

Chapter 2.46

DEFENSE OF OFFICIALS, EMPLOYEES, AND VOLUNTEERS

Sections:

- 2.46.010 Definitions.**
- 2.46.020 Legal representation.**
- 2.46.030 Exclusions.**
- 2.46.040 Determination of exclusion.**
- 2.46.050 Representation and payment of claims--Conditions.**
- 2.46.060 Effect of compliance with conditions.**
- 2.46.070 Failure to comply with conditions.**
- 2.46.080 Reimbursement of incurred expenses.**
- 2.46.090 Conflict with provisions of insurance policies.**
- 2.46.100 Pending claims.**
- 2.46.110 Repealed by M-3912**
- 2.46.120 Construction.**

Section 2.46.010 Definitions.

As used in this chapter, unless the context clearly requires otherwise, the following words shall have the meaning set forth below:

1. "Employee" means any person who is or has been employed by the City of Vancouver.
2. "Official" means any person who is serving or has served as an elected or appointed city official or officer, and any person who is serving or has served as an appointed member of any city board, commission, committee, or other appointed position with the city. The term "appointed," as used herein, shall mean a person formally appointed by the mayor or as authorized by state law or city ordinance.
3. "Volunteer" means any person who, without monetary compensation, serves or has served the City of Vancouver under the explicit authorization and direction of a city department. (Ord. M-3179 § 2, 1995)

Section 2.46.020 Legal representation.

a. The city shall provide to an official, employee or volunteer, subject to the conditions and requirements of this chapter, and notwithstanding the fact that such official, employee or volunteer may have concluded service or employment with the city, such legal representation as may be reasonably necessary to defend a claim or lawsuit filed against such official, employee or volunteer resulting from any conduct, act or omission of such official, employee, or volunteer performed or omitted on behalf of the city in his/her capacity as a city official, employee, or volunteer, which act or omission is within the scope of his/her service or employment with the city.

b. The legal services shall be provided by the office of the city attorney unless:

1. Any provision of an applicable policy of insurance provides otherwise; or
2. A conflict of interest or ethical bar exists with respect to said representation; or
3. The city attorney appoints alternate legal counsel to the case.

Vancouver Municipal Code

c. In the event that outside counsel is retained under subsections (b)(1) and (b)(3) of this section, the city shall indemnify the official, employee or volunteer from the reasonable costs of defense, provided that in no event shall the official, employee or volunteer be indemnified for attorney's fees in excess of the rates established by the city's contract with the attorney selected by the city. The official, employee or volunteer shall be liable for all attorney's fees in excess of said rate. In the event that outside counsel is retained under subsection (b)(2) of this section, the city shall indemnify the official, employee or volunteer from the reasonable costs of defense, provided that in no event shall the official, employee or volunteer be indemnified for attorney's fees in excess of the then prevailing hourly rate in the Vancouver area. The official, employee or volunteer shall be liable for all attorney's fees in excess of said rate. (Ord. M-3179 § 3, 1995)

Section 2.46.030 Exclusions.

A. In no event shall protection be offered under this chapter by the city for:

1. Any dishonest, fraudulent, criminal, willful, intentional or malicious act or course of conduct of an official, employee or volunteer;
2. Any act or course of conduct of an official, employee or volunteer which is not performed on behalf of the city;
3. Any act or course of conduct which is outside the scope of an official's, employee's or volunteer's service or employment with the city;
4. Any lawsuit brought against an official, employee or volunteer by or on behalf of the city;
5. Any action or omission contrary to or not in furtherance of any adopted city policy.

B. Nothing herein shall be construed to waive or impair the right of the city to institute suit or counterclaim against any official, employee or volunteer, nor to limit its ability to discipline or terminate an employee.

C. The provisions of this chapter shall have no force or effect with respect to any accident, occurrence or circumstance for which the city or the official, employee or volunteer is insured against loss or damages under the terms of any valid insurance policy, provided that this chapter shall provide protection, subject to its terms and limitations, above any loss limit of such policy. The provisions of this chapter are intended to be secondary to any contract or policy of insurance owned or applicable to any official, employee or volunteer. The city shall have the right to require an employee to utilize any such policy protection prior to requesting the protection afforded by this chapter. (Ord. M-3179 § 4, 1995)
(M-3912, Amended, 02/02/2009, Sec 1 - Effective 2/7/2009)

Section 2.46.040 Determination of exclusion.

1. The determination of whether an official, other than a member of the city council, employee or volunteer shall be afforded a defense by the city under the terms of this chapter shall be made by the city manager.
2. The determination of whether or the city manager shall be afforded a defense by the city shall be made by the city attorney.

Vancouver Municipal Code

3. The determination as to whether to furnish a defense as provided under this chapter to a member or members of the city council shall be made by the city council without the vote of such member or members of the city council unless the inclusion of such member or members is required for a quorum. Provided, that if a claim or lawsuit affects a quorum or greater number of the members of the city council, all such affected members shall retain their voting privileges under this section.
4. The official, employee or volunteer requesting defense and indemnification shall be informed in writing whether the request is granted or denied. The notice shall be sent to the official's, employee's, or volunteer's last known residential address by certified mail, return-receipt requested.
5. There shall be no appeal from the decision made under this section, except for an action in the Clark County Superior Court filed within thirty days of the mailing of a notice of denial.
6. Nothing herein shall preclude the city from undertaking an official's, employee's or volunteer's defense under a reservation of rights.

(Ord. M-3179 § 5, 1995)

(M-3912, Amended, 02/02/2009, Sec 2 - Effective 2/7/2009)

Section 2.46.050 Representation and payment of claims--Conditions.

The provisions of this chapter shall apply only when the following conditions are met:

1. In the event of any incident or course of conduct potentially giving rise to a claim for damage, or the commencement of a suit, the official, employee or volunteer involved shall, as soon as practicable, give the city attorney and city manager written notice thereof, identifying the official, employee or volunteer involved, all information known to the official, employee or volunteer with respect to the date, time, place and circumstances surrounding the incident or conduct giving rise to the claim or lawsuit, as well as the names and addresses of all persons allegedly injured or otherwise damaged thereby, and the names and addresses of all witnesses.
2. An official, employee or volunteer shall promptly give notice to the city manager and city attorney of his or her request for defense and indemnification from a claim or action upon receipt of any claim, demand, notice or summons or other process arising out of conduct described in subsection 1 of this section. The official, employee or volunteer may make a request for defense and indemnification at any time after it is reasonably believed that a claim and/or lawsuit will be filed. The city manager and city attorney shall provide copies of such notice to the city council as well as any determination as to whether a defense shall be provided under the terms of this chapter.
3. Upon receipt thereof, the official, employee or volunteer shall promptly deliver any claim, demand, notice or summons or other process relating to any such incident or conduct to the city attorney, and shall cooperate with the city attorney or an attorney designated by the city, and, upon request, assist in making settlement of any suit and enforcing any claim for any right of subrogation against any persons or organizations that may be liable to the city because of any damage or claim of loss arising from said incident or course of conduct, including, but not limited to, rights of recovery for costs and attorneys' fees arising out of state or federal statute upon a determination that the lawsuit brought was frivolous in nature.
4. Such official, employee or volunteer shall attend interviews, depositions, hearings and trial and shall assist in securing and giving evidence and obtaining attendance of witnesses all without any additional

Vancouver Municipal Code

compensation to the official, employee or volunteer and, in the event that an employee has left the employ of the city, no fee or compensation shall be provided.

5. Such official, employee or volunteer shall not accept nor voluntarily make any payment, assume any obligation, or incur any expense relating to said claim or suit; other than for medical first aid to others at the time of any incident or course of conduct giving rise to any such claim, loss or damage. Nothing herein shall be deemed to preclude any official, employee or volunteer from retaining an attorney to represent his/her interests relating to such claim or lawsuit, subject to the provisions of VMC Section 2.46.070; however, all costs and expenses incurred thereby shall be paid by the official, employee or volunteer.

(Ord. M-3179 § 6, 1995)

(M-3912, Amended, 02/02/2009, Sec 3 - Effective 2/7/2009)

Section 2.46.060 Effect of compliance with conditions.

If legal representation of an official, employee or volunteer is undertaken by the city, all of the conditions of representation are met, and a judgment is entered against the official, employee or volunteer, or a settlement made, the city shall pay such judgment or settlement not otherwise covered by insurance in the same manner as a judgment or settlement against the city, except any portion of the judgment which is for punitive damages.

The city council may, by separate resolution, authorize payment of a judgment for punitive damages against a person who has been represented by the city attorney or a designated attorney under VMC Section 2.46.020(b). The city reserves the right to appeal any judgment at its sole discretion. (Ord. M-3179 § 7, 1995)

Section 2.46.070 Failure to comply with conditions.

In the event that any official, employee or volunteer fails or refuses to comply with any of the conditions set forth in Section 2.46.050, or elects to provide his/her own representation with respect to any such claim or litigation, then all of the provisions for defense and indemnification in this chapter shall be inapplicable, and have no force or effect with respect to any such claim or litigation. (Ord. M-3179 § 8, 1995)

Section 2.46.080 Reimbursement of incurred expenses.

a. If the city determines that an official, employee or volunteer does not come within the provisions of this chapter, and a court of competent jurisdiction later determines that such claim does come within the provisions of this chapter, then the city shall pay any judgment rendered against the official, employee or volunteer and reasonable attorney's fees incurred in defending against the claim. The city shall pay any costs and reasonable attorney's fees incurred in obtaining the determination that such claim is covered by the provisions of this chapter. Provided, if a court of competent jurisdiction determines that such claim does not come within the provisions of this chapter, then the official, employee or volunteer shall pay the city's costs and reasonable attorney's fees incurred in obtaining the determination that such claim is not covered under the provisions of this chapter.

b. If the city determines that a claim against a city official, employee or volunteer does come within the provisions of this chapter, and a court of competent jurisdiction later finds that such claim does not come within the provisions of this chapter, then the city shall be reimbursed for costs or expenses incurred in

Vancouver Municipal Code

obtaining the determination that such claim is not covered by the provisions of this chapter. (Ord. M-3179 § 9, 1995)

Section 2.46.090 Conflict with provisions of insurance policies.

The indemnification provisions of this chapter do not constitute a policy of insurance, and nothing contained in this chapter shall be construed to modify or amend any provisions of any policy of insurance where any city official, employee or volunteer thereof is the named insured. In the event of any conflict between this chapter and the provisions of any such policy of insurance, the policy provisions shall be controlling; provided, however, that nothing contained in this section shall be deemed to limit or restrict any employee's, official's or volunteer's right to full coverage pursuant to this chapter, it being the intent of this chapter and section to provide the coverage detailed in this chapter only outside and beyond insurance policies which may be in effect, while not compromising the terms and conditions of such policies by any conflicting provision contained in this chapter. (Ord. M-3179 § 10, 1995)

Section 2.46.100 Pending claims.

The provisions of this chapter as amended shall apply to any pending claim or lawsuit against an official, employee or volunteer, or any such claim or lawsuit hereinafter filed, irrespective of the date of the events or circumstances which are the basis of such claim or lawsuit. (Ord. M-3179 § 11, 1995)
(M-3912, Amended, 02/02/2009, Sec 4 - Effective 02/07/2009)

Section 2.46.120 Construction.

In the event of any conflict between this chapter and any collective bargaining agreement, the terms of the collective bargaining agreement shall prevail. (Ord. M-3179 § 13, 1995)