

AN ORDINANCE OF THE CITY OF LOWRY CROSSING, TEXAS

ORDINANCE NO. 144

AN ORDINANCE OF THE CITY OF LOWRY CROSSING, TEXAS, ESTABLISHING THE STATUS OF CITY EMPLOYEES, OFFICERS, AND BOARD AND COMMISSION MEMBERS; PROVIDING EMPLOYEE AT WILL EMPLOYMENT; PROVIDING FOR EMERGENCY ACTIONS; DEFENSE AND INDEMNIFICATION; REPRESENTATION IN ACTIONS; SIX MONTHS NOTICE OF CLAIM AGAINST CITY; AND CITY'S DEFENSES; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOWRY CROSSING, TEXAS:

SECTION 1. EMPLOYEES AT WILL EMPLOYMENT

All city employees shall serve at the pleasure of the City Council and nothing stated herein, or hereinafter stated in any ordinance or code provision, or any personal policy or procedure publication, shall be construed to terminate the City's At Will status with regard to its employees, unless this provision is specifically repealed by the terms of an Ordinance, in writing at the time of adoption by the City Council.

SECTION 2. EMERGENCY ACTION

Every officer, agent, or employee of the City, while responding to emergency situations is hereby authorized to act in such a manner as to most effectively deal with the emergency. This provision shall prevail over every other ordinance of the City and, to the extent to which the City has the authority to so authorize, over any other law establishing a standard of care in conflict with this section. Neither the City nor the employee shall be liable for any failure to use ordinary care in such emergency.

SECTION 3. DEFENSE AND INDEMNIFICATION

A. NEED FOR INDEMNIFICATION

A necessity exists for the City's provision of legal defense and indemnification of City officers and employees.

B. DEFINITIONS

For purposes of this section, the term "officer" shall include a member of the City Council and any member of a City board or commission appointed by the City Council or any person appointed to a City position by the City Council. Employee means a person employed and paid a salary by the City, including individuals on a part-time basis, but does not include an independent contractor.

C. INDEMNIFICATION

Any officer or employee who is found and finally adjudged to be liable for the payment of any claim for damages arising out of the course and scope of employment with the City shall be entitled to be indemnified for such damages to the extent permitted by law, together with any reasonable and necessary legal expenses incurred by such officer or employee in defending such claim, provided that the acts or omissions resulting in such liability were done in good faith and without malicious or felonious intent. For the purposes of this section, the term "arising out of the course and scope of employment" shall not include any action which occurs during a period of time in which the officer or employee is engaged in outside employment or is rendering contractual services to someone other than the City. Whether the acts were done in good faith, without malicious or felonious intent, and within the course and scope of employment shall be determined by the City Council, and such determination shall be final for the purposes of the representation and indemnity of this section; provided, however, that in the event such representation and indemnity have been denied by the City, upon a trial on the merits it is determined that the officer or employee was acting in good faith, without malicious or felonious intent and within the scope of employment the indemnification hereunder shall be granted and reasonable legal expenses incurred in the defense of the claim reimbursed. This indemnity shall in no event apply to or cover punitive or exemplary damages where such damages are not recoverable in law or against the City. Further, the City shall not be liable for any settlement of any such claim or suit effected without its consent, and the City reserves the right to assert any defense and make any settlement of any claim or suit that it deems expedient.

D. REPRESENTATION IN ACTIONS

The City shall have the right and duty to provide legal representation through the City Attorney, or in its discretion through the selection of outside legal counsel, to any officer or employee sued in connection with any claim for damages, other civil action, or alleged violation of civil rights with criminal sanctions, against such person arising out of the course and scope of employment, provided that such officer or employee may be entitled to indemnification as set forth in this section. Such legal representation shall be provided at no cost to the officer or employee, and any officer or employee may have his or her own counsel assist in the defense at the sole expense of the officer or employee. The officer or employee shall cooperate fully with the City in preparation and presentation of the case, and the failure to cooperate shall waive such officer's or employee's right to representation and indemnity under this section.

E. CITY'S DEFENSES

Nothing in this section shall be construed as waiving the City's defense of governmental immunity to it or its employees or officers in any action brought against the City or such officer or employee. For any suit or claim arising under the Texas Tort Claims Act, the indemnity provided by this Section shall be limited to the statutory limits applicable to the City provided in said Act, as amended.

F. NOTICE

The provisions of this section shall apply only where the City has been given notice of the action brought against any City officer or employee within ten (10) days of service of process upon the officer or employee.

G. DISCIPLINARY ACTIONS

Nothing in this Section shall prevent the City from taking disciplinary action against any officer or employee for conduct defended or indemnified by the City under this section, either before or after conclusion of the civil suit.

H. SUITS IN BEHALF OF THE CITY

Nothing in this section shall require the City to indemnify any officer or employee for recoveries made against him or her in suits by or on behalf of the City. The City Council may, however, authorize the City Attorney to represent any officer or employee in a suit brought by a taxpayer in behalf of the City against the officer or employee.

SECTION 4. SIX MONTHS NOTICE OF CLAIM AGAINST CITY REQUIRED

A. The City of Lowry Crossing shall never be liable for any claim for property damage or for personal injury, whether such personal injury results in death or not, unless the person damaged or injured, or someone on his behalf, or in the event the injury results in death, the person or persons who may have cause of action under the law by reason of such death or injury, shall within (6) months from the date the incident giving rise to the claim occurred, give written notice to the Mayor and City Council, describing the following:

1. the damage or injury claimed;
2. the date, time and place of the incident;
3. the incident, fully describing how and under what circumstances the damage or injury occurred;
4. the present place or residence of each claimant by street, number, city, state, zip code;
5. the names of all persons having knowledge of the incident or the damages claimed;
6. the present location of any property alleged to have been damaged.

SECTION 5 REPEALING CLAUSE.

All parts of ordinances, inconsistent or in conflict with the provisions of this ordinance are hereby repealed.

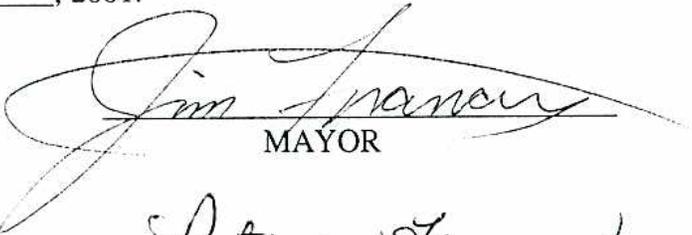
SECTION 6. SEVERABILITY CLAUSE.

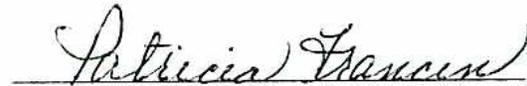
If any article, paragraph or subdivision, clause or provision of this ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so decided to be invalid or unconstitutional.

SECTION 7. EFFECTIVE DATE.

This ordinance shall take effect immediately after its passage as the law in such cases provides.

DULY ADOPTED by the City Council of the City of Lowry Crossing, Texas, on the 14 day of August, 2001.


MAYOR


CITY SECRETARY

APPROVED AS TO FORM:

CITY ATTORNEY