

ORDINANCE NO. 087-007

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS, AMENDING THE CODE OF ORDINANCES, TOWN OF ADDISON, TEXAS, BY ADDING SEC. 2-23 THROUGH 2-29 TO CHAPTER 2; PROVIDING FOR NOTICE TO CITY MANAGER OR CITY SECRETARY OF DAMAGE OR INJURY; PROVIDING FOR CONTENTS OF NOTICE; PROVIDING THAT APPLICATION FOR REDRESS BE MADE TO CITY COUNCIL PRIOR TO FILING LAWSUIT; PROVIDING FOR SERVICE OF NOTICE; PROVIDING THAT NOTICE MAY NOT BE WAIVED; PROVIDING THAT NOTICE MUST BE SWORN; PROVIDING THAT LIABILITY OF CITY NOT BE EXPANDED; PROVIDING FOR PENALTIES; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council is the ultimate repository of authority of the City; and

WHEREAS, the City Council has the management and control of the finances, properties and the contractual obligations and the policies of the City; and

WHEREAS, in the course of providing the many services to its citizenry, claims in the nature of contract, tort, property damage, personal injury, wrongful death and equitable relief may from time to time arise; and

WHEREAS, it is in the best interest of the City, the citizenry and the claimants that the City Council be expeditiously

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informed of the details of such claims; and

WHEREAS, an expeditious opportunity for the City Council to review and consider the validity of said claims can allow for resolution without resort being made to the already overburdened judiciary; and

WHEREAS, in order to realistically assess the merits of any claims presented to it, the City Council is in need of current, accurate factual documentation from those asserting such claims; and

WHEREAS, the Texas Court of Appeals in Borne v. the City of Garland, decision rendered June 18, 1986, Cause No. 05-85-00947-CV, declared that thirty (30) days' notice provisions in city charters violate the Texas Constitution; and

WHEREAS, Section 11.05 of the Addison City Charter requires thirty (30) days' notice of damage or injury claims; and

WHEREAS, the City Council desires to provide a notice requirement which will be constitutional and which will implement the terms of Addison's Charter, Section 11.05;

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

SECTION 1. That Chapter 2 of the Code of Ordinances of the Town of Addison, Texas, is hereby amended by adding Sec. 2-23 through 2-27 to read as follows:

Sec. 2-23. Notice to Manager or City Secretary of Damage or Injury Required.

(a) The Town of Addison, Texas, shall never be liable for any claim for any personal injury, whether such personal injury results in death or not, or for any claim for damage or injury to personal property, unless the person damaged or injured, or someone in his behalf, or in the event the injury results in death, the person or persons who may have a cause of action under the law by reason of such death or injury, shall, within ninety (90) days or within six (6) months for good cause shown from the date the damage or injury was received, give notice in writing to the City Manager or City Secretary of the facts outlined in Sec. 2-24 hereinbelow.

(b) The Town of Addison, Texas, shall never be liable for any claim for damage or injury to real property caused by the negligent act or omission of its officers, servants, agents or employees, unless the person whose real property has been injured or damaged, or someone in his behalf, shall, within ninety (90) days or within six (6) months for good cause shown from the date the damage or injury was received, give notice in writing to the City Manager or City Secretary of the facts outlined in Sec. 2-24 hereinbelow.

(c) In addition to the notice required in Sec. 2-23(a) or (b), the Town of Addison, Texas, shall never be liable on account of any damage or injury to person or to personal property arising from or occasioned by any defect in any public street, highway, alley, grounds or public work for the Town of Addison unless the specific defect causing the damage or injury shall have been actually known to the City Manager at least twenty-four (24) hours prior to the occurrence of the injury or damage, or unless the attention of the City Manager shall have been called thereto by a notice thereof in writing at least twenty-four (24) hours prior to the occurrence of the injury or damage and proper diligence has not been exercised to rectify the defect. The notice herein required to be given to the City Manager or the City Secretary of the specific defect causing the damage or injury shall apply where the defect arose from any omission of the City itself, through its agents, servants or employees, or acts of third parties.

Sec. 2-24. Contents of Notice.

The notice required herein shall contain the following facts:

(a) the date and time when the injury occurred and the place where the injured person or property was at the time when the injury was received;

- (b) the nature of the damage or injury sustained;
- (c) the apparent extent of the damage or injury sustained;
- (d) a specific and detailed statement of how and under what circumstances the damage or injury occurred;
- (e) the amount for which each claimant will settle;
- (f) the telephone numbers and the actual place of residence of each claimant by street;
- (g) in the case of personal injury or death, the names and addresses of all persons who, according to the knowledge or information of the claimant, witnessed the happening of the injury or any part thereof and the names of the doctors, if any, to whose care the injured person is committed; and
- (h) in the case of property damage, the location of the damaged property at the time the claim was submitted along with the names and addresses of all persons who witnessed the happening of the damage or any part thereof.

Sec. 2-25. Application for Redress Must be Made to City Council Prior to Filing Suit.

No suit of any nature whatsoever shall be instituted or maintained against the Town of Addison unless the plaintiff therein shall aver and prove that prior to the filing of the original petition, the plaintiff applied to the City Council for redress, satisfaction, compensation or relief, as the case may be, and that the same was by vote of the City Council refused.

Sec. 2-26. Service of Notice.

All notices required by this ordinance shall be effectuated by serving them upon the City Secretary or City Manager at 5300 Belt Line Road, Addison, Texas; and all such notices shall be effective only when actually received in the office of the person named above.

Sec. 2-27. Notice May Not Be Waived.

Neither the Mayor, a City Councilmember nor any other officer or employee of the City shall have the authority to waive any of the provisions of this ordinance.

Sec. 2-28. Notice Must Be Sworn.

The written notice required under this ordinance shall be sworn to by the person claiming the damage or injuries or by someone authorized by him to do so on his behalf. Failure to swear to the notice as required herein shall not render the notice fatally defective, but failure to so verify the notice may be considered by the City Council as a factor relating to the truth of the allegations and to the weight to be given to the allegations contained therein.

Sec. 2-29. Liability of City Not To Be Expanded.

No provision of this ordinance shall ever be so construed as to expand the ordinary liability of the City.

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 notice to City Council of damage or injury 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 27th day of January, 1987.

  
MAYOR

ATTEST:

  
CITY SECRETARY

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