

Chapter 2.90

LEGAL ACTION AGAINST CITY OFFICIALS, EMPLOYEES AND VOLUNTEERS

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2.90.010 Definitions. As used in this chapter, the following definition shall apply:

“Officials and employees” means all present or former elected City officials, including the Mayor and members of the City Council, together with the City Manager, the City Attorney, the Director of Public Works, the City Clerk, the Police Chief, and all full-time and part-time employees of the City.

“Volunteers” means all present or former duly appointed members of the boards and commissions listed in SMC Chapters 2.12, 2.14, 2.16, 2.18, 2.19, 2.20, 2.22, 19.04, and part-time or reserve officers of the Snohomish Police Department. (Ord. 1830, 1997; Ord. 2105, 2006)

2.90.020 Legal Representation. As a condition of their service and employment for and on behalf of the City of Snohomish, the City shall provide to all past and present officials, employees and volunteers such legal representation as may be reasonably necessary to defend any claims and/or litigation resulting from acts or omissions of such officials, employees or volunteers while performing or in good faith purporting to perform his or her official duties for the City of Snohomish. (Ord. 1830, 1997)

2.90.030 Conditions of Representation or Payment of Claims or Judgments. Except as may be provided in any applicable municipal policy of insurance, the City Attorney, or an attorney designated by the City Attorney, at the request and on behalf of any official, employee or volunteer of the City, shall investigate and defend such claims or litigation, and, if a claim is deemed by the City to be a proper claim, or if judgment is rendered against such an official, employee or volunteer, such claim or judgment shall be paid by the City; provided, that:

- A. In the event of any incident or course of conduct giving rise to a claim for damage and/or litigation, the official, employee or volunteer involved, as soon as practicable, shall give the City Clerk and City Attorney written notice thereof, identifying the official, employee or volunteer involved, and containing all information known to the official, employee or volunteer with respect to the date, time, place and circumstances surrounding the incident or conduct, as well as the names addresses of all persons allegedly injured or otherwise damaged thereby, and the names and addresses of all witnesses;
- B. Upon receipt thereof, the official, employee or volunteer shall forthwith deliver any demand, notice, summons or other process relating to any such incident or conduct to the City Clerk and City Attorney, and shall cooperate with the City Attorney or an attorney designated by the City Attorney, and upon request, shall assist in making settlements of any suits and in enforcing any claim for any right of subrogation against any persons or organization that may be liable to the City because of any damage claim of loss arising from said incident or course of conduct;

- C. Such officials, employees or volunteers shall attend interviews, depositions, hearings and trials, and shall assist in securing and giving evidence and obtaining the attendance of witnesses;
- D. Such officials, employees or volunteers shall not accept nor voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of any incident or course of conduct giving rise to any such claim, loss or damage; and
- E. In the case of any award or judgment against a City official, employee or volunteer for punitive damages, the City Council, in conjunction with the City Attorney, shall review the matter and make a determination as to whether the City shall defend against such claims for punitive damages or pay any claim or judgement for punitive damages for such official, employee or volunteer. In making such determination, the City Council shall consider the following:
 - 1. Whether the official, employee or volunteer was performing or in good faith purporting to perform his or here official duties for the City of Snohomish.
 - 2. Whether the official, employee or volunteer acted in a manner that was dishonest, fraudulent, criminal or malicious.
 - 3. Whether the official, employee or volunteer violated any federal, state or local laws or City policies.
 - 4. Whether the acts of the official, employee or volunteer subjected the City of Snohomish to an unreasonable risk of exposure to liability.

- 5. Any decision, directive or opinion rendered by the court.
- 6. Such other and further information as is relevant to the issue of whether the official, employee or volunteer should be personally punished for his or her acts or omissions. (Ord. 1830, 1997)

2.90.040 Refusal to Cooperate to Render Chapter Inapplicable. In the event that any official, employee or volunteer covered by this chapter fails or refuses to cooperate as provided in SMC 2.90.030, or elects to provide his own representation with respect to any such claim and/or litigation, then the provisions of this chapter shall be inapplicable and of no force and effect with respect to any such claim and/or litigation. (Ord. 1830, 1997)

2.90.050 Certain Actions and Occurrences Excluded. The obligations assumed under this chapter by the City shall not apply to any dishonest, fraudulent, criminal or malicious act of an official, employee or volunteer, or to any act of an official, employee or volunteer which is outside of the scope and course of his or her duties and employment with the City. Further, the provisions of this chapter shall have no force and effect with respect to any accident, occurrence or circumstance in which the City or the officials, employees or volunteers are insured against loss or damages under the terms of any valid insurance or self-insurance policy. (Ord. 1830, 1997)

2.90.060 Payment of Claims. The provisions of this chapter shall not modify existing procedures or requirements of law for processing and payment of claims against the City, or of judgments in those cases in which the City is a party defendant. (Ord. 1830, 1997)

2.90.070 Conflict with Insurance Policies.

Nothing contained in this chapter shall be construed to modify or amend any provision of any policy of insurance wherein the City of Snohomish or any 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 provision shall be controlling. (Ord. 1830, 1997)