

ORDINANCE 3398

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO CITY DEFENSE OF OFFICERS, EMPLOYEES, AND VOLUNTEERS.

Be it ordained by the City Council of the City of Kirkland as follows:

Section 1. The title of Chapter 3.72 of the Kirkland Municipal Code is hereby changed to "OFFICERS, EMPLOYEES, AND VOLUNTEERS".

Section 2. A new section 3.72.100 is added to the Kirkland Municipal Code, to read as follows:

3.72.100 Definitions. Throughout the remainder of this chapter, these words have the following meanings:

(1) "Official" means any person who is serving or has served the city of Kirkland as an elected city official or as an appointed member of any city board, commission or committee, or as a member of a community council, or by appointment to the positions of hearing examiner or city attorney.

(2) "Employee" means any person who is or has been employed by the city of Kirkland.

(3) "Volunteer" means a person who, without monetary compensation, serves or has served the city of Kirkland as a volunteer under the explicit authorization and direction of a city department.

Section 3. A new section 3.72.110 is added to the Kirkland Municipal Code, to read as follows:

3.72.110 Defense and Indemnification. Subject to the terms and conditions of this chapter, and as a condition of employment or service, the city shall defend and indemnify every official, employee and volunteer who is or is threatened to be made a party to or

otherwise involved in any actual or threatened action, suit, other than those as to which the city is or will be an adverse party, arising from action, inaction or conduct within the scope of that person's employment by or service to the city, against all expense, liability and loss actually and reasonably incurred in connection therewith.

Section 4. A new section 3.72.120 is added to the Kirkland Municipal Code, to read as follows:

3.72.120 Notice of Potential Liability. (a) Every official, employee, or volunteer shall give written notice as soon as practicable to the city attorney of:

1) Any accident, incident, or course of conduct which the person has witnessed or been involved in which may give rise to a claim against the city or against the person as an official, employee or volunteer of the city; or

2) Any litigation, administrative action or claim commenced or filed against the person as an official, employee or volunteer of the city.

(b) An official, employee, or volunteer may give notice to the city manager of his or her request for defense and indemnification from a claim or action.

Section 5. A new section 3.72.130 is added to the Kirkland Municipal Code, to read as follows:

3.72.130 Determination of Scope of Duties. When defense or indemnification is sought, the city manager shall determine whether the conduct complained of was within the scope of the duties of the official, employee or volunteer, or was in good faith purported to be, and if so shall grant the request. The city attorney shall then defend against the claim or action or may elect to designate other counsel to do so.

If the city manager determines that the conduct was outside the scope of duties, he or she shall notify the person seeking defense or indemnification promptly. Denial of the request is final and may be reviewed only by an action in the Superior Court.

Section 6. A new section 3.72.140 is added to the Kirkland Municipal Code, to read as follows:

3.72.140 Responsibility of Official, Employee or Volunteer. The official, employee or volunteer seeking indemnification shall:

a. Provide to the city attorney or attorney designated to represent that person all information known to that person with respect to the date, time, place and circumstances surrounding the incident or conduct, as well as the names and addresses of all persons allegedly injured or damaged thereby, and the names and addresses of all witnesses.

b. Deliver promptly to the city attorney any demand, notice, summons or other process relating to any such incident or conduct, and cooperate with the city attorney or designated attorney and, upon request, assist in making settlements of any suits and in enforcing any claim for any right of subrogation against any person or organization that may be liable to the city because of any damage or claim of loss arising from such incident or conduct.

c. As directed by the city attorney or designated attorney, attend interviews, depositions, hearings and trials, and assist in securing and giving evidence and obtaining the attendance of witnesses.

d. Not accept nor voluntarily make any payment, assume any obligation, or incur any expense in relation to the claim or incident, except as authorized by the city attorney or designated attorney; provided, however, that this section does not prohibit the administration of first aid at the time of an

incident, or a reasonable attempt to avoid or mitigate injury or damage to persons or property.

e. Not object to a motion by the city to intervene as a party in any action covered by Section 3.72.110.

Section 7. A new section 3.72.150 is added to the Kirkland Municipal Code, to read as follows:

3.72.150 Payment of Judgment, Costs and Expenses.

a. A judgment against an official, employee or volunteer who is entitled to defense and indemnification under section 3.72.110 and who has complied with the requirements of this chapter, shall be paid in the same manner as a judgment against the city, except any portion of the judgment which is for punitive damages.

b. The city council may by resolution authorize payment of a judgment for punitive damages against a person who has been represented by the city attorney or a designated attorney under Section 3.72.130.

c. Claims for other expense or loss covered by Section 3.72.110 may be submitted as other claims against the city.

d. If the request for defense and indemnification is denied because the conduct was not within the scope of official duties and a court of competent jurisdiction later holds otherwise, then the city shall pay the claim and reasonable attorney fees. If defense and indemnification are granted and a court of competent jurisdiction later holds that the conduct was outside the scope of official duties, then the official, employee or volunteer shall reimburse the city for any costs or expenses incurred in defending such claim.

Section 8. A new section 3.72.160 is added to the Kirkland Municipal Code, to read as follows:

3.72.160 Defense at Recall Hearing. The necessary expenses of defending an elected officer of the city in a judicial hearing to determine the sufficiency of a recall charge as provided in RCW 29.82.023 shall be paid by the city if the officer requests such defense and approval is granted by both the city council and the city attorney. The expenses paid by the city may include costs associated with an appeal of the decision rendered by the Superior Court concerning the sufficiency of the recall charge.

Section 9. A new section 3.72.170 is added to the Kirkland Municipal Code, to read as follows:

3.72.170 Limitations and Reservations.

a. The city is not liable for costs or expenses incurred prior to receipt of the notice described in Section 3.72.120, except for those items described in the proviso of Section 3.72.140(d).

b. The city is not liable under this chapter for the costs of defense or any judgment in a criminal action against any official, employee or volunteer.

c. The provisions of sections 3.72.110, 3.72.150, and 3.72.160, do not apply to any action in which the city is an adverse party.

d. An initial decision to defend or indemnify under Section 3.72.130 does not preclude the city from seeking a determination that the conduct of the official, employee or volunteer was outside the scope of his or her duties, or a claim by the city against such person for damages to the city resulting from his or her willful, wanton or intentional acts. Failure to cooperate with the defense as required by Section 3.72.140 is a withdrawal of the request for defense and indemnification and relieves the city of further liability.

Section 10. A new section 3.72.180 is added to the Kirkland Municipal Code, to read as follows:

3.72.180 Insurance Provisions. Nothing contained in this chapter shall be construed to modify or amend any provision of any policy of insurance wherein the city or any official, employee or volunteer 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 control; provided, however, that nothing contained in this section shall be deemed to limit or restrict the right of any official, employee or volunteer to full coverage pursuant to this chapter, it being the intent of this section to provide complete coverage 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.

Section 11. A new section 3.72.190 is added to the Kirkland Municipal Code, to read as follows:

3.72.190 Union Contracts. If a bargaining unit contract covers any of the provisions covered by sections 3.72.100-.200, all persons under such contract shall be governed by its provisions, rather than by the provisions of sections 3.72.100-.200, where a conflict exists.

Section 12. A new section 3.72.200 is added to the Kirkland Municipal Code, to read as follows:


3.72.200 Pending Claims. The provisions of Sections 3.72.100-.200 apply to any pending claim or lawsuit against an official, employee or volunteer, or any such claim or lawsuit hereafter filed, regardless of the date of the events or circumstances which are the basis of the claim or lawsuit.

Section 13. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

Section 14. This Ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code, in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 14th day of December, 1993.


Signed in authentication thereof this 14th day of December, 1993.

  
\_\_\_\_\_  
MAYOR

Attest:

  
\_\_\_\_\_  
City Clerk

Approved as to Form:

  
\_\_\_\_\_  
City Attorney

10city93\defense\gg:nmw

PUBLICATION SUMMARY OF  
ORDINANCE NO. 3398

AN ORDINANCE OF THE CITY OF KIRKLAND  
RELATING TO CITY DEFENSE OF OFFICERS, EMPLOYEES,  
AND VOLUNTEERS.

Section 1. -Changes the title of Kirkland  
Municipal Code Chapter 3.92 to "OFFICERS,  
EMPLOYEES AND VOLUNTEERS."

Sections 2 - 11. Add new sections to  
Chapter 3.72 requiring the City to defend or  
indemnify officers, employees, and volunteers  
against loss from claims or lawsuits arising  
from performance of their official duties, so  
long as specified conditions are met. These  
sections also address costs of defense of a  
recall hearing, procedures for payment of claims  
and judgments, and the effect of insurance  
contracts or union agreements.

Sections 12 - 13. Provide for severability  
of invalid provisions, and for application to  
existing claims.

Section 14. Authorizes publication of the  
Ordinance by summary, which summary is approved  
by the City Council pursuant to Section 1.08.017  
Kirkland Municipal Code and establishes the  
effective date as five days after publication of  
summary.

The full text of this Ordinance will be  
mailed without charge to any person upon request  
made to the City Clerk for the City of Kirkland.  
The Ordinance was passed by the Kirkland City  
Council at its regular meeting on the 14th day  
of December, 1993.

I certify that the foregoing is a summary  
of Ordinance 3398 approved by the Kirkland  
City Council for summary Publication.

  
city clerk

11city93\summdefe\GG:csc