the member has been subject to:

1. The City Council member filing the claim or lawsuit was subject to:

a. Harassment;

b. Threats of bodily or mental injury to the City Council member, or the City Council member's family; or

c. Threats of harm to the City Council member's property interests.

2. The City Council member reasonably fears the harassment or threats will result in actual bodily or mental injury to their person, family members, or the member's personal or real property, OR such harassment or threats actually results in such injury;

3. In response to such reasonable fears or in response to actual injury, the City Council member files a claim or lawsuit seeking protection or reimbursement from such injury;

4. The City's insurance policy does not otherwise provide coverage for the lawsuit or claim; and

5. The City Council member provides notice, as soon as practical, of their intention of filing a claim.

B. Legal Fees. The City may reimburse the City Council member for reasonable legal fees related to the prosecution of the claim or lawsuit. The City Council may determine to limit the total amount of legal fees to be reimbursed pursuant to this Policy, and any expenditures extending beyond the current year shall be subject to annual appropriation.

6. CONFLICT WITH PROVISIONS OF INSURANCE POLICIES. The provisions of this Policy do not constitute a policy of insurance, and nothing contained in this Policy shall be construed to modify or amend any provisions of any policy of insurance where any City official or employee thereof is the named insured.

7. NO LIABILITY TO THIRD PARTIES. This City Council policy shall inure only to the benefit of City Council members, and this Policy shall not be construed so as to expand, in any way, the City's liability to third-party claimants, whether under the provisions of the Colorado Governmental Immunity Act or otherwise, or otherwise create any third-party beneficiaries.