

RESOLUTION NO. D' 5820

A RESOLUTION providing for both repeal of prior resolutions for indemnification against personal liability for City personnel and for provision of broader coverage of City personnel.

WHEREAS, the City has been unable to obtain liability insurance except for coverage that carries a \$100,000.00 self-insured retention feature; and the City has been unable to obtain police professional insurance and errors and omission insurance except for coverage that is subject to a \$10,000.00 deductible feature; and it is unknown whether the City will continue to retain that coverage, or any other, in the future; and

WHEREAS, in the interest of attracting candidates for elected City positions, and in the interest of recruiting and retaining City officers, employees, police volunteers, and members of City boards and commissions, without exposing them to personal liability under the retention or deductible features of the City's existing insurance policies or in the event no coverage may exist in the future, and in accordance with Sections 35.21.205 and 36.16.138, and Chapter 48.62, all of the Revised Code of Washington, the City Council deems it to be in the best interests of the City that City elected and appointed officers, employees, police volunteers, and members of City boards and commissions, be indemnified from personal liability in their conduct of City affairs; and

WHEREAS, Resolution Nos. D-5253 and D-5456 have not provided indemnification coverage for police volunteers who perform valuable service for the City of Yakima, now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YAKIMA:
Section 1. Resolution Nos. D-5232 and D-5456, enacted respectively March 25, 1986 and May 17, 1988, by the City Council of the City of Yakima and each and every section thereof, are hereby repealed.

Section 2. Simultaneous with the repeal of Resolution Nos. D-5232 and D-5456 as effected by Section 1 of this resolution, the following is hereby enacted:

Section A. The City shall defend and indemnify all person who hold positions in the below-listed categories against all actions, claims or other proceedings threatened or instituted against them and which arise from the performance, purported performance, or failure of performance of their duties for or employment with the City; and the City shall hold them harmless from all expenses and liability connected with the defense or settlement of such claims and from liability for any monetary fine or judgment entered in an such action or proceeding.

Covered categories:

City of Yakima elected or appointed officers,
City of Yakima employees,
Members of City of Yakima boards and
commissions,
City of Yakima Police Reserve Officers,
commissioned and non-commissioned,
Police Explorers,
On-Guard Crime Prevention volunteers.

Section B. The defense, indemnification, and hold harmless provisions of this resolution shall be afforded only to persons who are in the categories listed in Section 2 hereof, at the time of occurrence of the incident on which the action, claim or proceeding is based. Further, the defense, indemnification or hold harmless provisions of this resolution shall be afforded only to those persons who exercised good faith in their performance, purported performance, or failure of performance of their duties for or employment with the City on which the action, claim or proceeding is based, and who were not acting clearly outside the scope of their authority as City officers, employees, police volunteers, or members of City boards or commissions; and no civil or criminal fine shall be paid for any person who knew, or should have known with the exercise of reasonable care, that the conduct or failure to act, on which the fine is based, was unlawful. The determination of whether an employee or police volunteer was acting in good faith within the scope of employment or duties, and without knowledge or discoverable knowledge of the unlawfulness of the person's conduct, shall be made by the City Manager; and that determination as to elected City officers and all members of City boards and commissions shall be made by the City Council.

Section C. The monetary amount of indemnification shall be the reasonable and necessary expenses actually incurred and connected with the defense, settlement, and monetary fine or judgment, including costs, disbursements, and attorney's fees, arising from the action, claim, or other proceeding, and shall include the amount of both civil and criminal fines actually imposed unless it is found by the City Manager or City Council, as the case may be (as provided by Section B of this resolution), that the person liable therefore knew, or should have known with the exercise of reasonable care, that the conduct or failure to act on which the fine is based, was unlawful.

Section D. In order to be eligible for the defense, indemnification, or hold harmless provisions of this resolution, the person seeking that protection must notify the City Manager immediately on learning that a claim is threatened or made, or that an action or other proceeding is filed or commenced, and provide the City Manager with a copy of all claims, pleadings, reports or other documents in that person's possession related to the claim, action or proceeding; and further must agree that the defense shall be conducted by investigators and legal counsel designated by the City, unless the City Council approves the hiring of other investigators or defense counsel for any particular claim, action or proceeding.

Section E. The agreed settlement of any claim, action or other proceeding against a City officer, employee, police volunteer, or board or commission member falling within the provisions of this resolution shall be subject to the approval of the City Council.

Section F. The defense, indemnification, or other hold harmless provisions of this resolution shall not be afforded to any City officer, employee, police volunteer, or board or commission member in any claim or cross-claim, action, or proceeding of any nature threatened, filed, or instituted by the City against that officer, employee, police volunteer, or board or commission member.

Section G. The defense, indemnification, and hold harmless provisions of this resolution shall apply to any deductible or self-insurance retention provided for or required by any insurance coverage held by the City at the time of the adoption of this resolution or acquired thereafter, regardless of the amount of the deductible provision or self-insurance retention requirement; and, further, the inability or failure of the City to apply for or acquire any insurance shall not limit the protection afforded by this resolution to City employees,

officer, police volunteers, and board or commission members, in which event the defense, indemnification, and hold harmless provisions of this resolution shall to the full monetary amount of the expenses defined in Section C of this resolution."

ADOPTED BY THE CITY COUNCIL this 18th day of September,

1990.

Pat Burnett
Mayor

ATTEST:

Karen S Roberts, cmc
City Clerk