

ORDINANCE NO. 086-031

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, AMENDING ARTICLE 1 OF CHAPTER 12 OF THE CODE OF ORDINANCES OF THE TOWN OF ADDISON, TEXAS, ADDING SEC. 12-1 THROUGH 12-11, PROVIDING FOR A LIABILITY PLAN FOR OFFICERS AND EMPLOYEES OF THE CITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR COVERAGE; PROVIDING FOR DEFENSE; PROVIDING FOR LIMITS OF COVERAGE; PROVIDING FOR NOTICE OF OCCURRENCE, CLAIM OR SUIT, COOPERATION; PROVIDING FOR PLAN PERIOD; PROVIDING FOR EXCLUSIONS; PROVIDING FOR SUBROGATION; PROVIDING FOR LEGAL REPRESENTATION; PROVIDING FOR DETERMINATION OF COVERAGE; PROVIDING FOR NO CREATION OF CAUSE OF ACTION; PROVIDING FOR PENALTIES; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. That the Code of Ordinances of the Town of Addison, Texas, is hereby amended to amend Article I of Chapter 12, to read as follows:

ARTICLE I. TOWN OF ADDISON OFFICER
AND EMPLOYEE LIABILITY PLAN

Sec. 12-1. Definitions. For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number

include the plural number. The word "shall" is always mandatory and not merely directory.

(1) "City" means the Town of Addison.

(2) "City Vehicle" means a vehicle or mobile equipment either leased or owned by the City.

(3) "Loss" means an amount which a plan member is legally obligated to pay resulting from an act or omission of the plan member which is covered under this plan and which amount is in excess of any underlying policy.

(4) "Plan" means the Town of Addison Officer and Employee Liability Plan.

(5) "Plan Member" means a person who is:

(a) an appointed official of the City;

(b) a member of a City board, commission or committee created by charter, ordinance or resolution of the City; or

(c) a member of the City Council and the Mayor.

(6) "Underlying Policy" means other collectible insurance with any other insurer available to the plan member covering a loss also covered hereunder.

Sec. 12-2. Coverage.

(1) The City shall indemnify and defend a plan member, in accordance with the terms of this plan, against a loss arising out of any claim, suit or judgment resulting from an act or omission of the plan member during the discharge of his duties and within the scope of his office with the City.

(2) A plan member whose position with the City terminates is entitled to coverage in accordance with this plan for any event that occurred while the person was a plan member.

(3) The coverage provided under the plan shall be in excess of, and not contribute with the underlying policy.

Sec. 12-3. Defense.

(1) When the underlying policy does not apply to a loss, the City will defend any suit against a plan member

who is covered under this plan even if the suit is groundless or fraudulent.

(2) The city may investigate, negotiate, and settle any claim or suit as it determines necessary.

Sec. 12-4. Limits of Coverage.

(1) The City will pay losses covered by this plan that a plan member is legally obligated to pay in excess of any underlying policy, except, that in cases arising under the Texas Tort Claims Act (Chapter 101, Civil Practice and Remedies Code) the City will pay losses covered by this plan that a plan member is legally obligated to pay up to, but not exceeding the limits of liability provided by that Act, as amended for units of government.

(2) In addition to the coverage provided in paragraph (1), the City will pay, unless covered by the underlying policy:

(a) the City's expenses in investigating and defending the claim or lawsuit;

(b) costs taxed against a plan member in a suit covered by this plan and interest that accrues after entry of judgment before the City has deposited payment with the court on that part of the judgment which does not exceed the limits of coverage;

(c) reasonable expenses of the plan member incurred at the City's request; and

(d) attorney's fees ordered by the court to be paid by the plan member.

Sec. 12-5. Notice of Occurrence, Claim or Suit; Cooperation. To be entitled to coverage under the plan, a plan member must:

(1) notify the city secretary as soon as practicable upon receipt of written notice of a claim or lawsuit, but no later than three (3) working days after receipt;

(2) cooperate with the attorney for the City and, upon the attorney's request, assist in making settlements in the conduct of suits, and in enforcing any right of contribution or indemnity against a person or organization who may be liable to the City because of injury or damage covered under the plan;

(3) attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses; and

(4) not, except upon advice of the attorney for the City or when questioned by a police officer at the scene of an accident, give any oral or written statement or enter into any stipulation or agreement concerning a claim or lawsuit;

(5) not, except at his own cost, voluntarily make any payment, assume any obligation, or incur any expense with respect to a claim or lawsuit without the consent of the City.

Sec. 12-6. Plan Period. This plan covers only acts or omissions occurring or alleged to have occurred:

(1) while the plan is in effect;

(2) before the plan was in effect and which are not barred by any statute of limitations; and

(3) if the plan is cancelled, while the plan is in effect and which are not barred by any statute of limitations.

Sec. 12-7. Exclusions. Coverage under this plan does not apply to a claim or lawsuit that is brought against a plan member:

(1) by the City;

(2) arising out of the intentional or knowing violation of a penal statute or ordinance committed by or with the knowledge or consent of the plan member, or any claim arising out of acts of fraud committed by or at the direction of the plan member with intent to deceive or defraud;

(3) arising either while the plan member is operating a city vehicle with no authority to operate the vehicle, or while the plan member is operating a city vehicle in the course of personal or private business;

(4) for liability assumed by the plan member under a contract, unless the contract is entered into at the request of the City;

(5) if the plan member joins or attempts to join with the suit against the plan member a claim against the City for benefits under this plan; or

(6) if the plan member fails to comply with Section 8 of this plan.

Sec. 12-8. Subrogation. If payment or legal representation is provided under this plan, the City is subrogated to the plan member's rights of recovery against any person or organization to the extent of the City's liability and payments, and the plan member must execute and deliver to the attorney for the City whatever documents are necessary to secure those rights. The plan member must not do anything after a loss to prejudice those rights.

Sec. 12-9. Legal Representation.

(1) The City will provide legal representation for a plan member in a claim or suit in which the plan member is covered under this plan.

(2) If the attorney for the City determines that there is a conflict of interests for the attorney for the City in representing a plan member, and the plan member is otherwise entitled to coverage under this plan, the City will pay the reasonable fee of a private attorney to represent the plan member. The private attorney will be selected by mutual agreement of the plan member and the attorney for the City.

Sec. 12-10. Determination of Coverage. If the City denies coverage to a plan member, the plan member may seek a determination of coverage by a court of proper jurisdiction in Dallas County, Texas. If the court rules in favor of the plan member, the City shall provide the plan member all benefits under the plan and shall reimburse the plan member for reasonable attorney fees, expenses and costs incurred in obtaining the determination of coverage.

Sec. 12-11. No Creation of Cause of Action.

(1) Nothing contained in this plan shall be construed as creating a right or cause of action against a plan member nor as giving a right to a third party to institute or maintain a suit which would not otherwise exist under law as a legal claim against a plan member.

(2) Nothing in this ordinance 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.

SECTION 2. Any person, firm or corporation violating any


of the provisions of this Ordinance, shall upon commission be deemed guilty of a misdemeanor, and shall be subject to a fine not to exceed the sum of Two Hundred and no/100 Dollars (\$200.00) for each offense, and each day such violation continues shall constitute a separate offense.

SECTION 3. That all ordinances of the City in conflict with the provisions of this ordinance be, and the same are hereby repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. That should any paragraph, sentence, subdivision, clause, phrase or section of this ordinance be adjudged or be held to be unconstitutional, illegal or invalid, 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, illegal, or unconstitutional.

SECTION 5. The fact that the present Code does not provide for an officer and employee liability plan, and is therefore inadequate to properly safeguard the general public, health and safety, creates an emergency and an imperative public necessity, and the ordinance shall take effect and be in force from and after its adoption.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, this the 25th day of March, 1986.


MAYOR

ATTEST:


CITY SECRETARY