

Chapter 3.02 CITY MANAGER

3.02.010 Powers and duties.

The powers and duties of the city manager, appointed by the city council during the period that the council-manager plan of government is in effect in the city, shall be coextensive with those powers and duties prescribed by RCW 35A.13.080 and other laws of the state and ordinances of the city now in force or as hereafter amended.

(Added during 1980 codification)

3.02.020 Office full-time job—Oath.

Unless express authority to the contrary is hereafter granted by resolution of the city council, the city manager shall devote his/her full-time to the affairs of the city, and before undertaking the duties of his/her office the city manager shall take an official oath or affirmation in support of the government of the United States, the laws of the state, the ordinances of the city and the faithful performance of his/her duties.

(Ord. A-102 § 2, 1991; added during 1980 codification)

3.02.030 Provision for professional services.

The city manager shall be empowered to make by any reasonable contractual arrangement for professional services such as casualty and liability insurance for the city, actuarial appraisal of properties, and similar professional services as may from time to time be required. Such provision may be by appointment on a full-time or part-time basis, or by any reasonable contractual arrangement for such professional services.

(Ord. A-102 § 2, 1991; added during 1980 codification)

Chapter 3.04 INDEMNIFICATION OF CITY EMPLOYEES, OFFICIALS AND VOLUNTEERS

3.04.010 Purpose.

The purpose of this chapter is to protect city officers, employees and volunteers acting in good faith purporting to perform his or her official duties and to authorize the defense of any action or proceeding against such officer, employee or volunteer and to create a procedure to determine whether or not the acts or omissions of the officer, employee, or volunteer were, or in good faith purported to be, within the scope of his or her official duties.

(Ord. 17C-08 § 1)

3.04.020 Definitions.

Unless the context indicates otherwise, the words and phrases used in this chapter shall have the following meanings:

Employee means any person who is or has been employed by the city. "Employee" does not include independent contractors.

Official means any person who is serving or has served as an elected city official, 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. "Official" does not include independent contractors performing the duties of appointed positions.

Volunteer means any person who performs his or her services gratuitously for the benefit of the city and has no employer-employee relationship with the city.

(Ord. 17C-08 § 1)

3.04.030 Legal representation.

- A. As a condition of service or employment with the city of Mercer Island, the city shall provide to an official, employee or volunteer, and any spouse or registered domestic partner of an official, employee or volunteer to the extent the community, as community is defined in RCW Chapter 26.16, is implicated, 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 or her capacity as a city official, employee or volunteer, which act or omission is within the scope of their 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 or self-insurance plan provides otherwise; or
 - 2. A conflict of interest or ethical bar exists with respect to said representation; or
 - 3. The city manager determines that the assignment of counsel other than the city attorney is necessary or prudent under the circumstances.
- C. In the event that outside counsel is retained under subsection B of this section, the city shall indemnify the official, employee or volunteer from the reasonable costs of defense; provided, that in circumstances where outside counsel is retained under subsection B of this section, the city controls the defense of the matter consistent with the contract with the outside counsel selected by the city.

(Ord. 17C-08 § 1)

3.04.040 Exclusions.

- A. In no event shall protection be offered under this chapter by the city to:
 - 1. Any dishonest, fraudulent, criminal, intentionally wrongful 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;

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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; and/or
 4. Any lawsuit brought against an official, employee or volunteer by or on behalf of the city.

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

- B. The protections of this chapter shall not apply 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 or self-insurance program; 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 any official, employee or volunteer to utilize any such policy protection prior to requesting the protection afforded by this chapter.

(Ord. 17C-08 § 1)

3.04.050 Determination of exclusion.

The determination of whether an official, employee or volunteer shall be afforded a defense by the city under the terms of this chapter shall be finally determined by the city council on the recommendation of the city manager. The city council may request the city attorney to provide an opinion or recommendation concerning the determination. The decision of the city council shall be final as a legislative determination of the council. Nothing herein shall preclude the city from undertaking an officer's, employee's or volunteer's defense under a reservation of rights.

(Ord. 17C-08 § 1)

3.04.060 Representation and payment of claims—Conditions.

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

- A. 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 risk manager written notice thereof, identifying the official, employee or volunteer involved, all information known to 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.
- B. Upon receipt thereof, the official, employee or volunteer shall forthwith 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 the 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 suit brought is frivolous in nature.
- C. Such official, employee or volunteer shall attend interviews, depositions, hearings and trials and shall assist in securing and giving evidence and obtaining attendance of witnesses all without any additional

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. The city shall pay reasonable out-of-pocket expenses and costs (e.g., travel expenses, parking expenses, etc.) incurred by employees, officials and volunteers (including former employees, former officials and former volunteers) in connection with such attendance. All such expenses shall be approved by the city manager, or designee, and the city manager's determination shall be final.

- D. Such official, employee or volunteer shall not accept nor voluntarily make any payment, assume any obligations, or incur any expense relating to the claim or suit, 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.

(Ord. 17C-08 § 1)

3.04.070 Effect of compliance with conditions.

If legal representation of an official, employee or volunteer is undertaken consistent with this chapter, 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; provided, that the city may, at its discretion, appeal as necessary such judgment.

(Ord. 17C-08 § 1)

3.04.080 Failure to comply with conditions.

In the event that any official, employee or volunteer fails or refuses to comply with any of the conditions of MICC 3.04.060, or elects to provide his/her own representation with respect to any such claim or litigation, then all of the protections of this chapter shall be inapplicable and shall have no force or effect with respect to any such claim or litigation.

(Ord. 17C-08 § 1)

3.04.090 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 attorneys' fees incurred in defending against the claim. The city shall pay any attorneys' fees incurred in obtaining the determination that such claim is covered by the provisions of this chapter.
- B. If the city determines that a claim against a city official, employee or volunteer does not 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 by the official, employee or volunteer for costs or expenses incurred in obtaining the determination that such claim is not covered by the provisions of this chapter.

(Ord. 17C-08 § 1)

3.04.100 Conflict with provisions of insurance policies or self-insurance plan.

Nothing contained in this chapter shall be construed to modify or amend any provision of any policy of insurance or self-insurance plan 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 or self-insurance plan, the policy or plan provisions shall be controlling; provided, however, that nothing contained in this section shall be deemed to limit or restrict any official's, employee's or volunteer's right to full protection pursuant to this chapter, it being the intent of this chapter and section to provide the protection detailed in this chapter outside and beyond insurance policies that may be in effect, while not compromising the terms and conditions of such policies by any conflicting provision contained in this chapter.

(Ord. 17C-08 § 1)

3.04.110 Pending claims.

The provisions of this chapter shall apply to any pending claim or lawsuit against an official, employee or volunteer, or any such claim or lawsuit hereafter filed, irrespective of the date of the events or circumstances which are the basis of such claim or lawsuit.

(Ord. 17C-08 § 1)