

ORDINANCE NO. 2021-61

AN ORDINANCE OF THE CITY OF LARGO, FLORIDA AMENDING SECTION 2-50 OF THE CITY CODE OF ORDINANCES BY AMENDING THE DEFINITIONS; BY CLARIFYING THE CITY'S OBLIGATIONS TO INDEMNIFY, PROTECT AND DEFEND PUBLIC OFFICIALS AND CITY EMPLOYEES IN CIVIL, CRIMINAL AND ADMINISTRATIVE PROCEEDINGS AND AUTHORIZING THE DEFENSE OF PUBLIC OFFICIALS AND EMPLOYEES IN CERTAIN CIRCUMSTANCES UNDER A RESERVATION OF RIGHTS LETTER; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Largo City Commission wishes to amend section 2-50 of the Largo City Code of Ordinances to clarify the city's obligations to indemnify, protect and defend public officials and city employees in civil, criminal, and administrative proceedings and to be fully consistent with state statute provisions; and

WHEREAS, the city commission wishes to authorize the provision of a defense to a public official or city employee in certain circumstances under a reservation of rights letter.

NOW, THEREFORE, THE CITY OF LARGO CITY COMMISSION HEREBY ORDAINS:

Section 1. That Section 2-50 of the City of Largo Code of Ordinance is hereby amended to read as follows:

Sec. 2-50. – Indemnification of city employees.

(a) *Definition.* As used in this section, the term:

(1) "Employee" means, unless the context otherwise requires, any person who receives remuneration from the city for the performance of any work or service, but shall not include an independent contractor. The term "Employee" includes a former employee or his or her estate or judicially appointed personal representative, and includes Law Enforcement Officers.

(0) "Law Enforcement Officer" means, unless the context otherwise requires, any law enforcement officer, as defined in section 943.10(1), Florida Statutes, as may be amended, whom is employed full time by the city.

(2) "Proceeding" means, unless the context otherwise requires, any threatened, pending or completed action, suit or other legal proceeding, whether civil, administrative or investigative. It does not include criminal proceedings.

(3) "Public Official" means, unless the context otherwise requires, any person holding or that did hold a position by election or appointment on the city commission or on a city-sponsored board, or a volunteer expressly authorized to participate in a city-sponsored program, including any person serving on an advisory body of the city.

(b) *Defense and indemnification of city employees.*

(1) The city shall ~~save harmless, and~~ indemnify, protect and defend all Employees in any Proceeding ~~civil action or proceeding~~ in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint or petition to have occurred while the Employee was acting within the scope of his public employment or duties, or which is brought to enforce a provision of Section 1981, 1983, or 1985 of Title 42 of the United States Code (42 USC 1981, 1983, 1985). ~~Nothing in this subsection (b)(1) shall authorize the city to indemnify or save harmless any employee with respect to punitive or exemplary damages, fines or penalties,~~ so long as all conditions of this section are met. Provided, however, that the city shall not be obligated to defend any Employee who is alleged to have (A) acted outside the scope of his or her employment; (B) acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property; or (C) acted in violation of or with intent to deprive someone of their constitutional rights

(2) The city shall indemnify, protect and defend all Public Officials in any Proceeding in any state or federal court arising out of any alleged act or omission taken as part of the Public Official's duties as a Public Official, so long as all conditions of this section are met. This includes actions brought to enforce a provision of Section 1981, 1983, or 1985 of Title 42 of the United States Code (42 USC 1981, 1983, 1985). Provided, however, that the city shall not be obligated to defend a Public Official who is alleged to have (A) acted outside the scope of his or her office, authority or function; (B) acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property; (C) acted while not serving a public purpose; or (D) acted in violation of or with intent to deprive someone of their constitutional rights.

(3) ~~In amplification of subsection (b)(1) of this section,~~ All such Employees and Public Officials provided a defense under this section, shall be entitled to be represented by the office of the city attorney; provided, however, any such Employee or Public Official may be represented by private counsel where the city commission determines that representation by the city attorney would be inappropriate or that a conflict of interest exists requiring private counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the city to such private counsel from time to time during the pendency of the ~~civil action or p~~Proceeding.

(34) Except as otherwise provided in ~~subsection (b)(1) of this section,~~ the city shall indemnify ~~and save harmless~~ its Employees and Public Officials in the amount of any judgment obtained against the ~~such~~ Employee or Public Officials which is entered by a court of competent jurisdiction, after all appeals are final or the time to file an appeal has expired, ~~in any state or federal court, or in the amount of any settlement of a claim,~~ provided that the judgement did not determine or is not based on a finding that the Employee or Public Official (A) acted

outside the scope of his or her office, authority or function; (B) acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property; (C) acted while not serving a public purpose; or (D) acted in violation of or with intent to deprive someone of their constitutional rights. ~~the act or omission from which such judgment or settlement arose, occurred while the employee was acting within the scope of his public employment or duties.~~

(5) If criminal charges are brought against any Public Official based upon or arising out of the performance of his or her duties for or on behalf of the city, the Public Official shall be responsible for his or her own defense; provided, however, if the Public Official is adjudicated not guilty, the city shall reimburse the Public Official for all reasonable expenses, including litigation costs and attorneys' fees, incurred by the Public Official in defending the criminal action.

(6) The city shall provide an attorney and pay the reasonable attorney's fees and costs for a Law Enforcement Officer in a criminal action commenced against the Law Enforcement Officer in any court if the city determines that the Law Enforcement Officer's actions that gave rise to the charges: (1) arose within the course and scope of the Law Enforcement Officer's duties; (2) were not acts of omission or commission which constituted a material departure from the city's written policies and procedures, or generally recognized criminal justice standards if no written policies or procedures exist; and (3) occurred in response to what the Law Enforcement Officer reasonably believed to be an emergency; and either (1) occurred when the Law Enforcement Officer reasonably believed that his or her action was necessary to protect the Law Enforcement Officer or others from imminent death or bodily harm; or (2) occurred in the course of the Law Enforcement Officer's fresh pursuit, apprehension, or attempted apprehension of a suspect whom the Law Enforcement Officer reasonably believed had perpetrated, or attempted to perpetrate, a forcible felony as defined in section 776.08, Florida Statutes, or the offense of escape. The city's provision of an attorney pursuant to this subsection shall otherwise be governed by section 111.065, Florida Statutes, as amended.

(4) Nothing in this section shall authorize the city to indemnify, protect or defend any Public Official or Employee in any Proceeding with respect to punitive or exemplary damages, fines or penalties.

(c) *Conditions to defense or indemnification.* The duty to defend or indemnify, protect and defend an Employee or Public Official in any Proceeding ~~and save harmless~~ as prescribed by this section shall be conditioned upon:

(1) Delivery to the city attorney and risk manager ~~or staff attorney~~ by the ~~employee~~ Employee or Public Official of the original or a copy of any summons, complaint, process, notice, demand or pleading within five (5) days after the Eemployee or Public Official is served with same; and

(2) The full cooperation of the Eemployee or Public Official in the defense of such ~~action or Proceeding~~ and in defense of any ~~action or pProceeding~~ against the city based upon the same act or omission, and in the prosecution of any appeal.

(3) If it is alleged in any Proceeding that a Public Official, the city manager, the city attorney or the city clerk (A) acted outside the scope of his or her office, authority or function; (B) acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property; (C) acted while not serving a public purpose; or (D) acted in violation of or with intent to deprive someone of their constitutional rights, the city commission may determine that the city will provide a defense to the Public Official, city manager, city attorney or city clerk under a reservation of rights letter as set forth below and in accordance with the other provisions of this section.

(4) If it is alleged in any Proceeding that an Employee (A) acted outside the scope of his or her employment; (B) acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property; or (C) acted in violation of or with intent to deprive someone of their constitutional rights, the city manager may determine that the city will provide a defense to the Employee under a reservation of rights letter as set forth below and in accordance with the other provisions of this section.

(5) If the city provides a defense to a Public Official or Employee pursuant to subsection (c) (3) or (4), the risk manager shall issue a reservation of rights letter to the Public Official or Employee providing that the city will be entitled to recover all of the amounts the city pays for attorneys' fees and litigation costs to defend the Public Official or Employee if it is finally determined by a court of competent jurisdiction, after all appeals are final or the time to file an appeal has expired, that the Public Official or Employee (A) acted outside the scope of his or her office, authority or function; (B) acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property; (C) acted while not serving a public purpose; or (D) acted in violation of or with intent to deprive someone of their constitutional rights. The reservation of rights letter shall also provide that the city may terminate the provision of a defense of the Public Official or Employee, as determined by the city commission or city manager, respectively, if the city becomes aware of information or evidence showing that the Public Official or Employee (A) acted outside the scope of his or her office, authority or function; (B) acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property; (C) acted while not serving a public purpose; or (D) acted in violation of or with intent to deprive someone of their constitutional rights. The provision of a defense under subsections (c)(3) and (4) shall not obligate the city to indemnify the Public Official or Employee from the payment of any judgment or settlement. The Public Official or Employee must acknowledge the reservation of rights letter, agreeing to its terms, as a condition to the provision of a defense by the city.

(d) *Relation of section to insurance.* The provisions of this section shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer or insured under any policy of insurance.

(e) *Relation to sovereign immunity.* Nothing in this section is intended to nor should be interpreted to serve as a waiver of sovereign immunity by any party, including but not limited to the city, an Employee or a Public Official, to which sovereign immunity may be applicable.

(f) *Application of section.* The provisions of this section shall apply to all ~~actions and~~ Proceedings pending upon the effective date of the ordinance from which this section is derived or thereafter instituted. As used herein, an action shall be construed to be pending where the action has not been tried or if tried, the judgment has not become final by reason of the completion of any appellate proceedings.

Section 2. That it is the intention of the Largo City Commission that each provision hereof be considered severable, and, if any section, subsection, sentence, clause, or provision of this ordinance is held invalid, the remainder of the ordinance shall not be affected.

Section 3. That this ordinance shall take effect immediately upon its final passage and adoption.

APPROVED ON FIRST READING _____

PASSED AND ADOPTED ON
SECOND AND FINAL READING _____

CITY OF LARGO, FLORIDA

Louis ("Woody" Brown, Mayor

Reviewed and Approved:

ATTEST:

Alan S. Zimmet, City Attorney

Diane Bruner, City Clerk