

**AN ORDINANCE PROVIDING FOR LEGAL DEFENSE  
AND INDEMNIFICATION FOR CITY EMPLOYEES AND OFFICIALS**

WHEREAS, there is a need to establish a uniform system providing for the defense of employees, officers, commissioners, board members, and other officials of the City when such persons are sued because of their activities on behalf of the City, and to provide for indemnification if necessary.

NOW THEREFORE, BE IT ORDAINED BY THE URBANA CITY COUNCIL that the following is hereby enacted to be placed in the Urbana Code of Ordinances as Article VIII of Chapter 2:

Section 1. Purpose.

The purpose of this ordinance is to provide for legal defense services and indemnity for employees and commissioners and elected officials of the City of Urbana who are sued or threatened with suit for damages allegedly caused by their actions. The intent is to provide legal defense services and indemnity to the fullest extent permitted by the Home Rule provisions of the Constitution of the State of Illinois and this ordinance, even if such is inconsistent with State statutes.

Section 2. Definitions.

*Employee* as used in this Ordinance means all persons who are employees of the City of Urbana other than elected officials and includes employees who have concluded employment with the City. It shall also include the estate or personal representative of the estate of a deceased employee.

*Elected Officials* as used herein means the Mayor, Alderpersons, and the City Clerk, even if such person was appointed to fill out an unexpired term. It shall also include the estate or personal representative of the estate of a deceased elected official.

*Commissioners* as used in this Ordinance means the member(s) appointed by action of the City to a Board or Commission created pursuant to statute or ordinance of the City. It shall also include the Boneyard commissioner and the person appointed to the Champaign County Housing Development Corporation Board. It shall also include the estate or personal representative of the estate of a deceased commissioner.

*Defendant* as used in this Ordinance means the employee, commissioner or elected official sued or threatened with suit as appropriate to the context.

*Legal Defense Services* means undertaking legal representation of the person sued (or threatened with suit) by the City Attorney or other counsel expressly authorized by the City Attorney to appear and defend against the claim, action or proceeding, or reimbursement of the employee, commissioner or elected official for part or all of his or her court costs and attorney's fees incurred in the defense of such claim, action or proceeding. Such reimbursement may include part or all of the cost of defense against a claim of willful and wanton conduct whether undertaken voluntarily or in accordance with Section 3(D) below.

*Indemnity* means to pay on behalf of the employee, commissioner or elected official part or all of a judgment based on such claim, action or proceeding or to reimburse the employee, commissioner or elected official for all or part of any compromise or settlement of such claim, action or proceeding.

*Reservation of Rights Agreement* means an agreement between the City and the employee that provides for legal defense of the employee while reserving the rights of the City not to pay the judgment, compromise or settlement until it is established that the injury complained of arose out of an act or omission relating to the employee's duties and was not willful and wanton.

### Section 3. Employees and Commissioners.

A. General - Duty to Defend. If a claim, action, or proceeding is filed against an employee for damages allegedly arising out of the actions or

omissions of such employee relating to his/her duties as an employee of the City, (regardless of whether such is alleged to be in his or her official or individual capacity, or both) unless the City Attorney declines to appear and defend (or withdraws) on the basis that the employee was guilty of willful or wanton misconduct or despite the allegations, the actions or omissions complained of were not relating to his/her duties as an employee (see 3D below), the City shall provide employees legal defense services and/or indemnity, to the extent determined by the City. Nothing herein shall preclude the City from undertaking such defense under a reservation of rights.

In the event the City maintains any action or claim against an employee, commissioner or elected official, whether as Plaintiff, Claimant, Cross-Plaintiff, or Counter-Plaintiff, Petitioner or otherwise, no legal defense services or indemnity will be provided.

B. Separate Attorney When Conflict of Interest. Upon receipt of a declination to defend on the basis of potential or actual conflict of interests or upon withdrawal by the City Attorney on the basis of an actual or potential conflict of interest, the employee may employ his/her own attorney to appear and defend, in which event, if, but for the conflict of interest only, the City would defend, the City shall pay the employee's court costs, litigation expenses and attorney's fees as they are incurred to the extent approved by the City Attorney as reasonable.

C. Criteria for Determining if Conduct was Related to Duties.. In determining whether the conduct upon which the claim is based was related to or arose out of his/her duties as an employee, the following shall be considered:

(1) Whether the conduct is the kind the employee is employed or charged to perform;

(2) Whether it occurred substantially within authorized time and space limits; and

(3) Whether it was motivated, at least in part, by a purpose to serve the City.

D. Not Related to Duties/Willful Misconduct.

(1) In the event that the City Attorney determines that the act or omission upon which the claim or action is based was not related to the employee's duties or was willful or wanton misconduct, the City shall have no duty to provide defense services or indemnify unless a jury or court finds that the act or omission of the employee was related to his/her duties as an employee and was not willful or wanton misconduct, in which case the City shall indemnify the employee for any damages awarded, and court costs and attorney's fees assessed as part of any final and unreversed judgment. In such event, the City shall also pay the Defendant's court costs, litigation expenses, and attorney's fees which are not assessed as part of any final and unreversed judgment, to the extent approved by the City Attorney as reasonable charges and reasonably related to proper representation of the Defendant..

In all cases the employee shall cooperate in good faith to have Special Interrogatories and/or jury instructions submitted to the Court or jury to determine whether the conduct or inaction which gave rise to the claim or cause of action: (1) was or was not willful or wanton misconduct, and (2) was or was not intended to serve or benefit the interests of the City.

(2) The City may elect to defend the employee under a reservation of rights agreement. If the City so elects and if the employee enters into a reservation of rights agreement, the City shall pay the judgment, compromise or settlement only if it is established that the injury arose out of an act or omission relating to the employee's duties and was not willful and wanton.

E. Effect of Other Proceedings. The termination of any action, suit, or proceeding by judgment or settlement, conviction, or in a plea of nolo contendere, or its equivalent, shall not, of itself, create a presumption that

the act giving rise to the claim did not arise out of actions or omissions of such employee relating to his/her duties as an employee of the City.

F. Settlement.

(1) In any settlement, if the City Attorney determines that the conduct or inaction which gave rise to the claim or cause of action was willful or wanton misconduct, or was not intended to serve or benefit the interests of the City, the City shall not indemnify the employee for any damages, court costs, or attorney's fees agreed to as part of the settlement. Otherwise the case may be settled, in the City Attorney's discretion and with the employee's consent and the City shall indemnify the employee for any damages, court costs, and attorney's fees agreed to as part of the settlement, or shall pay such settlement directly. Where the employee is represented by private counsel due to the City Attorney declining to defend on the basis of an actual or potential conflict of interests, the City Attorney shall be informed in writing of all settlement offers. The City Attorney and the Court having jurisdiction must approve any settlement in order to obligate the City to indemnify the employee.

(2) If, in the City Attorney's sole discretion, the City Attorney determines that a settlement offer is reasonable and the City agrees in writing that it would fund such settlement, and the employee refuses to settle, the City will continue to defend and/or indemnify the employee, however, the extent of the City's liability for indemnity will then be limited to the amount of such settlement offer which the City would have accepted. Where the employee is represented by private counsel due to the City Attorney declining to defend on the basis of an actual or potential conflict of interest, the extent of the City's liability for indemnity will be limited to the amount of the settlement offer which the City indicated in writing it would accept, plus reasonable attorney fees incurred as of the date the City agreed in writing to the proposed settlement.

G. Determination of Coverage..

(1) If the City Attorney determines that an employee does not come within the provisions of this ordinance, and thus fails or refuses to provide an employee with a defense, and a court of competent jurisdiction later determines that such claim should have been determined to be within the provisions of this ordinance, then the City shall pay any judgment rendered against the employee and reasonable costs and fees incurred in obtaining the determination that such claim is covered by the provisions of this ordinance. Nothing in this ordinance shall be construed to deprive an employee of the right to petition a court of competent jurisdiction to compel the City to perform the duties imposed by this ordinance.

(2) If the City Attorney determines that a claim against an employee comes within the provisions of this ordinance, and if a court of competent jurisdiction later finds that such claim does not come within the provisions of this ordinance, the City may seek reimbursement for any payments made by the City or on its behalf for part or all of any judgment and costs or fees incurred by or on behalf of the employee's defense as well as for that part or all of the costs or expenses incurred in obtaining the determination that such claim is not covered by this ordinance.

Section 4. Elected Officials and Commissioners.

A. If an elected official or commissioner is sued or threatened with suit for damages allegedly caused by their actions, the City may provide legal defense service and/or indemnity, if the elected official or commissioner acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the City, provided no such legal defense service or indemnification shall be provided with respect to any claim, issue or matter as to which such person has been adjudged to be liable to the City unless, and only to the extent the Court in which such action was brought, shall determine upon application that, despite the adjudication of liability,

and in view of all the circumstances, such person is fairly and reasonably entitled to indemnity for such expenses as the Court shall deem proper.

The termination of any action, suit or proceeding by judgment or settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption:

(1) That the person did not act in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the City; and

(2) That with respect to any criminal action or proceeding, the person had reasonable cause to believe that his or her conduct was unlawful.

B. The City may provide legal defense service and/or indemnity as set forth in Section 4(A) to persons who formerly served as Mayor, City Clerk, Alderperson or Commissioner if the basis of the claim or charge against such person arises out of such person's duties as an official of the City.

C. Whether or not, and the extent to which, if any, the City shall provide legal defense services and/or indemnification as set forth in Section 4(A), shall be only as authorized in the specific case by a majority vote of Alderpersons then holding office who were not parties to such suit or action or, if there are less than three such disinterested Alderpersons, by the City Attorney.

Section 5. Matters Common to All Defendants.

A. Determinations Under Ordinance.

Unless specifically reserved to the City Council, all determinations to be made by the City in administering this Ordinance shall be made by the City Attorney.

B. Conflict of Interest.

(1) In the event the City Attorney determines that for the City to represent a Defendant would place the city and the party defended in an actual or potential conflict of interest the City Attorney shall promptly decline in

writing to appear and defend or shall take appropriate action to withdraw as attorney for such party.

C. Continuing Review. The decision to provide or not provide defense services or indemnify may be reviewed and modified at any time when the interests of justice require, and legal defense services or payment therefore, even retroactively, may be authorized as well as indemnity.

D. Duty of Defendant to Notify City. It is the obligation of the Defendant to request in writing within fourteen (14) days after service of a claim, demand, notice, summons or other process upon the defendant that the City provide for defense. Such written request shall be filed together with the claim, demand, notice, summons, or other process with the City Clerk and the City Attorney. The city, at its sole discretion, may provide a defense for those who fail to make a timely request.

E. Cross Complaints and Counterclaims. For the purposes of this Ordinance, the City's duty and authority to defend and indemnify Defendant shall extend to a cross-complaint or counterclaim against such Defendant, if in the determination of the City Attorney, the cross-complaint or counterclaim meets the requirements as set forth for defense if such were contained in an original complaint, and notice is given as set forth in Section 5(D). If the Defendant wants to file a counterclaim or cross complaint in any legal proceeding covered by this ordinance, the City reserves the right to separate the costs of defense from the costs associated with presentation of counterclaim or cross complaint. If the City exercises its right to separate such costs the Defendant shall be liable for all costs associated with the presentation of the counterclaim or cross complaint.

F. Control of Litigation. Whenever the City provides for the defense of any action set forth in this ordinance, as a condition of such defense, the City may assume exclusive control over the representation of such Defendant, provided, however, that any Defendant may at any time, at the option of the



Defendant, take control over representation by waiving all rights to all or part of indemnification and rights to payment for costs of defense.

G. Insurance. If any insurance policy provides coverage of the Defendant for the allegations made, the City's obligation to pay for legal representation, settlement, judgment, or costs or fees, shall be secondary to such insurance, and the City's obligation to defend and/or indemnify will not begin until the limits of all such insurance policies are exhausted. Nothing contained in this ordinance shall be construed to modify or amend any provisions of any insurance policy in which a Defendant is a named insured.

H. Non-Cooperation. In the event that a Defendant fails or refuses to comply with any of the conditions of this ordinance or fails or ceases to cooperate in good faith, then all the provisions of this ordinance shall be inapplicable and have no force or effect with respect to any such claim or litigation from the time such failure to cooperate first occurs .

If a Defendant fails or ceases to cooperate in good faith, but later resumes cooperation in good faith, the City Attorney may reinstate the benefits of this Ordinance as to such Defendant as the City Attorney deems appropriate. Failure to cooperate in good faith implies the conscious doing of wrong or actions taken for a dishonest purpose. It involves the actual or constructive fraud or design to mislead or deceive the City, or neglect or refusal to fulfill a duty not prompted by an honest mistake as to one's rights or duties.

I. City Can Employ Independent Counsel. The City may provide for the defense of a Defendant pursuant to this ordinance by employing independent counsel for this purpose or by asserting the City's right under any appropriate insurance policy which requires the insurer to provide the defense.

J. Labor Contract. If a labor union contract covers any of the provisions of this Ordinance, all employees under such contract shall be governed by the provisions thereof rather than the provisions of this Ordinance

and if any conflict exists between the provisions of this Ordinance and the provisions of any such contract, the contract shall control.

K. Punitive or Exemplary Damages. The City is authorized to pay that part of a judgment that is for punitive or exemplary damages if the City Council finds all of the following:

(1) The court judgment is based on an act or omission of an employee acting in a manner that was related to or arose out of his/her duties as an employee; and

(2) That at the time of the act giving rise to the liability, the employee acted or failed to act, in good faith, without actual malice, and in the apparent best interests of the City; and

(3) Payment of the claim or judgment would be in the best interests of the City.

L. No Modification of Immunity Or Liability Intended. Nothing in this ordinance shall be construed as abrogating or waiving any limitation of liability or immunity presently or hereinafter made applicable to the City or its Defendant which would otherwise be applicable to any action or proceeding to which this ordinance would apply.

Section 6. Indemnification Authorization and Limitations.

Notwithstanding anything stated herein limiting indemnification or legal defense services, if it feels justice would be served, the City Council may elect nevertheless to authorize indemnification or legal defense services if under all circumstances considered, the Council determines such would be fair and reasonable.

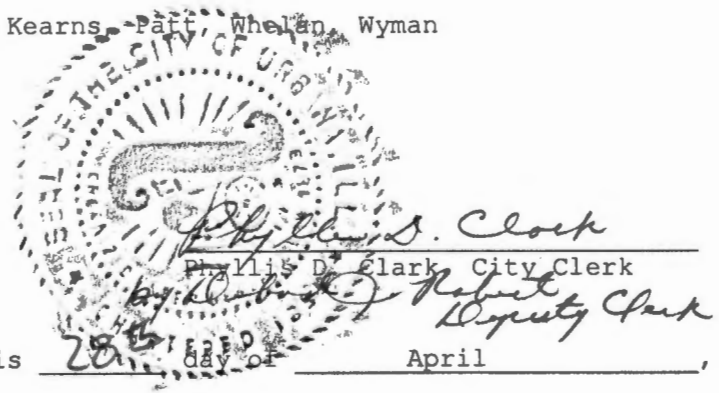
This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a regular meeting of said Council.

PASSED by the City Council this 17<sup>th</sup> day of April,  
2000 .

AYES: Hayes, Huth, Kearns, ~~Patt~~, ~~Whelan~~, Wyman

NAYS:

ABSTAINS:



APPROVED by the Mayor this 28<sup>th</sup> day of April,

2000 .

*Tod Satterthwaite*  
Tod Satterthwaite, Mayor