

BILL NO. _____

RESOLUTION NO. _____

RESOLUTION FOR THE CITY COUNCIL TO POST COMPETITIVE BIDS IN PERTINENT VENUES TO SPECIFICALLY RECRUIT AND HIRE A FORENSIC INVESTIGATION/AUDIT FIRM, WITH PROVEN EXPERIENCE IN COMPREHENSIVE INVESTIGATIONS OF POTENTIAL MISUSE OF PUBLIC FUNDS TO CONDUCT A DETAILED THOROUGH INVESTIGATION OF ALL ACTIONS AND DOCUMENTATION OF THE CREATION AND PRACTICE OF EXCESSIVE OVERTIME PAYMENTS TO AN EMPLOYEE NOT CLASSIFIED TO DO SUCH WORK FOR THE CITY TO WHICH EXCESSIVE OVERTIME PAY WAS DISBURSED FROM PUBLIC FUNDS AND REPORT SUCH FINDINGS TO THE CITY COUNCIL.

WHEREAS; City Manager Zach Walker did on February 10, 2022 engage Daniel Nelson Esq. of Spencer Fane Law Firm," specifically to conduct an internal investigation regarding overtime compensation in the Independence Police Department and related matters." Without first conferring with or informing the City Council members to determine the scope and parameters of such investigation; and,

WHEREAS; the scope of the investigation cannot be expanded without renegotiating the price which would exceed the City Managers authority to contract above \$50,000.00; and,

WHEREAS; the City Charter Article 1 Section 2.10 (7) gives the power of investigation. to the City Council and the City Council may authorize another City authority to conduct an investigation but no such authorization was given to City Manager Zach Walker by the City Council; and,

WHEREAS; the scope of representation is focused on overtime compensation in the Police Department and not on the actions/inactions of the City Manager and Departments under his authority charged with certifying payroll, reviewing Charter required justification for pay disbursement and auditing and reporting excessive overtime; and,

WHEREAS; the scope of the investigation does not require the final report to affix responsibility for all involved in this overtime issue or to determine who had knowledge and took no action and what council authorization existed for remodeling/construction work that was not put out for competitive bid; and,

WHEREAS; the scope does not require the investigation or report to determine if any Charter provisions, internal rules, Federal or State grant restrictions, Drug Enforcement Grant restrictions against funds diversion, LAGERS Retirement plan rules or State and Federal Statutes concerning the potential use, misuse or abuse of public funds were violated; and,

WHEREAS; the scope does not include determining how long any individual in the Police Department was receiving overtime pay while doing remodeling/construction work while classified to do Police or Police Investigative work; and,

WHEREAS; the contract with Spencer Fane does not direct a focused investigation of the City's

internal controls to determine noncompliance and or adherence or to review all e-mails, communications and documents pertinent to the overtime accumulation and actual work done to disburse such overtime; and,

WHEREAS; the contract with Spencer Fane does not direct a focused investigation of the Construction permits, material purchase/reimbursement, Professional Certification/License (that may have been required by City Code), budget appropriations for construction on public and private property or inter -fund transfers to fund a non-competitively bid remodeling project; and,

WHEREAS; the contract with Spencer Fane does not direct a focused investigation to reconstruct what actually transpired over an unknown length of time that created a police investigator's ability to earn overtime while working in a classification historically found in the Public Works department; and,

WHEREAS; the contract with Spencer Fane does not direct a focused investigation of the City Charter at Section 5.13 to determine how an employee was paid for working in two classifications at the same time which appears to be prohibited by said provision and such concept to prohibit a person from being paid for two offices was established by the Independence reform government efforts in the 1950's that resulted in the 1951 citizen adoption of the City Charter; and,

WHEREAS; the contract with Spencer Fane does not direct a focused investigation of the Meritorious Award issued in 2018 with supporting justification that states 20 construction projects were completed listing three of which that were on private property and the officer being commended as doing so "voluntarily" and was "compensated with compensatory time only" that we now know the person so commended was paid the excessive overtime and remodeled private buildings; and,

WHEREAS; the contract with Spencer Fane is not directed to secure the Police Department computers and secure all written, digital and electronic communication of all offices with knowledge and/or involved in the line of authority or responsibility of recommending, reviewing, certifying, and disbursing the subject overtime payments; and,

WHEREAS; the public trust demands a scope of investigation to determine how long this overtime practice has existed by reconstructing all players and actions and documents/communication that allowed the reported excessive overtime going back to the origin of such practice to the present; and,

WHEREAS; the citizen's representatives must know the full extent of this issue in order to be fully informed to address corrective, preventative, punitive (if applicable) and restitution measures for all City offices to include the City Manager and City Council; and,

WHEREAS; one definition of a forensic investigation is a "very specialist type of engagement, which requires highly skilled team members who have experience not only of accounting and auditing techniques, but also of the relevant legal framework."; and,

WHEREAS; the City Council seeks a thorough and comprehensive forensic investigation to address those who might claim a limited scope investigation would give rise to speculation of a

cover up or scapegoating of any individual former or current employee; and,

WHEREAS; we have not had a City Management Auditor required by City Charter for over a year, and there is an exhaustive list of inexplicable actions that permeate this issue; and,

WHEREAS; the City Charter at Section 126 (4) and Section 3.34 (7) places specific payroll responsibilities on certain Department directors to ensure segregation of authority to protect the public funds are applied as required by the City Charter before disbursing funds for payroll and/or services must be investigated to determine how the overtime payments bridged the Charter requirements to guard the public purse; and,

WHEREAS; the citizens deserve a forensic investigation of this overtime issue to account for every penny of any potential fraud, waste or abuse of public funds to provide full transparency to the public and provide factual evidence in the event federal or state authorities need to be informed of any discovered violations of law or rules; and,

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. that the City Council post competitive bids and engage a Forensic Investigation/Audit firm, with proven experience in comprehensive investigations of potential misuse of public funds, to audit and investigate every aspect of the overtime issue from when it started to present and report their finding directly to the City Council and to meet beforehand to determine and establish the specific scope of the investigation.

PASSED THIS _____ DAY OF _____, 2022, BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI.

Presiding Officer of the City Council
of the City of Independence, Missouri

ATTEST:

City Clerk

APPROVED AS TO FORM AND LEGALITY:

City Counselor

REVIEWED BY:

City Manager