

Ordinance No. 2087

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS AMENDING THE CODE OF ORDINANCES OF THE CITY OF TERRELL, TEXAS BY AMENDING CHAPTER 9: PERSONNEL TO ADD SECTION 11; PROVIDING FOR A CITY OFFICER AND EMPLOYEE LIABILITY PLAN; PROVIDING DEFINITIONS; PROVIDING LIMITS OF COVERAGE; PROVIDING SUBROGATION; PROVIDING LEGAL REPRESENTATION; PROVIDING FOR DETERMINATION OF COVERAGE; PROVIDING FOR REPEALING CAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS THAT:

Section I.

That the Code of Ordinances of the City of Terrell, Texas be, and the same is hereby amended by amending Chapter 9: Personnel to add Section 11, which shall read as follows:

Section 11: Officer and Employee Liability Plan

(A.) Definitions

- (1.) "City" means the City of Terrell, Texas.
- (2.) "City Vehicle" means a vehicle or mobile equipment either leased or owned by the City.
- (3.) "Loss" means an amount which a plan member is legally obligated to pay resulting from an act or omission of the plan member which is covered under this plan.
- (4.) "Plan" means the City of Terrell Officer and Employee Liability Plan.
- (5.) "Plan Member" means a person who is:
 - (a.) An employee of the City;
 - (b.) A member of a City board, commission, or committee created by charter, ordinance, or resolution of the City;
 - (c.) A member of the City Council;

- (d.) A volunteer who has been approved as a volunteer by a departmental volunteer coordinator and who is working under the direction of an employee of the City; or
- (e.) A member of the board of directors of a nonprofit corporation created by charter, ordinance, or resolution of the City as an instrumentality of the City, unless such nonprofit corporation has a source of income to provide indemnification and legal defense for its directors.

(B.) Coverage

- (1.) The City shall indemnify and defend a plan member, in accordance with the terms of this plan, against a loss arising out of any claim, suit, or judgment resulting from an act or omission of the plan member during the discharge of his duties and within the scope of his office, employment, or assigned volunteer work with the City.
- (2.) A plan member whose position with the City terminates is entitled to coverage in accordance with this plan for any event that occurred while the person was a plan member.

(C.) Defense

- (1.) Subject to the provisions of Subsection H, the City will defend any suit against a plan member who is covered under this plan, even if the suit is groundless or fraudulent.
- (2.) The City may investigate, negotiate, and settle any claim or suit as it determines necessary.

(D.) Limits of Coverage

- (1.) The City will pay losses covered by this plan that a plan member is legally obligated to pay, except, that in cases arising from incidents or occurrences where the City's liability exists by virtue of the Texas Tort Claims Act (Chapter 101 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE), whether or not the City is a party defendant, the City will pay those losses covered by this plan that a plan member is legally obligated to pay up to, but not exceeding the maximum payments allowable under Chapter 102 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE.

- (2.) Subject to the limits of coverage in subsection (1) above, and the exclusions in subsection F, the City will pay:
 - (a.) the City's expenses in investigating and defending the claim or lawsuit;
 - (b.) costs taxed against a plan member in a suit covered by this plan and interest that accrues after entry of judgment before the City has deposited payment with the court on that part of the judgment which does not exceed the limits of coverage;
 - (c.) reasonable expenses of the plan member incurred at the City's request; and
 - (d.) attorney's fees ordered by the court to be paid by the plan member.
- (3.) To be entitled to coverage under the plan, a plan member must:
 - (a.) notify the City Attorney in writing as soon as practicable upon receipt of written notice of claim or lawsuit, but no later than three (3) working days after receipt;
 - (b.) cooperate with the City Attorney, and upon the City's request, assist in making settlements in the conduct of suits, and in enforcing any right of contribution or indemnity against a person or organization who may be liable to the City because of injury or damage covered under this plan;
 - (c.) attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses; and
 - (d.) not, except upon advice of the City Attorney or when questioned by a police officer at the scene of an accident, give any oral or written statement or enter into any stipulation or agreement concerning a claim or lawsuit;
 - (e.) not, except at his own cost, voluntarily make any payment, assume any obligation, or incur any expense with respect to a claim or lawsuit without the consent of the City.

(E.) Plan Period

This plan covers only acts or omissions occurring or alleged to have occurred:

- (1.) while the plan is in effect;
- (2.) before the plan was in effect (above any insurance coverage in effect) and which are not barred to any statute of limitations; and
- (3.) if the plan is canceled, while the plan is in effect and which are not barred by any statute of limitations.

(F.) Exclusions

Coverage under this plan does not apply to a claim or lawsuit that is brought against a plan member:

- (1.) by the City;
- (2.) arising out of the intentional or knowing violation of a penal statute or ordinance committed by or with the knowledge or consent of the plan member, or any claim arising out of acts of fraud committed by or at the direction of the plan member with intent to deceive or defraud;
- (3.) arising while the plan member is operating a City vehicle with no authority to operate the vehicle;
- (4.) for liability assumed by the plan member under a contract, unless the contract is entered into at the request of the City;
- (5.) if the plan member joins or attempts to join with the suit against the plan member a claim against the City for benefits under this plan;
- (6.) if the plan member fails to comply with subsection D(3) of this plan;
- (7.) for punitive damages, where such damages are not recoverable in law or against the City; or
- (8.) for damages or payments in excess of the amounts permitted in Chapter 102 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE or expressly excluded under Section 102.002(c) and (d) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE in cases and claims arising from incidents or occurrences where the City's liability exists by virtue of

the Texas Tort Claims Act (Chapter 101 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE).

(G.) Subrogation

If the payment of legal representation is provided under this plan, the City is subrogated to the plan member's rights of recovery against any person or organization to the extent of the City's liability and payments, and the plan member must execute and deliver to the City Attorney whatever documents are necessary to secure those rights. The plan member must not do anything after a loss to prejudice those rights. Any damages or court costs recovered by a plan member shall be paid to the City to the extent necessary to offset the cost of the defense of such plan member.

(H.) Legal Representation

(1.) Covered Claims or Suits Only

The City will provide legal representation for a plan member in a claim or suit in which the plan member is covered under this plan.

(2.) Conflict of Interest

If the City Attorney determines that there exists a conflict of interest for the City Attorney to represent a plan member, and the plan member is otherwise entitled to coverage under this plan, the City will pay the reasonable fee of a private attorney to represent the plan member. The private attorney will be selected by the City Attorney in consultation with the plan members. If an agreement regarding selection of counsel is not reached, the plan member may appeal to the City Council which shall select the private attorney. The City Council's determination shall be final.

(3.) Representation of Police Officers in Criminal Proceedings

The City will provide legal representation for any Police Officer in any criminal proceeding up to the time of an Internal Affairs report is submitted to the Chief of Police. The City will provide legal representation in criminal proceedings for any Police Officer thereafter, if the City Manager certifies that the Police Officer was acting within the course and scope of his/her employment, provided, however, that legal representation for any appeal of a criminal conviction may be provided at the discretion of the Claims Board.

(I.) Determination of Coverage

If the City denies coverage to a plan member, the plan member may seek a determination of coverage by a court of proper jurisdiction in Kaufman County, Texas. If the court rules in favor of the plan member, the City shall provide the plan member all benefits under the plan and shall reimburse the plan member for reasonable attorney fees, expenses, and costs incurred in obtaining the determination of coverage.

(I.) No Creation of Cause of Action

Nothing contained in this plan shall be construed as creating a right or cause of action against a plan member nor giving a right to a third party to institute or maintain a suit which would not otherwise exist under the law as a legal claim against a plan member.

Section II.

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

Section III.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

Section IV.

This ordinance will take effect immediately from and after its passage and the publication of the caption as the law in such cases provides.

Passed and approved this the 4th day of September, 2001.

Passed and adopted this the 18th day of September, 2001.

HENRY C. MADGWICK, SR., MAYOR

ATTEST:

JOHN ROUNSAVALL, CITY SECRETARY

APPROVED AS TO FORM:

MARY GAYLE RAMSEY, CITY ATTORNEY