

ORDINANCE NO. 044, 2021  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING DIVISION 6 IN ARTICLE VII OF CHAPTER 2 OF THE CODE OF THE CITY  
OF FORT COLLINS CONCERNING THE CITY'S DEFENSE AND INDEMNITY OF ITS  
EMPLOYEES IN CERTAIN CIVIL, CRIMINAL AND ADMINISTRATIVE MATTERS

WHEREAS, in June 1987, the City Council adopted Resolution 87-79 to affirm the City's obligations under the Colorado Governmental Immunity Act (the "CGIA") to its "public employees" to defend and indemnify them against certain civil claims; and

WHEREAS, as used in the CGIA, the term "public employees" includes not only compensated City employees but also City councilmembers, appointed board and commission members and authorized City volunteers; and

WHEREAS, Resolution 87-79, as amended by Resolution 94-101 adopted by City Council in June 1994, also provided that the City would, under certain circumstances, reimburse its employees for reasonable attorney fees they incur in defense of a criminal charge arising from the employee's act or omission occurring during the performance of their City duties and within the scope of their City employment; and

WHEREAS, in December 2000, the City Council adopted Ordinance No. 176, 2000, to codify these defense and indemnity obligations by adding Division 6 to Article VII of City Code Chapter 2 ("Division 6"); and

WHEREAS, a recent review of Division 6 by City staff reveals the need to amend it to address the City's defense and indemnity obligations to its police officers under two Colorado statutes, which obligations are in addition to the City's obligations to all of its employees under the CGIA; and

WHEREAS, Section 29-5-111 of the Colorado Revised Statutes ("C.R.S.") requires the City to indemnify its police officers for up to a \$100,000 judgment and provide them with a defense for any torts committed by an officer within the scope of the officer's employment with the City, regardless of any limitations on such indemnity and defense obligations imposed by the CGIA; and

WHEREAS, C.R.S. Section 13-21-131 was enacted into law in 2020 by the Colorado General Assembly as part of Senate Bill 20-217, commonly known as the Enhance Law Enforcement Integrity Act, to establish a new civil claim against police officers for the violation of person's rights under Colorado's Bill of Rights in Article II of the Colorado Constitution; and

WHEREAS, Section 13-21-131 requires the City to indemnify its police officers for any judgment or settlement arising under this new civil claim regardless of any limitation on this indemnity obligation in the CGIA, unless the officer is convicted of a crime related to the constitutional violation; and

WHEREAS, the review also revealed the need to add a new section to Division 6 to address the circumstance where a City employee is required, as condition of their City employment, to have and maintain a license, certification, accreditation or permit issued by an agency or branch of the federal government or of any state or local government, and an investigation, grievance, charge, complaint or other administrative action has been commenced by or with that agency or branch of government arising from the employee's act or omission occurring during the performance of their duties and within the scope of their employment with the City and, as a result, the employee incurs costs and attorney fees in defense of that administrative action; and

WHEREAS, this Ordinance therefore adds a new section to Division 6 to require, like Code Section 2-613 does for City employees regarding certain criminal matters, the City to pay the employee's reasonable costs and attorney fees they incur in defending the administrative action provided the administrative action results in no action being taken to reprimand the employee or to revoke, terminate or suspend the employee's license, certification, accreditation or permit and the employee's conduct from which the administrative action arises was not willful and wanton; and

WHEREAS, Division 6 has also been amended to generally update and provide for consistency in the wording throughout it; and

WHEREAS, the City Council determines and finds it is in the best interests of the City and its employees, and necessary for the public health, safety and welfare, for Division 6 to be amended as hereafter provided.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 2-610 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 2-610. - Public employee defined.**

When used in this Division 6, the terms "public employee" and "employee" shall have the same meaning as the term "public employee" is given in C.R.S. Section 24-10-103(4) of the Colorado Governmental Immunity Act. In addition, these terms shall include within their meaning any official of a board, commission or authority appointed by the City Council and who is also subject to removal by the City Council or City Manager, whether or not such board or commission is itself under the control of the City Council. However, with respect to any such official, the City's defense and indemnity obligations under this Division 6 shall be secondary to any insurance coverage carried by the board, commission or authority for the benefit of the official. Further, these terms may include the "public employees" (as defined in C.R.S. Section 24-10-103(4)), of any other governmental entity provided the City has entered into an intergovernmental agreement with that governmental entity as authorized by C.R.S. Section 29-1-203 and Section 16, Article II of the

Charter and the intergovernmental agreement provides that the other governmental entity may participate in the City's self-insurance program as established in Division 3, Article III of Chapter 8 of this Code. However, the City's obligations to defend and indemnify the public employees of the other governmental entity under this Division 6 shall be governed by the specific terms and conditions of the parties' intergovernmental agreement.

Section 3. That Section 2-611 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 2-611. - Defense and indemnification obligations to employees.**

(a) Except as provided in paragraph (c) of this Section, the City shall assume liability, to the extent permitted by law, for the payment of all defense costs, attorney fees, judgments and settlements in all civil claims against any of its present and former public employees that lie in tort or could lie in tort regardless of the type of action or form of relief chosen by the claimant and regardless of whether the City itself is separately liable to the claimant, if all of the following circumstances exist:

- (1) The claim arises from an act or omission of the employee occurring during the performance of the employee's duties and within the scope of the employee's employment with the City;
- (2) The employee's act or omission was not "willful and wanton," that is, conduct purposely committed which the employee must have realized as dangerous, done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, particularly the person injured;
- (3) The defense of sovereign or governmental immunity is not available under the Colorado Governmental Immunity Act to bar the claim against the employee, but this circumstance shall not apply to the City's obligation under this Division 6 to pay the defense costs of its employees or to pay judgments or settlements where the employee's act or omission is willful and wanton while operating an emergency vehicle within the provisions of C.R.S. Section 42-4-108(2) and (3);
- (4) The employee has not compromised or settled the claim without the consent of the City;
- (5) If the civil claim is asserted in a lawsuit filed against the employee that does not name the City as a co-defendant, the employee has notified the City in writing about the lawsuit within fifteen (15) days after being served with the summons and complaint;
- (6) The employee has not willfully and knowingly failed to notify the City of the incident or occurrence which led to the claim within a reasonable time after such incidence or occurrence, if such incidence or occurrence could reasonably have been expected to lead to a claim; and
- (7) If there exists any other prerequisite under the Colorado Governmental Immunity Act or any other applicable law to the City's obligations to defend and indemnify the employee, the employee has satisfied that prerequisite.

(b) Except as provided in paragraph (c) of this Section and in addition to the City's obligations to defend and indemnify its employees as provided in paragraph (a) of this Section, the City shall

further indemnify and defend, to the full extent required by C.R.S. Sections 13-21-131(4) and 29-5-111, its employees employed as peace officers certified by the Colorado Peace Officer Standards and Training Board.

(c) Notwithstanding paragraphs (a) and (b) of this Section, nothing in this Division 6 shall be construed as obligating the City to indemnify any of its employees for punitive or exemplary damages awarded against them in any civil action unless the City Council adopts a resolution authorizing such indemnification as provided in C.R.S. Section 24-10-118(5) or unless the City is required to do so by C.R.S. Section 13-21-131(4).

Section 4. That Section 2-612 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 2-612. - Legal representation of employees.**

The City's obligation in § 2-611 to pay an employee's defense costs and attorney fees shall apply only to legal counsel chosen and retained by the City to represent the employee in the civil action. When the City and the employee are named defendants in the same civil action, the City may retain the same legal counsel to represent them both, as well any other City employee named as a defendant in the civil action. If, however, in the judgment of the City Attorney, a conflict of interest is determined to exist between the employee and the City or any other City employee named as a defendant, the City may retain separate legal counsel for the employee and shall be obligated to pay the defense costs and attorney fees for such legal counsel as provided in § 2-611. However, except as otherwise provided in C.R.S. Sections 13-21-131(4) and 29-5-111, if a court subsequently determines that the employee's act or omission did not occur during the employee's performance of their duties for the City and within the scope of the employee's employment with the City, or that the act or omission of the employee was willful and wanton, the City may request, and the court is required to order, such employee to reimburse the City for its reasonable costs and attorney fees incurred in the defense of that employee in the civil action.

Section 5. That Section 2-613 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 2-613. - Payment of employees' costs and attorney fees in criminal matters.**

(a) As determined by the City Manager in consultation with the City Attorney, except as provided in paragraph (c) of this Section, the City shall pay or reimburse the reasonable defense costs and attorney fees, incurred by an employee related to any criminal investigation conducted concerning or criminal charge filed against the employee by any agency or branch of the federal government or of any state or local government, provided all of the following circumstances exist:

- (1) The investigation or charge arises from an alleged act or omission of the employee occurring during the performance of their duties and within the scope of their employment with the City;
- (2) The investigation results in no charge being filed or any prosecution results in the dismissal or acquittal of all charges filed; and

- (3) The employee's conduct from which the investigation or charge arises was not "willful and wanton," as this term is defined in § 2-611(a)(2).
- (b) As determined by the City Manager in consultation with the City Attorney, except as provided in paragraph (c) of this Section, the employee's reasonable defense costs and fees may either be paid by the City as incurred by the employee or may be reimbursed by the City upon final disposition of the investigation or prosecution. In the event such costs and fees are paid by the City as incurred and the employee subsequently enters into a plea agreement for a criminal charge, pleads no contest or guilty to a criminal charge or is convicted of a criminal charge, the employee shall reimburse the City for the full amount of said defense costs and fees within ninety (90) days of the final disposition date of the charge.
- (c) If the criminal investigation or prosecution is directed against the City Manager, City Attorney or Municipal Judge, the determinations to be made by the City Manager in consultation with the City Attorney under this § 2-613 shall be made by City Council by resolution.

Section 6. That a new Section 2-614 of the Code of the City of Fort Collins is hereby added to Division 6 of Article VII in Code Chapter 2 to read as follows:

**Sec. 2-614. - Payment of employees' costs and attorney fees in administrative matters.**

(a) As determined by the City Manager in consultation with the City Attorney, except as provided in paragraph (c) of this Section, the City shall pay the reasonable defense costs and attorney fees incurred by a City employee related to any investigation, grievance, charge, complaint or other administrative action commenced, taken or filed against the employee by any agency or branch of the federal government or of any state or local government concerning any license, certification, accreditation or permit the employee is required to have and maintain as a condition of their employment with the City ("Administrative Action"), provided all of the following circumstances exist:

- (1) The Administrative Action arises from an alleged act or omission of the employee occurring during the performance of their duties and within the scope of their employment with the City;
  - (2) The Administrative Action results in no action being taken by the government or agency or branch thereof to reprimand the employee or to revoke, terminate or suspend the employee's license, certification, accreditation or permit; and
  - (3) The employee's conduct from which the Administrative Action arises was not "willful and wanton," as this term is defined in § 2-611(a)(2).
- (b) As determined by the City Manager in consultation with the City Attorney, except as provided in paragraph (c) of this Section, the employee's reasonable defense costs and attorney fees may be paid by the City as incurred by the employee or may be reimbursed by the City upon final disposition of the Administrative Action. In the event such costs and fees costs are paid by the City as incurred and the Administrative Action results in the employee being reprimanded or in the employee's license, certification, accreditation or permit being revoked, terminated or suspended, the employee shall reimburse the City for the full amount of said costs and fees within ninety (90) days of the final disposition date of the Administrative Action.

(c) If the Administrative Action is directed against the City Manager, City Attorney or Municipal Judge, the determinations to be made by the City Manager in consultation with the City Attorney under this § 2-614 shall be made by City Council by resolution.

Section 7. That the current Section 2-614 of the Code of the City of Fort Collins is renumbered to Section 2-615 and amended to read as follows:

**Sec. 2-615. - No liability to third parties.**

The City's assumption of liability in this Division 6 shall not be construed so as to expand in any way the City's liability to third-party claimants, whether under the provisions of the Colorado Governmental Immunity Act or under any other law or legal authority.

Introduced, considered favorably on first reading, and ordered published this 16th day of March, A.D. 2021, and to be presented for final passage on the 20th day of April, A.D. 2021.

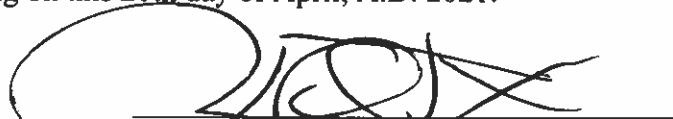
  
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Mayor

ATTEST:

  
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City Clerk



Passed and adopted on final reading on this 20th day of April, A.D. 2021.

  
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Mayor

ATTEST:

  
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City Clerk

