

RESOLUTION NO. 6308

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO CONTEST A PROPOSED CIVIL PENALTY AGAINST CITY MANAGER WES HARE STEMMING FROM AN ALLEGED VIOLATION OF ORS 260.432

WHEREAS, on or about February 20, 2014, City Manager Wes Hare and the City of Albany received a notice from the Oregon Secretary of State advising of a proposed civil penalty to be assessed against City Manager Hare, stemming from an alleged violation of ORS 260.432; and

WHEREAS, the proposed civil penalty stems from actions of the City Manager which were undertaken pursuant to express City Council direction; and

WHEREAS, the City Council directed the City Manager to announce to the public the Council decision to involve members of the public in developing plans for new fire and police stations; and

WHEREAS, the aforesaid actions by the City Manager did not, in the judgment of the Council, constitute or require advocacy as prohibited by statute; and

WHEREAS, the City Manager has not requested or sought in any fashion the assistance of the City Attorney, which is authorized by this resolution; and

WHEREAS, an acceptance without appeal of the proposed civil penalty will, in the judgment of the Council, have a significant and undesirable chilling effect on the willingness of City staff and others within the scope of ORS 260.432 by unlawfully limiting their free speech, precluding them from sharing factual and technical information with the City Council and the public, reducing the volume and quality of information that can ultimately be provided to the public when future city measures are pending for voter consideration; and

WHEREAS, this action is taken exclusively for the benefit of the public and not for the private benefit of City Manager Hare; and

WHEREAS, any incidental benefit that the City Manager could be deemed to receive from this action is hereby determined by the Council to be authorized compensation; and

WHEREAS, the City Attorney has expressed a willingness to bear the cost of the contested case proceeding and subsequent appeals, if any, without charge to the City.

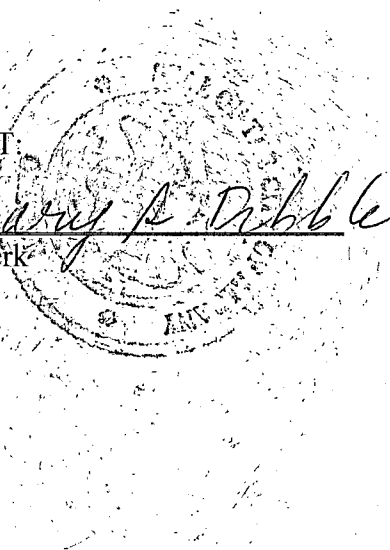
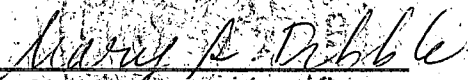
NOW, THEREFORE, BE IT RESOLVED that the City Attorney is hereby authorized and directed to contest the civil penalty proposed for assessment against City Manager Wes Hare under the circumstances set forth in the recitals above and is further authorized, in the event of an adverse ruling, to prosecute an appeal thereof to the Court of Appeals of the State of Oregon should he determine the appeal to be meritorious and should he be willing to continue to provide legal representation in this matter without cost to the City.

BE IT FURTHER RESOLVED that the recitals set forth above are incorporated as facts in this resolution.

DATED AND EFFECTIVE THIS 26th DAY OF FEBRUARY 2014.

  
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Mayor

ATTEST:

  
  
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City Clerk