

ARTICLE VIII. LEGAL DEFENSE AND INDEMNIFICATION OF CITY OFFICERS AND EMPLOYEES

Sec. 2-243. Definitions.

For purposes of this article, the term "employee" shall include all city councilmembers, members of all city boards and committees, and all officers and employees of the city and any other persons, including volunteers, former officers, volunteers or employees and the estate of any such officer, volunteer or employee encompassed within the definition of "employee" in Chapter 102 of the Texas Civil Practice and Remedies Code, hereinafter referred to as the "Code."

(Ord. No. 95-128, § I, 7-11-95)

Sec. 2-244. Indemnification.

The City of Denton shall indemnify and pay actual damages, court costs, and reasonable attorneys fees, excluding punitive damages, awarded against any city councilmember, city board or commission member, or other officer or employee of the city, to the extent such damages are not covered under an insurance contract or self-insurance program of the city authorized by statute, for damages resulting from an act or omission of an employee acting in the course and scope of his or her employment for the city; and which arise from a cause of action for negligence.

(Ord. No. 95-128, § I, 7-11-95)

Sec. 2-245. Type of employment and limitations.

The City of Denton shall never pay damages awarded against an employee that arise from a cause of action for official misconduct, or arise from a cause of action involving a willful or wrongful act or omission, or an act or omission constituting gross negligence. The phrase "course and scope of employment" shall not include any action which occurs during a period of time when the employee is engaged in outside employment or is rendering contractual services to someone other than the city or engaged in activities unrelated to his or her municipal employment or services. Whether the actions for which damages are awarded were performed during the employee's course and scope of employment shall be determined by the city, and this determination shall be final; provided however, if the indemnity and payment of damages and legal representation has been denied by the city, if a final judgment of a court of competent jurisdiction determines that the employee was acting in the scope and course of his or her employment and the employee was not engaged in official misconduct, a willful or wrongful act or omission, or an act or omission constituting gross negligence, the city shall pay any damages, court costs, and reasonable attorneys' fees incurred in the defense of the claim reimbursed. The payments under this article by the city may not exceed one hundred thousand dollars (\$100,000.00) to any one person, or three hundred thousand dollars (\$300,000.00) for any single occurrence, in the case of personal injury or death; or ten thousand dollars (\$10,000.00) for a single occurrence for

property damage, or any other limitation on the payment of damages which is hereinafter legally established.

(Ord. No. 95-128, § I, 7-11-95)

Sec. 2-246. Legal defense.

The city shall provide legal counsel to represent any defendant for whom the city may pay damages under this article, including any appeal resulting from the litigation under which damages were or may be assessed. The legal counsel provided by the city may be the city attorney, or any member of the city attorney's staff, or the city's regularly employed counsel, unless there is a potential conflict of interest between the city and the defendant, in which case, the city shall employ other legal counsel to defend the suit. Such legal representation shall be provided at no cost to the employee. Any employee may have his own counsel assist in the defense at the sole expense of the employee. The employee shall cooperate fully with the city, the city attorney, or the city appointed legal counsel in the preparation and presentation of the case. The failure of the employee to so cooperate shall constitute a waiver of the employee's right to representation and indemnity under this article. Any legal counsel provided under this section may settle the portion of the suit that may result in the payment of damages by the city under this article with approval of the city council. The city shall not be liable for any settlement of any such claim or suit effected without the consent of the city council.

(Ord. No. 95-128, § I, 7-11-95)

Sec. 2-247. Preservation of defenses.

Nothing contained in this article shall waive any defenses which are available to the city or the officer or employee under the Tort Claims Act or any other applicable laws, including, without limitation, the defense of governmental or sovereign immunity, the limitations on governmental officers' and employees' liability or the limitations on the amount of recoverable damages as set forth in the Tort Claims Act and Chapters 102 through 104 of the Code, as those laws may now read or may be amended in the future. This article does not impose liability or waive immunity for an employee who has common law, statutory, or other immunity. Nothing contained in this article shall create any rights on behalf of third parties who are not officers or employees of the City of Denton.

(Ord. No. 95-128, § I, 7-11-95)

Sec. 2-248. Notice.

The provisions of this article shall apply only if the city has been given notice of the action brought against the city employee in writing, which has been received by the city manager within thirty (30) calendar days of the service of process on the employee.

(Ord. No. 95-128, § I, 7-11-95)

Sec. 2-249. Disciplinary action.

Nothing in this article shall prevent the city from taking any disciplinary action against any employee for conduct defended or indemnified by the city under this article, either before or after the conclusion of the litigation.

(Ord. No. 95-128, § I, 7-11-95)

Sec. 2-250. Suits on behalf of the city.

Nothing in this article shall require the city to indemnify or pay damages to any employee for recoveries made against him or her in suits by or on behalf of the city, including, without limitation, suits to collect delinquent taxes, assessments, and fines.

(Ord. No. 95-128, § I, 7-11-95)