

ORDINANCE NO. 24-015

AN ORDINANCE/RESOLUTION OF THE CITY COUNCIL TO ADOPT A POLICY FOR THE INDEMNIFICATION AND DEFENSE OF ELECTED OFFICIALS, APPOINTED OFFICIALS, AND EMPLOYEES SUED FOR ACTIONS TAKEN IN THE COURSE AND SCOPE OF THEIR EMPLOYMENT OR OFFICIAL CAPACITY, TO ESTABLISH PARAMETERS UNDER WHICH SUCH INDEMNITY AND DEFENSE WILL APPLY, AND FOR OTHER PURPOSES

WHEREAS, the Charter of the City of Auburn empowers the City Council to take actions necessary to protect the health, safety, and welfare of the citizens, residents, and visitors within the City of Auburn; and

WHEREAS, O.C.G.A. § 45-9-2 authorizes the City to enact a policy of indemnification and defense for officials and employees of the City who act within the course and scope of their engagement for or on behalf of the City; and

WHEREAS, the City Council finds and concludes that providing such defense and support for the officials and employees of the City is an important safeguard for the retention and recruitment of City officials and employees; and

WHEREAS, the City Council finds that the person or persons receiving the benefit of the policy must be acting in the course and scope of their job or position for the City, must act without selfish motive or intent, and must not act for their own personal gain or advancement; and

WHEREAS, the City Council further finds and concludes that it is important for the officials and employees of the City that each of them understand and have the Council's commitment that when the City's officials and employees are performing the work of the City as determined by the Council through its legislation, policies, and procedures, that the City will stand behind that work and the official or employee need not worry or be concerned about personal liability for their work on behalf of the City.

NOW THEREFORE, THE COUNCIL OF THE CITY OF AUBURN hereby ordains as follows:

The findings and conclusions above are made a part of this Ordinance and are expressly adopted and found to be true by the City Council.

The following shall be the Policy of the City and may be referred to or cited as "City of Auburn Indemnity Policy:"

Section 1. Immunity of City and its officials and employees not waived.

Nothing in this policy shall be construed to constitute any waiver by the City of any immunity or privilege of any kind now or hereafter enjoyed by the City or any elected official, appointed

official, or employee of the City. Any sovereign immunity, official immunity, governmental immunity, qualified immunity, judicial immunity, prosecutorial immunity, or other immunity or privilege afforded to the City or any of its officials or employees under the laws and constitution of the state or federal government shall remain in full force and affect and shall not be waived.

Nothing in this policy shall be construed in any way to reduce or eliminate the rights of any official or employee against any other party.

Section 2. Indemnity and Defense.

It shall be the policy of the City of Auburn that wherever any civil litigation is instituted in or before a court of this state or of the United States against any official (including any elected official or appointed official) or employee asserting personal liability for damages arising out of the performance of the official duties of such official or employee or in any way reasonably related thereto, whether based upon negligence, violation of contract rights or violation of civil, constitutional, common law, or other statutory rights, whether federal, state or local, the City, upon written notice to the City by any such official or employee and as a part of such official's or employee's compensation or terms of employment, subject to the limitations and exclusions as set forth in this policy will undertake to defend the civil action on behalf of any such official or employee by and through the office of the City attorney. Subject to the terms and restrictions of this policy, the City will provide an indemnification and defense for any part or all of the damages awarded by, or resulting from, any court or agency of competent jurisdiction for any action taken by any official and any employee, who at the time of the alleged actions or omissions was performing work for and on behalf of the City, was acting within established policies, procedures, or guidelines or was acting pursuant to express authority from the City Council, and was not acting for their own personal advantage or advancement.

Section 3. Expenditures for defense.

The City may expend funds for such purposes, including but not limited to, attorney's fees, court costs, deposition costs, witness fees and compensation, and all other like costs, expenses, and fees.

Section 4. Notice to City attorney.

This policy shall not apply unless the official or employee or the department head of such official or employee has given notice in writing of any such pending civil action to the City attorney within ten days after the official or employee has received notice thereof or has been served with any such summons and complaint.

Section 5. Grounds for refusal of defense.

The City shall refuse to undertake to defend civil actions brought against any official or employee if it is determined by the City Council in consultation with the City attorney that:

- (1) The act or omission did not arise out of and in the course of the employment of such official or employee nor was the act or omission reasonably related to such employment.

- (2) The official or employee acted or failed to act because of actual or intentional misconduct, fraud, corruption, malice, or bad faith.
- (3) The defense of any such civil action by the City would create a conflict of interest between the City and the official or employee.
- (4) The litigation is for the purpose of criminal prosecution.
- (5) Undertaking to defend against any such civil action would not be in the best interest of the City.
- (6) The official or employee acted or failed to act as a result of impaired judgment caused by the voluntary consumption of alcohol or by the voluntary illegal use of any controlled substance as defined by the laws of the state.
- (7) The official or employee acted or failed to act in such a manner as to constitute a criminal offense involving theft, embezzlement or other like crime with respect to the property or money of or in which the City has an interest.
- (8) The official or employee fails to fully cooperate with the City attorney, or other attorney hired to represent the interests of the official or employee, or any other entity hired by the City in the conduct of the investigation and/or defense of the matter and/or litigation.
- (9) The official or employee fails or refuses to follow the advice of the City attorney, or other attorney hired to represent the person, in any matter related to the claim made or action brought against said official or employee.
- (10) The official or employee conceals or misrepresents any facts or circumstances concerning the occurrence upon which the claim or cause of action is based.
- (11) The occurrence upon which the claim is based is otherwise covered by a policy or contract of insurance purchased by the City.

Section 6. Conflict of interest between officials or employees.

Any official or employee represented under this policy shall execute a written waiver of any and all actual or potential conflicts of interest with the City and any other official or employee of the City.

Nothing in this policy shall be construed to prohibit the City from undertaking to defend against any such civil action on behalf of any official or employee where there exists a conflict of interest with another official or employee. If, at the initiation of or during the course of any such civil litigation, a conflict of interest arises as to the representation of any officials or employees, the City attorney shall provide representation pursuant to the following:

- (1) As between elected officials and appointed officials and employees, the City attorney shall represent the elected officials;
- (2) As between appointed officials and employees, the City attorney shall make the determination, subject to the approval, by resolution duly adopted and approved, of the council and the mayor; and
- (3) As between elected officials, the determination shall be made by a resolution duly adopted and approved by the council and the mayor.

Further, where any such conflict of interest exists and a determination has been made as to which officials or employees shall be represented by the City attorney, the City in its discretion may by a resolution duly adopted and approved, authorize those officials or employees not represented by the City attorney to employ counsel at the expense of the City. However, the selection and compensation of such other counsel shall be subject to prior approval by the City.

Section 7. Indemnification limits.

The City will indemnify any official or employee of the City under this policy subject to the following monetary limitations:

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| Bodily Injury: | \$100,000 each Claimant | \$500,000 each Occurrence |
| Property Damage: | \$100,000 each Claimant | \$500,000 each Occurrence |
| Other (not excluded below): | \$100,000 each Claimant | \$500,000 each Occurrence |

The City shall not provide indemnification for any claims for emotional harm, mental harm, or punitive damages.

The City shall not be obligated to pay any claim or judgment or defend any cause of action on behalf of an official or employee of the City after the indemnification limits, as set out above, have been exhausted.

No sum shall be paid where the City has terminated the official or employee's entitlement to a defense or to indemnification under this policy prior to trial or settlement.

No sum shall be paid pursuant to this policy unless the official or employee and all claimants unconditionally and forever release and discharge the City and each and every official and employee of the City from any and all liability, suits, claims, actions, causes of action, demands, damages, costs, expenses, and compensation on account of or in any way arising out of or related to any such single or continuing incident or occurrence.

Section 8. Disbursements paid from City funds.

Any such payment or disbursement as provided in this policy shall be deemed to be for public purposes and may be paid from state, federal or local funds.

Section 9. Resolution of Disputes Over Application of Policy

If a question arises about the application of this policy to a particular set of facts or circumstances, such question shall be resolved by the City Council, acting pursuant to law and its rules, within the discretion of the legislative body.

Section 10. Applicability

This policy shall apply to any claim for which the City or any official or employee has received an ante litem notice, summons and complaint, or other notice of administrative action as of the time this policy is adopted by the Council.

Section 11. Right and authority of Council to direct the purchase of insurance

The Council shall have the option and discretion to direct the City Manager to purchase such insurance as deemed appropriate and sound to provide a defense and/or indemnity for the City and its officials and employees. This policy shall apply in excess of any applicable insurance policy or in cases where insurance is determined not to provide coverage.

The City Administrator and City Clerk are further authorized to correct typographical errors in the text of this Ordinance and the existing City Code and to produce and publish a final codified version of the City Code with the amendments and revisions outlined herein.

In the event any Court of competent jurisdiction determines that any portion of the foregoing amendment is invalid, unconstitutional, or otherwise illegal, such rulings shall not impair the validity of the rest and remainder of this amendment.

All laws and parts of laws in conflict with this Ordinance are hereby repealed.


This Ordinance shall be effective immediately upon its adoption by the Mayor and City Council.

SO ORDAINED this 14 day of November, 2024.


Richard E. Roquemore, Mayor


Joshua Rowan, Council Member


Robert L. Vogel, III Council Member


Jamie L. Bradley, Council Member


Taylor J. Sisk, Council Member

ATTEST:


Brooke Haney, City Clerk

