

ORDINANCE NO. 798

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LEGAL ACTIONS BROUGHT AGAINST CITY OFFICIALS, OFFICERS AND EMPLOYEES, PROVIDING FOR LEGAL REPRESENTATION FOR CONDUCT, ACTS AND OMISSIONS PERFORMED ON BEHALF OF THE CITY AND WITHIN THE SCOPE OF THEIR SERVICE 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; ADDING A NEW CHAPTER **2.19 TO THE GIG HARBOR MUNICIPAL CODE.**

WHEREAS, the City currently has no ordinance in place to address indemnification of public officials and employees; and

WHEREAS, RCW 4.96.041 allows the City to establish a procedure for same; NOW, THEREFORE

BE IT ORDAINED by the City Council of the City of Gig Harbor, Washington as follows:

Section 1. A new chapter 2.19 is hereby added to the Gig Harbor Municipal Code, to read as follows:

CHAPTER 2.19

INDEMNIFICATION OF PUBLIC OFFICIALS AND EMPLOYEES

2.19.010	Conditions Under Which City Will Provide Legal Representation.
2.19.020	Exclusions.
2.19.030	Determination of Exclusion.

2.19.040	Representation and Payment of Claims -- Conditions.
2.19.050	Effect of Compliance with Conditions.
2.19.060	Failure to Comply with Conditions.
2.19.070	Reimbursement of Incurred Expenses.
2.19.080	Conflict with Provisions of Insurance Policies.
2.19.090	Pending Claims.
2.19.100	Definitions.
2.19.110	Effect of Future Repeal or Modification.

2.19.010 Conditions Under Which City Will Provide Legal Representation.

A. As a condition of service or employment 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 their capacity as a City official or employee, unless the conduct, act or omission are specifically excluded under GHMC § 2.19.020 herein. The City Council shall, in its sole discretion, determine whether the fees and costs of any legal representation provided under this chapter are "reasonably necessary" for the defense of an official or employee, and are subject to reimbursement.

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. A conflict of interest or ethical bar exists with respect to said representation.

C. In the event that outside counsel is retained under subparagraph B(1) above, the City shall indemnify the employee from the reasonable costs of defense, provided that in no event shall the officer or employee be indemnified for attorney's fees in excess of the 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, and for any fees and costs determined not to be "reasonably necessary" for the official or employee's defense, as determined by the City Council.

2.19.020 Exclusions.

A. In no event shall protection be offered under this chapter by the City to:

1. Any dishonest, fraudulent, criminal, willful, intentional or malicious act or course of conduct of an official or 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; and/or
4. Any lawsuit brought against an official or employee by or on behalf of the City.

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 to limit its ability to discipline or terminate an employee.

C. 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 against loss or damages under the terms of any valid insurance policy, provided that this chapter shall provide protection, subject to its terms and limitations, above any loss limit of such policy. The provisions of this chapter are intended to be secondary to any contract or policy of insurance owned or applicable to any official or employee. The City shall have the right to require an employee to utilize any such policy protection prior to requesting the protection afforded by this chapter.

2.19.030 Determination of Exclusion.

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 Mayor and City Administrator. The decision of the City Council shall be final as a legislative determination and shall be based upon a finding that the claim or suit against an official or employee is excluded under GHMC § 2.19.020.

Nothing herein shall preclude the City from undertaking an officer or employee's defense under a reservation of rights. This reservation of rights shall include, but not be limited to, the officer or employee's written agreement to reimburse the City for all attorneys' fees and costs incurred by the City under the circumstances described in GHMC § 2.19.070.

The determination as to whether to furnish a defense as provided under this chapter to a member or 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.

2.19.040. 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 damage or the commencement of a suit, the official or employee involved shall, as soon as practicable, give the City Attorney written notice thereof, identifying the official or employee involved, all information known to the official or employee involved, all information known to the official or employee with respect to the date, time, place and circumstances surrounding the incident or conduct giving rise to the 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 Attorney, and shall cooperate with the City Attorney or an attorney designated by the City, and, upon request, 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 attorneys' fees arising out of state or federal statute upon a determination that the suit brought is 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 attendance 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 relating to said claim or suit; 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.

2.19.050. Effect of Compliance with Conditions.

If legal representation of an official or employee is undertaken by the City Attorney, all of the conditions of representation are met, and a judgment is entered against the official or employee, or a settlement made, the City Council shall make a decision, based on the exclusions set forth in GHMC § 2.19.020, whether to pay such judgment or settlement not otherwise covered by insurance, and the City Council may at its discretion appeal as necessary such judgment.

2.19.050. Failure to Comply with Conditions.

In the event that any official or employee fails or refuses to comply with any of the conditions of GHMC § 2.19.040, or elects to provide his/her own representation with respect to any such claim or litigation, then all of the provisions for indemnification in this chapter shall be inapplicable, and have no force or effect with respect to any such claim or litigation.

2.19.070. 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 the reasonable attorney's fees incurred by the official or employee 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, 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 attorneys' fees, costs or expenses incurred in obtaining the determination that such claim is not covered by the provisions of this chapter, as well as all of the attorneys' fees and costs incurred by the City in the official or employee's defense that are not covered by the City's insurance.

2.19.080. 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 any 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 section 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 and section 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 provision contained in this chapter.

2.19.090. Pending Claims.

The provisions of this chapter shall apply to any pending claim or lawsuit against an official or employee, or any such claim or lawsuit thereafter filed, without regard to the date of the events or circumstances which are the basis of such claim or lawsuit.

2.19.100. Definitions.

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

A. **"Official".** Any person who is serving or has served as an elected or appointed City official or officer, and any person who is serving or has served as an appointed member of any City board, commission, committee or other appointed position with the City. The term appointed as used herein shall mean a person formally appointed by the City Council or as authorized by State law or City ordinance.

B. **"Employee".** Any person who is or has been employed by the City.

2.19.110. Effect of Future Repeal or Modification.

This chapter 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.

Section 2. **Severability.** If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this ordinance.

Section 3. **Effective Date.** This ordinance shall take effect and be in full force

and effect five (5) days after its passage, approval and publication as required by law.

PASSED by the Council of the City of Gig Harbor, this 27th day of July, 1998.

APPROVED:

MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

BY: _____
CITY CLERK, MOLLY TOWSLEE

APPROVED AS TO FORM:

BY: _____
CITY ATTORNEY, CAROL A. MORRIS

FILED WITH THE CITY CLERK: 7/8/98
PASSED BY THE CITY COUNCIL: 7/27/98
EFFECTIVE DATE: 8/11/98
ORDINANCE NO. 798

SUMMARY OF ORDINANCE NO. 798

of the City of Gig Harbor, Washington

On the 27th day of July, 1998, the City Council of the City of Gig Harbor, passed Ordinance No.798. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LEGAL ACTIONS BROUGHT AGAINST CITY OFFICIALS, OFFICERS AND EMPLOYEES, PROVIDING FOR LEGAL REPRESENTATION FOR CONDUCT, ACTS AND OMISSIONS PERFORMED ON BEHALF OF THE CITY AND WITHIN THE SCOPE OF THEIR SERVICE 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; ADDING A NEW CHAPTER 2.19 TO THE GIG HARBOR MUNICIPAL CODE.

The full text of this Ordinance will be mailed upon request.

DATED this 28th day of July, 1998.

CITY CLERK, MOLLY TOWSLEE