

2-1-79

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 2733

AN ORDINANCE relating to legal actions brought against City officials and employees; providing for legal representation for conduct, acts, and omissions on behalf of the City and in the scope of their service or employment; setting conditions therefor; specifying the circumstances under which claims against City officials and employees will be paid by the City; adding a new chapter to the Bellevue City Code, Chapter 3.81; and approving prior practices of the City.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. There is hereby added to Title 3 of the Bellevue City Code a new chapter, Chapter 3.81, to be entitled as follows:

CHAPTER 3.81

LEGAL ACTIONS BROUGHT AGAINST
CITY OFFICIALS AND EMPLOYEES

Section 2. Section 3.81.010 of the Bellevue City Code is hereby adopted to read as follows:

3.81.010 Definitions.

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

1. "Official" means any person who is serving or has served as an elected City official, any person who is serving or has served as an appointed member of any City board, commission or committee and any person who is or has served as a member of a community council elected pursuant to Chapter 35.14 RCW.
2. "Employee" means any person who is or has been employed in the service of the City.

Section 3. Section 3.81.020 of the Bellevue City Code is hereby adopted to read as follows:

3.81.020 Legal Representation.

As a condition of service or employment with the City of Bellevue, the City shall provide, subject to the conditions and requirements of this chapter, to an official or employee, notwithstanding the fact that such official or employee may have concluded service or employment with the City, such legal representation as may be reasonably necessary to defend

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a claim(s) filed against such official or employee which is not excluded by the provisions of this chapter, resulting from any conduct, act, or omission of such official or employee performed or omitted by the official/employee on behalf of the City in his/her capacity as a City official or employee and is within the scope of his/her service or employment with the City. Except as may be provided in any applicable municipal policy of insurance, such legal representation shall be provided by the City Attorney or by an attorney designated by the City Attorney.

Section 4. Section 3.81.030 of the Bellevue City Code is hereby adopted to read as follows:

3.81.030 Exclusions.

The obligations assumed under this chapter by the City and the City Attorney shall not apply to any dishonest, fraudulent, criminal or malicious act of an official or employee, or to any act of an official or employee which is not performed on behalf of the City or which is outside the scope of his/her service or employment with the City or to any lawsuit brought by or on behalf of 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 an official or employee is insured against loss or damages under the terms of any valid insurance policy.

The determination of whether an official or employee was acting on behalf of the City and within the scope of his/her service or employment with the City shall be made by the City Attorney. The determination of whether an official or employee committed a dishonest, fraudulent, criminal or malicious act shall be made by the City Attorney. There shall be no appeal from such determinations.

Section 5. Section 3.81.040 of the Bellevue City Code is hereby adopted to read as follows:

3.81.040 Payment of Claims--Conditions of Representation.

Except as may be provided in any applicable municipal policy of insurance, the City Attorney, or an attorney designated by the City Attorney, shall, at the request and on behalf of any official or employee of the City, investigate and defend a claim which is within the provisions of this chapter and, if such claim is deemed by the City Attorney to be a proper claim against such official or employee, then the same shall be paid by the City, provided that the following requirements are complied with:

1. The City Attorney, or an attorney designated by the City Attorney shall represent such official or employee;
2. In the event of any incident or course of conduct giving rise to a claim for damage and/or litigation, the official or employee involved shall, as soon as practicable, give the City Attorney

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written notice thereof, identifying the official or employee involved, all information known to the official or employee with respect to the date, time, place, and circumstances surrounding the incident or conduct, as well as the names and addresses of all persons allegedly injured or otherwise damaged thereby, and the names and addresses of all witnesses;

3. Upon receipt thereof, the official or employee shall forthwith deliver any demand, notice, 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 Attorney and, upon request, 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 or claim of loss arising from said incident or course of conduct;
4. Such officials or employees shall attend interviews, depositions, hearings and trials, and shall assist in securing and giving evidence and obtaining the attendance of witnesses; and
5. Such officials or employees 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.

In addition, if the City Attorney determines that a claim against an official or employee does not come within the provisions of this chapter and a Court of competent jurisdiction finds that such claim does come within the provisions of this chapter, then the City shall pay the claim and reasonable attorney's fees. And, if the City Attorney determines that a claim against an official or employee does come within the provisions of this chapter and a Court of competent jurisdiction finds that such claim does not come within the provisions of this chapter, then the City shall be reimbursed for any costs or expenses incurred in defending such claim.

Section 6. Section 3.81.050 of the Bellevue City Code is hereby adopted to read as follows:

3.81.050 Refusal to Cooperate.

In the event that any official or employee fails or refuses to cooperate as provided in Section 3.81.040, or elects to provide his/her own representation with respect to any such claim, then all of the provisions of this chapter shall be inapplicable and of no force and effect with respect to any such claim.

Section 7. Section 3.81.060 of the Bellevue City Code is hereby adopted to read as follows:

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3.81.060 Conflict with Provisions of Insurance Policies.

Nothing contained in this chapter shall be construed to modify or amend any provision of any policy of insurance wherein the City or any official or employee 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 or official's right to full coverage pursuant to this chapter, it being the intention of this section to provide complete coverage 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.

Section 8. Section 3.81.070 of the Bellevue City Code is hereby adopted to read as follows:

3.81.070 Pending Claims

The provisions of this chapter shall apply to any pending claim or lawsuit against an official or employee or any such claim or lawsuit hereafter filed irrespective of the date of the events or circumstances contained in such claim or lawsuit.

Section 9. The City Council hereby ratifies and approves the past practice of the City of providing legal representation for employees and officials when sued for conduct, acts or omissions as employees and officials of the City.


Section 10. This ordinance shall take effect and be in force five days after its passage and legal publication.

PASSED by the City Council this 6 day of August, 1979, and signed in authentication of its passage this 6 day of August, 1979.

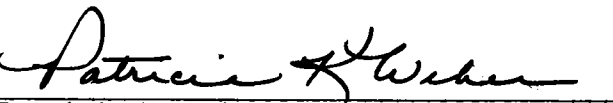
(SEAL)


Gary A. Zimmerman, Mayor

Approved as to form:


Lee Kraft, City Attorney

Attest:


Patricia K. Weber, City Clerk

Published August 11, 1979