

**CITY OF LIBERTY LAKE
SPOKANE COUNTY, WASHINGTON
RESOLUTION NO. 01-011**

A RESOLUTION OF THE CITY OF LIBERTY LAKE, WASHINGTON, RELATING TO LEGAL ACTIONS BROUGHT AGAINST CITY OFFICIALS AND EMPLOYEES, PROVIDING FOR LEGAL REPRESENTATION FOR CONDUCT, ACTS AND OMISSIONS ON BEHALF OF THE CITY WITHIN THE SCOPE OF THEIR SERVICES OR EMPLOYMENT; PROVIDING FOR THE TERMS, CONDITIONS AND EXCEPTIONS FROM SUCH REPRESENTATION AND INDEMNIFICATION; SPECIFYING THE CIRCUMSTANCES UNDER WHICH CLAIMS AGAINST CITY OFFICIALS AND EMPLOYEES WILL BE PAID BY THE CITY; AND FIXING A TIME WHEN THE SAME SHALL BE EFFECTIVE.

WHEREAS, the City of Liberty Lake finds and declares it is in the best interest of the City to defend and represent its officials and employees who are acting in good faith on behalf of the City in furtherance of City business and interests;

WHEREAS, frequently City officials and employees may be the subject of claims or lawsuits that relate to their official and/or employment duties on behalf of the City of Liberty Lake; and

WHEREAS, the City of Liberty Lake has acquired insurance for the purpose of providing coverage against liability and damage claims pursuant to RCW 35A.21.220 and desires through RCW 4.96.041 to authorize the defense of an action or proceeding at the expense of the City of Liberty Lake.

NOW, THEREFORE, be it Resolved by the City Council of the City of Liberty Lake, Washington as follows:

Section 1. Definitions. Unless the context indicates otherwise, the words and phrases used in this Resolution 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. The term appointed as used herein shall mean a person appointed by City Council action or as authorized by State law or City Resolution.

Section 2. Legal Representation.

A. The City shall provide to an official or employee, subject to the conditions and requirements of this Resolution, 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. This Resolution is subject to repeal or modification at the sole discretion of the City Council, provided, that such repeal or modification shall apply prospectively only, and shall have no effect upon the obligation to indemnify and/or defend against any claim which is based, in whole or in part, upon any act or omission of an official occurring prior to the effective date of the repeal or modification.

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;
2. The City Attorney appoints alternate legal counsel to the case; or
3. A conflict of interest or ethical bar exists with respect to said representation by the City Attorney.

C. In the event outside counsel is retained under subparagraph B (1) or (2) above, the City shall indemnify the employee for the reasonable costs of defense, provided that in no event shall the officer or employee be indemnified for attorney's fees in excess of hourly rates established by the City's contract with the attorney selected by the City. The officer or employee shall be liable for all hourly charges in excess of said rate.

Section 3. Exclusions.

A. In no event shall protection as provided by this Resolution be offered by the City to or involving

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. Nothing herein shall be construed to waive or impair the right of the City Council to institute suit or counterclaim against any official or employee nor limit its ability to discipline or terminate an employee.

C. The provisions of this Resolution 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 Resolution 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 Resolution 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 Resolution.

Section 4. Determination of Exclusion. The determination of whether an official or employee shall be afforded a defense by the City under the terms of this Resolution shall be made by the City Council on the recommendation of the Mayor. 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 Resolution. 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 Resolution 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 5. Representation and Payment of Claims - Conditions. The provisions of this Resolution 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 Mayor 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 Mayor, 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 any attorney to represent his/her interests relating to such claim or lawsuit; however, all costs and expenses incurred thereby shall be paid by the official or the employee.

Section 6. 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.

Section 7. 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 5 of this Resolution, or elects to provide his/her own representation with respect to any such claim or litigation, then all of the provisions of this Resolution shall be inapplicable, and shall have no force or effect with respect to any such claim or litigation. As allowed by RCW 4.96.041(4), the City may elect to pay an award of non-punitive or punitive damages.

Section 8. Reimbursement of Incurred Expenses.

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

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

Section 9. Conflict with Provisions of Insurance Policies. The indemnification provisions of this Resolution do not constitute a policy of insurance, and nothing contained in this Resolution 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 Resolution and the provisions of any such policy of insurance, the policy provisions shall be controlling; provided, however, that nothing contained in this Resolution shall be deemed to limit or restrict any employee's or official's right to full coverage pursuant to this Resolution, it being the intent of this Resolution to provide the coverage detailed in this Resolution 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 Resolution.

Section 10. Pending Claims. The provisions of this Resolution 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 11. Severability. If any section, sentence, clause or phrase of this Resolution, 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 Resolution.

Section 12. Effective Date. This Resolution shall be effective immediately upon passage by the City of Liberty Lake City Council.

Passed by the City Council on 12 June, 2001.



Mayor, Steve Peterson

ATTEST:



Interim City Clerk, Arlene Fisher

Approved As To Form:



Interim City Attorney, Stanley M. Schwartz