

# Ordinance No. 00019

[\(Council Minutes 95/11/27\)](#)

## ORDINANCE NO. 19

AN ORDINANCE of the City of Lakewood, Washington, providing for indemnification of City officers and employees

WHEREAS, the City Council of the City of Lakewood desires to encourage its officers and employees to serve in their various functions and capabilities to the best of their abilities, fully and without undue worry or concern of potential personal legal liability for official acts taken in the course and scope of their duties; and,

WHEREAS, state law provides for indemnification of officers, employees and volunteers who are acting in good faith on behalf of the City; and,

WHEREAS, a policy conforming to state law allowing for indemnification by the City of employees would satisfy the potential concerns stated above.

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

### Section 1. 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.

### Section 2. Definitions.

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

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

B. "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.

### Section 3. Legal Representation.

A. The City shall provide to an official or employee, subject to the conditions and requirements of this Ordinance, 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 other wise; or,
2. The City Attorney appoints alternate legal counsel to the case.

### Section 4. Exclusions.

A. Except as otherwise determined pursuant to Section 2.06.050, in no event shall protection as provided by this Ordinance be offered by the City to or involving

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1. Any dishonest, fraudulent, criminal, wilful, 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 Ordinance shall have no force or effect with respect to any accident, occurrence or circumstance for the which the City or the official or employee is insured from whatever source against loss or damage; provided that the provisions of this Ordinance 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 Ordinance 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 Ordinance.

#### Section 5. Determination of Exclusion.

The determination of whether an official or employee shall be afforded a defense by the City under the terms of this Ordinance 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 Ordinance. 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 Ordinance 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.

#### Section 6. Representation and Payment of Claims - Conditions.

The provisions of this Ordinance 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.

#### Section 7. 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 judgement.

#### Section 8 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 Section 6 of this Ordinance, or elects to provide his/her own representation with respect to any such claim or litigation, then all of the provisions of this Ordinance shall be inapplicable, and shall have no force or effect with respect to any such claim or litigation.

#### Section 9. Reimbursement of Incurred Expenses.

A. If the City determines that an official or employee does not come within the provisions of this Ordinance, and a court of competent jurisdiction later determines that such claim does come within the provisions of this Ordinance, 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 Ordinance; provided, that if a court of competent jurisdiction determines that such claim does not come within the provisions of this Ordinance, 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 Ordinance.

B. If the City determines that a claim against a City official or employee does come within the provisions of this Ordinance, and a court of competent jurisdiction later finds that such claim does not come within the provisions of this Ordinance, 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 Ordinance.

#### Section 10. Conflict with Provisions of Insurance Policies.

The indemnification provisions of this Ordinance do not constitute a policy of insurance, and nothing contained in this Ordinance 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 Ordinance and the provisions of any such policy of insurance, the policy provisions shall be controlling; provided, however, that nothing contained in this Ordinance shall be deemed to limit or restrict any employee's or official's right to full coverage pursuant to this Ordinance, it being the intent of this Ordinance to provide the coverage detailed in this Ordinance 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 Ordinance.

#### Section 11. Pending Claims.

The provisions of this Ordinance 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.

Section 12. Modification of Ordinance.

The provisions of this Ordinance shall be subject to amendment, modification and repeal, at the soul 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.

Section 13. Severability.

If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not effect the validity or constitutionality of any other section, sentence, clause or phrase of the Ordinance.

Section 14. Effective date.

This Ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary and on February 28, 1996.

ADOPTED by the City Council this 27th day of November, 1995

/S/ Bill Harrison

Attest: Mayor

/S/ Alice M. Bush

City Clerk

Approved as to Form:

/S/ Daniel B. Heid

City Attorney

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