

ORDINANCE 2024-01

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
TOPPENISH, WASHINGTON, CREATING A NEW CHAPTER  
2.98 OF THE TOPPENISH MUNICIPAL CODE RELATING TO  
INDEMNIFICATION FOR CITY OFFICIALS, CITY  
EMPLOYEES AND CITY VOLUNTEERS, PROVIDING FOR  
SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the City of Toppenish, like many cities, depends upon the services of its elected and appointed officials as well as its employees and others serving in various volunteer capacities; and

WHEREAS, cities occasionally find themselves having to face lawsuits from people challenging city action; and

WHEREAS, such lawsuits sometimes also personally name individual officials, employees and even volunteers as parties to such lawsuits; and

WHEREAS, such lawsuits could put such officials, employees and volunteers in the position of having to defend themselves because of their actions taken on behalf of the city; and

WHEREAS, it is reasonable for the City of Toppenish to provide some level of protection for its officials, employees and volunteers from lawsuits stemming from actions taken as part of their official duties; and

WHEREAS, it is therefore appropriate for the City Council to adopt an Ordinance adding provisions to the Municipal Code providing protection from lawsuits for its officials, employees and volunteers,

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF TOPPENISH, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. That a new Chapter 2.98 of the Toppenish Municipal Code is created to read as follows:

Chapter 2.98

INDEMNIFICATION FOR CITY OFFICIALS, CITY EMPLOYEES  
AND CITY VOLUNTEERS

Sections:

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| 2.98.010 | Definitions.                                       |
| 2.98.020 | Legal representation.                              |
| 2.98.030 | Exclusions.  |
| 2.98.040 | Determination of exclusion.                        |
| 2.98.050 | Representation and payment of claims – Conditions. |
| 2.98.060 | Effect of compliance with conditions.              |

- 2.98.070 Failure to comply with conditions.
- 2.98.080 Reimbursement of incurred expenses.
- 2.98.090 Conflict with provisions of insurance policies.
- 2.98.100 Pending claims.

2.98.010 Definitions.

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

A. "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.

B. "Employee" means any person who is or has been employed by the city of Toppenish.

C. "Volunteer" means any person who, without monetary compensation, serves or has served the city of Toppenish under the explicit authorization and direction of a city department.

2.98.020 Legal representation.

A. As a condition of service or employment the city shall provide to an official, employee or volunteer, and any spouse of an official, employee or volunteer to the extent the marital community 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 representations 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 their 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 provides otherwise; or
2. A conflict of interest or ethical bar exists with respect to said representation; or
3. The city attorney appoints outside legal counsel to the case.

In the event that outside counsel is retained under subsection (B)(1), (2), or (3) of this section, the city shall indemnify the official, employee or volunteer from the reasonable costs of defense paid by the official, employee or volunteer; provided, that in no event shall the official, employee or volunteer be indemnified for attorneys' fees paid in excess of the hourly rates established by the city's contract with the attorney selected by the city. The official, employee, or volunteer shall be liable for all hourly charges in excess of said rate.

2.98.030 Exclusions.

A. In no event shall protection be offered under this chapter by the city to:

1. Any dishonest, fraudulent, criminal, willful, intentional 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;
3. Any act or course of conduct which is outside the scope of any 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.

B. Nothing herein shall be construed to waive or impair the right of the city manager or 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 or terminate the services of a volunteer.

C. The provisions of this chapter shall have no force or effect 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; 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 an official, employee or volunteer to utilize any such policy protection prior to requesting the protection afforded by this chapter.

#### 2.98.040 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 made by the city council on the recommendation of the city manager. The decision of the city council shall be final as a legislative determination and shall be based upon a finding that the claim or suit against an official, employee or volunteer meets or does not meet the criteria of this chapter. Nothing herein shall preclude the city from undertaking an official's, employee's, or volunteer's defense under a reservation of rights. The determination as to whether to furnish a defense as provided under this chapter to a member or members of the city council shall be made without the vote of such member or members of the city council unless the inclusion of such member or members is required for a quorum; provided, that if a claim or lawsuit affects a quorum or greater number of the members of the city council, all such affected members shall retain their voting privileges under this section.

The affected official, employee or volunteer will be notified by registered mail, return receipt, of the council's determination within five business days. Denial of a request for representation or indemnification may be reviewed only by an action in the Yakima County superior court filed within 30 days of the date of the denial by the city council.

#### 2.98.050 Representation and payment of claims – Conditions.

The provisions 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 clerk written notice thereof, identifying 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. The city clerk shall forward all information pertaining to the claim to the Washington Cities Insurance Authority.

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 clerk, and shall cooperate with the Washington Cities Insurance Authority and any attorney designated by the Washington Cities Insurance Authority, 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 said 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 official, employee or volunteer has left the employ or service of the city, no fee or compensation shall be provided.

D. Such official, employee or volunteer shall not accept nor voluntarily make any payment, assume any obligation, or incur any expense relating to said 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.

#### 2.98.060 Effect of compliance with conditions.

If legal representation of an official, employee or volunteer is undertaken by the city attorney or by outside legal counsel designated under 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 not otherwise covered by insurance in the same manner as a judgment or settlement against the city, except any portion of the judgment which is for punitive damages.

The city council may, by separate resolution, authorize payment of a judgment for punitive damages against a person who has been represented by the city attorney or outside counsel designated under this chapter.

#### 2.98.070 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 this chapter or elects to provide their own representation with respect to any such claim or litigation, then all the provisions of this chapter shall be inapplicable, and have no force or effect with respect to any such claim or litigation.

#### 2.98.080 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 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 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 for costs or expenses incurred in obtaining the determination that such claim is not covered by the provisions of this chapter.

#### 2.98.090 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 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, the policy provisions shall be controlling; provided, however, that nothing contained in this section

shall be deemed to limit or restrict any employee's, official's or volunteer's right to full coverage pursuant to this chapter, it being the intent of this chapter and section to provide the coverage detailed in this chapter 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.

2.98.100 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 to the date of the events or circumstances which are the basis of such claim or lawsuit.

Section 2. Severability: If any section, sentence, clause, or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 3. Corrections: The city clerk and the codifiers of this ordinance are authorized to make necessary clerical corrections to this ordinance including, but not limited to, the corrections of scriveners/clerical errors, references, section or subsection numbers and any references thereto.

Section 4. Effective Date: That this Ordinance shall be effective five (5) days after passage, approval and publication as required by law.

PASSED by the Toppenish City Council at its regular meeting held on the 11<sup>th</sup> day of March, 2024.



ELPIDIA SAAVEDRA, Mayor

ATTEST:



HEIDI RIOJAS, CMC, City Clerk

APPROVED AS TO FORM:



GARY M. CUILLIER, City Attorney

# CITY OF TOPPENISH

21 West First Avenue  
Toppenish, WA 98948

*"Where the West Still Lives"*

## CLERK'S CERTIFICATION

I, the undersigned, the duly chosen, qualified and acting Clerk of the City of Toppenish, Washington, and keeper of the records of the Council of the City (herein called the "Council"), DO HEREBY CERTIFY:

1. That the attached Ordinance 2024-01 (herein called the "Ordinance") is a true and correct copy of an Ordinance of the City, as finally passed at a meeting of the Council held on the 11th day of March, 2024, and duly recorded in my office.
2. That said meeting was duly convened and held in all respects in accordance with law, and, to the extent required by law, due and proper notice of such meeting was given; that a quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of the ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Toppenish, Washington, this 12th day of March, 2024.



Heidi Riojas, CMC, City Clerk

Official Newspaper: *Sunnyside Sun*

Published: March 20, 2024

Effective: March 25, 2024