

1st Reading:
2nd Reading:

SPONSOR:

ORDINANCE NO. _____

BILL NO. 22-04

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A CONSENT TO JOINT REPRESENTATION AND WAIVER OF CONFLICTS OF INTEREST RELATED TO THE LAWSUIT, *SCAUZZO V. FINKBINER*.

WHEREAS, on January 17, 2022, Nikki Finkbiner was served with a summons and petition in *Scauzzo v. Andrea N. Finkbiner*, Cause No. 22SL-CC00345 (the “Lawsuit”) in which she was sued individually for alleged actions taken in her official capacity as the City’s Community Development Director; and

WHEREAS, it is in the interest of the City to defend against this Lawsuit and defend its employees for actions taken in their official capacity and, therefore, the City desires Cunningham, Vogel and Rost P.C. to assist insurance counsel in representing Ms. Finkbiner in her official capacity in the Lawsuit; and

WHEREAS, the Board of Aldermen desires to and finds it in the best interest of the City to authorize the Mayor to execute a joint representation agreement and waiver of conflicts of interests to authorize such representation and protect the attorney-client privilege.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FENTON, MISSOURI, AS FOLLOWS:

Section 1. The Board of Aldermen hereby authorizes the Mayor to execute on behalf of the City the Consent to Joint Representation and Waiver of Conflicts of Interest, substantially in the form of Exhibit 1 attached hereto incorporated herein by reference.

Section 2. This ordinance shall be in full force and effect after the date of its passage and approval.

ORD. NO. _____

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PASSED this 27th day of January, 2022.

BOB BRASSES, MAYOR

APPROVED this 27th day of January, 2022.

BOB BRASSES, MAYOR

Motion to approve. Roll Call vote:

Ayes:

Nays:

Absent:

Abstain:

ORD. NO. _____

EXHIBIT 1

CONSENT TO JOINT REPRESENTATION AND WAIVER OF CONFLICTS OF INTEREST

WHEREAS, Cunningham, Vogel and Rost, P.C. (“**CVR**”) currently serves as City Attorney for the City of Fenton Missouri (the “**City**”); and

WHEREAS, Andrea N. Finkbiner is the current City Administrator and former Community Development Director for the City (“**Nikki**” and together with the City, the “**Parties**”); and

WHEREAS, on January 17, 2022, Nikki was served with a summons and petition in *Scauzzo v. Andrea N. Finkbiner*, Cause No. 22SL-CC00345 (the “**Lawsuit**”) in which she was sued individually for alleged actions taken in her official capacity as the City’s Community Development Director; and

WHEREAS, the City’s insurance carrier has provided coverage and assigned insurance counsel (“**Insurance Counsel**”) to represent Nikki in the Lawsuit in both her personal and individual capacities; and

WHEREAS, it is in the interest of the City to defend against this Lawsuit and defend its employees for actions taken in their official capacity and, therefore, the City desires CVR to assist Insurance Counsel in representing Nikki in her official capacity in relation to the Lawsuit; and

WHEREAS, the Parties find that they have a joint interest to defend against this Lawsuit and acknowledge that Nikki will be represented by insurance counsel and that by this joint representation agreement, CVR will represent the City and Nikki in her official capacity and may share information with Insurance Counsel and Insurance Counsel may share information with CVR to assist in such representation; and

WHEREAS, at any time either Party determines that there is no longer a joint interest, either party may terminate this agreement; and

WHEREAS, the City and Nikki have each previously determined and here reaffirm that it is in their mutual best interests to have CVR serve as counsel for the City and Nikki in her official capacity in relation to the Lawsuit and share information with Insurance Counsel in this Lawsuit, and therefore desire to consent to such joint representation and to waive and consent to any actual or potential conflicts of interest as may exist from such joint representation; and

NOW, THEREFORE, the Parties, with understanding of the circumstances and in order to engage such joint representation, and to continue to CVR to represent of the City now and in the future as City Attorney do hereby provide the informed consent and waiver of conflicts of interest as follows:

1. On behalf of the City and Nikki, respectively, the undersigned acknowledge that CVR has affirmatively informed each of the Parties of the information above, and that each of the Parties is aware of and acknowledges the following:

- Nikki is being represented by Insurance Counsel and CVR is representing the City and Nikki in her official capacity. To the extent that joint representation of the Parties as set forth above creates an actual or potential for conflicts of interest, any such conflict is hereby waived respecting any work relating to the City Attorney services provided by CVR to the City and the Lawsuit, In the event it is subsequently determined that a conflict of interest arising out of the Lawsuit cannot be waived by a Party, CVR will withdraw from representation of the Parties with respect to the Lawsuit, in accordance with all applicable Missouri Rules of Professional Conduct.
- As a necessity of the joint representation, information obtained by CVR relating to the Lawsuit will be and is authorized to be shared between the Parties. In the event one Party decides that some matter material to the joint representation should be kept from the other Party, CVR will withdraw from representation of the Parties, if required by the applicable Missouri Rules of Professional Conduct.
- Joint representation of the Parties may prevent the City or Nikki from enjoying the limitations on attorney disclosures of communications from a client relating to the attorney's representation of that client. Therefore, it must be assumed that in the event of litigation between the Parties, the attorney-client privilege may no longer protect any such communications. **In no circumstance, however, shall a third-party be able to cause waiver or dilution of the attorney-client privilege enjoyed by either Party.**

2. On behalf of the City and Nikki, each having been fully informed of the considerations and circumstances described above, and in waiver of any potential or actual conflicts of interest that may exist now or in the future, each of the Parties, by and through the undersigned duly authorized person, hereby gives its informed consent to CVR's joint representation of the Parties with respect to all legal work necessary and appropriate related to City Attorney services to the City and the Lawsuit, even if the interests are directly adverse, to the full extent such conflicts may be waived under the applicable Missouri Rules of Professional Conduct. The Parties further agree that CVR may withdraw its representation of the Parties or either of them without prejudice should it be determined that continued representation of such Party or Parties would violate the applicable Missouri Rules of Professional Conduct.

CITY OF FENTON, MISSOURI

By: _____

Date: _____, 2022

ATTEST:

City Clerk

ANDREA N. FINKBINER

Date: _____, 2022

ATTEST:

City Clerk