

ORDINANCE NO. 692

AN ORDINANCE of the City Council of the City of Lakewood, Washington, amending Chapter 1.28 of the Lakewood Municipal Code relating to indemnification of City employees.

WHEREAS, the City has operated under the same indemnification language since pre-incorporation; and

WHEREAS, developments in municipal liability suggest that cities review indemnification provision to ensure they are adequate to the goals of the City; and

WHEREAS, such review, including consideration of recent case law and the codes of other cities suggests some alternatives to consider for the purposes of indemnification; and

WHEREAS, the City's preferred option balances the City's desire to properly protect employees with the responsibility to City resources; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN as Follows:

Section 1. That Chapter 1.28 of the Lakewood Municipal Code is amended to read as follows:

1.28.010 Procedure for indemnification of officers and employees created.

There is hereby created a procedure to provide for indemnification and for defense of claims of liability arising from acts or omissions of officers and employees of the City, including volunteers, while performed or in good faith purported to have been performed in the scope of the official duties of such officers or employees, including volunteers. [Ord. 19 § 1, 1995.]

1.28.020 Definitions.

Unless the context indicates otherwise, the words and phrases used in this chapter shall have the following meaning:

"Employee" means any person who is or has been employed by the City, including volunteers.

"Official" means any person who is serving or has served as an elected City official, and any person who is serving or who has served as an appointed member of any City board, commission, committee or any other appointed position with the City. [Ord. 19 § 2, 1995.]

1.28.030 Legal representation.

A. The City shall provide to an official or employee, subject to the conditions and requirements of this chapter, and notwithstanding the fact that such official or employee may have concluded service or employment with the City, such legal representation as may be reasonably necessary to defend a claim or lawsuit filed against such official or employee resulting from any conduct, act or omission of such official or employee performed or omitted on behalf of the City in his/her capacity as a City official or employee, which act or omission is within the scope of his/her

service or employment with the City.

B. The legal services shall be provided by the Office of the City Attorney unless:

1. Any provision of an applicable policy of insurance provides otherwise; or
2. The City Attorney appoints alternate legal counsel to the case. [Ord. 19 § 3, 1995.]

1.28.040 Exclusions.

A. Except as otherwise determined pursuant to LMC 1.28.050, in no event shall protection as provided by this chapter be offered by the City to or involving:

1. Any dishonest, fraudulent, criminal, willful, intentional or malicious act or course of conduct of an official or an employee;
2. Any act or course of conduct of an official or employee which is not performed on behalf of the City;
3. Any act or course of conduct which is outside the scope of an official's or employee's service or employment with the City;
4. Any lawsuit brought against an official or employee by or on behalf of the City; and/or
5. Any action or omission contrary to or not in furtherance of any adopted City policy.

B. The provisions of this chapter shall have no force or effect with respect to any accident, occurrence or circumstance for which the City or the official or employee is insured from whatever source against loss or damage; provided, that the provisions of this chapter shall apply in the event the loss or damages fall within the deductible or exclusion(s) of the City's applicable insurance policy. The provisions of this chapter are intended to be secondary to any contract or policy of insurance whether owned by or otherwise applicable to any official or employee. The City shall have the right to require an employee to fully utilize any such policy protection prior to requesting the protection afforded by this chapter. [Ord. 19 § 4, 1995.]

1.28.050 Determination of exclusion.

A. The determination of whether an official or employee shall be afforded a defense by the City under the terms of this chapter shall be made by the City Council on the recommendation of the City Manager. The decision of the City Council shall be final as a legislative determination and shall be based upon a finding that an official or employee meets or does not meet the criteria of this chapter. Nothing herein shall preclude the City from undertaking an officer's or employee's defense under a reservation of rights. The determination as to whether a defense is to be furnished as provided under this chapter to a member or to members of the City Council shall be made without the vote of such member or members of the City Council unless the inclusion of such member or members is required for a quorum; provided, that if a claim or lawsuit affects a quorum or greater number of the members of the City Council, all such affected members shall retain their voting privileges under this section. [Ord. 19 § 5, 1995.]

B. In cases which pose the potential for an award of punitive damages against City officials or employees acting in the course of employment, such as certain tort and civil rights actions, the City shall issue a reservation of rights, as referenced in subsection A of this section 1.28.050 to each individual employee who may be exposed to such individual liability. The City, as directed by the City Manager, shall further conduct an investigation, the findings of which shall be presented to the City Council for a determination as to whether any punitive damages awarded shall be paid by the City.

C. If any such action or proceeding results in any monetary judgement against such city official or employee, the city council shall, by resolution, provide for the city's payment in full of such judgement. Upon consideration of the particular facts of the case, as determined through the City Manager's investigation, the city council may also provide for the city's payment of any punitive damages included in such judgment; provided, however, that this provision for payment by the city of punitive damages on behalf of a city official or employee under this chapter shall not be constructed as a waiver of the city's immunity to punitive damages.

1.28.060 Representation and payment of claims – Conditions.

The provisions of this chapter shall apply only when the following conditions are met:

A. In the event of any incident or course of conduct potentially giving rise to a claim for damages, or for the commencement of a lawsuit, the official or employee involved shall, as soon as practicable, give the City Manager written notice thereof; identifying the official or employee involved, all information known to the official or employee involved with respect to the date, time, place and circumstances surrounding the incident or conduct giving rise to the potential claim or lawsuit, as well as the names and addresses of all persons allegedly injured or otherwise damaged thereby, and the names and addresses of all witnesses.

B. Upon receipt thereof, the official or employee shall forthwith deliver any claim, demand, notice or summons or other process relating to any such incident or conduct to the City Manager, and shall cooperate with the City Attorney or if the City Attorney authorizes or designates another attorney to handle the matter, with that attorney, and, upon request, shall assist in making settlement of any suit and enforcing any claim for any right of subrogation against any persons or organizations that may be liable to the City because of any damage or claim of loss arising from said incident or course of conduct, including, but not limited to, rights of recovery for costs and attorney's fees arising out of state or federal statute upon a determination that the lawsuit brought was frivolous in nature.

C. Such official or employee shall attend interviews, depositions, hearings and trials and shall assist in securing and giving evidence and obtaining assistance of witnesses all without any additional compensation to the official or employee, and, in the event that an employee has left the employ of the City, no fee or compensation shall be provided; and

D. Such official or employee shall not accept nor voluntarily make any payment, assume any obligation, or incur any expense related to said claim or lawsuit, other than for first aid to others at the time of any incident or course of conduct giving rise to any such claim, loss or damage. Nothing herein shall be deemed to preclude any official or employee from retaining an attorney to represent his/her interests relating to such claim or lawsuit; however, all costs and expenses incur thereby shall be paid by the official or the employee. [Ord. 19 § 6, 1995.]

1.28.070 Effect of compliance with conditions.

If legal representation of an official or employee is undertaken by the City, all of the conditions of representation are met, and a judgment is entered against the official or employee, or a settlement is made, the City shall pay such judgment or settlement; provided, that the City may at its discretion appeal as necessary any such judgment. [Ord. 19 § 7, 1995.]

1.28.080 Failure to comply with conditions.

In the event that any official or employee fails or refuses to comply with any of the conditions set forth in LMC 1.28.060, or elects to provide his/her own representation with respect to any such

claim or litigation, then all of the provisions of this chapter shall be inapplicable, and shall have no force or effect with respect to any such claim or litigation. [Ord. 19 § 8, 1995.]

1.28.090 Reimbursement of incurred expenses.

A. If the City determines that an official or employee does not come within the provisions of this chapter, and a court of competent jurisdiction later determines that such claim does come within the provisions of this chapter, then the City shall pay any judgment rendered against the official or employee and reasonable attorney's fees incurred in defending against the claim. The City shall pay any costs and reasonable attorney's fees incurred in obtaining the determination that such claim is covered by the provisions of this chapter; provided, that if a court of competent jurisdiction determines that such claim does not come within the provisions of this chapter, then the official or employee shall pay the City's costs and reasonable attorney's fees incurred in obtaining the determination that such claim is not covered under the provisions of this chapter.

B. If the City determines that a claim against a City official or employee does come within the provisions of this chapter, and a court of competent jurisdiction later finds that such claim does not come within the provisions of this chapter, then the City shall be reimbursed by the official or employee for costs or expenses incurred in obtaining the determination that such claim is not covered by the provisions of this chapter. [Ord. 19 § 9, 1995.]

1.28.100 Conflict with provisions of insurance policies.

The indemnification provisions of this chapter do not constitute a policy of insurance, and nothing contained in this chapter shall be construed to modify or amend any provisions of any policy of insurance where City official or employee thereof is the named insured. In the event of any conflict between this chapter and the provisions of any such policy of insurance, the policy provisions shall be controlling; provided, however, that nothing contained in this chapter shall be deemed to limit or restrict any employee's or official's right to full coverage pursuant to this chapter, it being the intent of this chapter to provide the coverage detailed in this chapter only outside and beyond insurance policies which may be in effect while not compromising the terms and conditions of such policies by any conflicting provisions contained in this chapter. [Ord. 19 § 10, 1995.]

1.28.110 Pending claims.

The provisions of this chapter shall apply to any claims or lawsuits filed against any official or employee, and any such claims or lawsuits hereinafter filed, irrespective of the date of the events or circumstances which are the basis of such claim or lawsuit. [Ord. 19 § 11, 1995.]

1.28.120 Modifications of chapter.

The provisions of this chapter shall be subject to amendment, modification and repeal, at the sole discretion of the City Council; provided, that any such amendment, modification or repeal shall apply prospectively only, and shall have no effect on the obligation of the City to indemnify and/or defend against any claim which is based, in whole or in part, upon any action or omission of an official occurring prior to the effective date of the amendment, modification or repeal. [Ord. 19 § 12, 1995.]

Section 2. Severability. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the

provision to other persons or circumstances shall not be affected.


Section 3. Effective Date. That this Ordinance shall be in full force and effect thirty (30) days after publication of the Ordinance Summary.

ADOPTED by the City Council this 6th day of August, 2018.

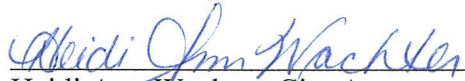
CITY OF LAKEWOOD

Attest:


Don Anderson, Mayor


Briana Schumacher, City Clerk

Approved as to Form:


Heidi Ann Wachter, City Attorney