

## **RESOLUTION 2022-47**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF TARPON SPRINGS, FLORIDA, ADOPTING A REIMBURSEMENT POLICY WITH REGARD TO SUPPORT AND LEGAL DEFENSE; PROVIDING FOR SEVERABILITY CLAUSE; PROVIDING FOR REPEAL OF RESOLUTIONS OR POLICIES INCONSISTANT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.**

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**WHEREAS**, the Board of Commissioners of the City of Tarpon Springs, Florida (the "City"), have home rule authority to act for a municipal purpose, including enacting policies applicable to its Officers and City employees; and

**WHEREAS**, it is essential to the effective operation of the City that such decisions be made in an environment where the threat of personal liability for the Board of Commissioners, its Officers and City employees are maintained at a minimum; and

**WHEREAS**, Section 111.07, Florida Statutes, provides for the defense of civil actions against public officers, employees or agents; and

**WHEREAS**, public officers, employees or agents are also entitled to a legal defense at common law so long as they are acting within the scope of their official duties and while acting for a public purpose; and

**WHEREAS**, Section 112.08, Florida Statutes, provides that a public agency may procure insurance that provides for legal expenses; and

**WHEREAS**, the Board of Commissioners wishes to codify and formalize its policy regarding the support and legal protection of certain protected parties as defined below so as to reduce the threat of personal liability to such individuals.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF TARPON SPRINGS, FLORIDA, THAT:**

Section 1: The recitals stated above are hereby adopted and incorporated herein by reference. As set forth in this Resolution, the City of Tarpon Springs, in accordance with Florida law, agrees that the following Officials, Offices, and City employees shall be provided the benefit of indemnification, support and legal defense provisions in this Resolution:

- (a) All members of the Board of Commissioners, all members appointed by the Board of Commissioners to City boards, the City Manager and support staff, the City Clerk and support staff, employees of the City and support staff (hereinafter "Protected Parties").
- (b) Independent contractors and other agents or persons not listed in Section 1(a) of this Resolution shall not be so indemnified with respect to any service provided to the City except to the extent permitted by law and authorized by a majority vote of the members of the City's Board of Commissioners.

Section 2: As set forth in this Resolution and in accordance with Sections 11.07, 112.08, and 768.28, Florida Statutes, the City hereby agrees to provide legal representation to defend any and all civil actions, including federal civil rights and other federal civil claims, arising from a complaint for damages or injuries suffered as a result of any act or omission of action of any of the Protected Parties of the City, present or former, arising out of and in the scope of his or her employment or function, unless, in the case of a tort action, the Protected Party acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property. Defense of such civil actions includes, but is not limited to, any civil rights lawsuit seeking relief personally against any of the above-listed Protected Parties for any act or omission under color of state law, custom or usage, wherein it is alleged that such Protected Party has deprived another person of rights secured under the Federal Constitution of laws, including, by way of example, actions under 42 U.S.C. § 1983 or any other federal statute. The City hereby further agrees to provide legal representation to defend against any other litigation arising against the Protected Parties from the performance of their official duties while serving a public purpose, including civil, administrative or criminal actions as permitted by law. By these provisions, the City does not waive any immunity from liability or limited waiver of such immunity as granted under Florida law. Rather, the City is stating that to the extent the state does not, through its laws, protect the Protected Parties from liability, it is committed to doing so to the extent described in this Resolution.

Section 3: The City may insure itself in order to cover all reasonable costs and fees directly arising out of or in connection with any legal claim or suit which directly results from a decision or act made by a Protected Party while performing the duties and functions of his or her position.

Section 4: This Resolution is intended to evidence the City's support of its Commissioners, Officers, and City employees who perform acts and render decisions in good faith performance of their duties and functions. The City will neither support nor defend those actions or omissions committed by an individual outside the scope of his or her office/employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property. In the event that the City has expended funds to provide an attorney to defend a Protected Party who is found to be personally liable by virtue of acting outside the scope of his or her employment or function, or is found to have acted in bad faith, with malicious purpose, or in a manner exhibiting wanton disregard for human rights, safety or property, the individual shall be required to reimburse the City for funds so expended. The City may recover such funds in a civil action.

Section 5: The City agrees to pay any final judgment, including damages, including fines, penalties or other damages, costs and attorney's fees and costs arising from any complaint for damages or injuries suffered as a result of any action or omission of action of any Protected Party as described in Section One (1) of this Resolution, in any civil action or civil rights lawsuit described in Section 11.07, Florida Statutes. If the action arises under Section 768.28, Florida Statutes, as a tort claim, the limitations and provisions of that Section governing payment shall apply. If the action is a civil rights action arising under 42 U.S.C. § 1983, or similar federal statutes, payment for the full amount of judgment may be made unless the individual has been determined in the final judgment

to have caused the harm intentionally. The City agrees to pay any compromise or settlement of any claim or litigation described in this paragraph, provided, however, that the City determines such compromise or settlement to be in the City's best interests.

Section 6: Payments of judgements or provision of legal representation pursuant to this Resolution is conditioned on the following as determined in the sole discretion of the City.

- (a) The action of the Protected Party were within the scope of his or her duties and authority; and
- (b) The acts or omissions of the Protected Party did not constitute bad faith, malicious purpose, intentional infliction of harm, or were not done in a manner exhibiting wanton and willful disregard of human rights, safety or property; and
- (c) The Protected Party did not receive any financial profit or advantage to which he or she was not legally entitled; and
- (d) A copy of the summons, complaint, notice, demand letter or other document or pleading in the action, or a letter setting forth the substance of any claim or complaint was delivered to the Board of Commissioners, City Manager, support personnel, City Clerk, City employees, and City Attorney within fourteen (14) calendar days after actual receipt of any such document together with a specific request in writing that the City defend or provide representation for the individual; and
- (e) The Protected Party cooperates continuously with and fully with the City in the defense of the action; and
- (f) The Protected Party followed the advice of legal counsel for the City in carrying out his or her duties as prescribed by law.

Section 7: Any indemnification, legal defense or other protection provided pursuant to this representation as determined by the Board of Commissioners shall not extend to:

- (a) Consulting or other professional or business activities for which the Protected Party received financial or other material compensation, which are outside the scope of his or her City duties and authority; and
- (b) Any independent contractor for whom defense or indemnification is not authorized pursuant to Section 1(b) of this Resolution; and
- (c) Any fine, penalty, or other punishment imposed as a result of conviction for a criminal offense, and any legal fees and costs incurred to defend criminal prosecution in which a conviction is obtained; and
- (d) Any indemnification or defense prohibited by law; and
- (e) Blatant disregard for the advice rendered by legal counsel for the City.

Section 8: In the event legal representation or defense is provided pursuant to this Resolution, the Protected Party may either:

- (a) Retain legal counsel appointed by the City, in which case legal counsel shall be paid directly by the City; or
- (b) Retain legal counsel chosen by the Protected Party, in which case the City shall have the right to:

- i. Approve, in advance, any agreement for legal fees or disbursements; and
- ii. Pay all or part of the legal fees, costs and other disbursements; and
- iii. Direct the defense and settle or compromise the action or claim; and
- iv. Any monies that may be payable by the City shall be reduced or offset by any court costs or attorneys fees awarded to the Protected Party.

Section 9: The benefits of the policy adopted in this Resolution shall be determined by the Commission and shall not enlarge the rights that would have been available to any third-party plaintiff or claimant in the absence of this policy.

Section 10: This Resolution shall not apply to actions initiated by the City against a Protected Party.

Section 11: To the extent permitted by law, this Resolution shall inure to the benefit of the heirs, personal representatives and estate of the Protected Parties.

Section 12: The City reserves the right to change, modify or withdraw this Resolution in its sole discretion, except as to actions, demands or other claims based on acts or omissions which occurred before the effective change, modification or withdrawal of this Resolution.

Section 13: If any provision of this Resolution is held to be illegal or invalid, the other provisions shall remain in full force and effect.

Section 14: Any resolutions or parts of resolutions inconsistent herewith are hereby repealed to the extent of such conflict.

Section 15: This Resolution shall be effective as of its adoption on the date listed below and shall apply to the any acts or omissions occurring after that date.

PASSED and ADOPTED this 13th day of December, 2022.

  
COSTA S. VATIKIOTIS, MAYOR

  
CRAIG K. LUNT, VICE MAYOR

  
JACOB KARR, COMMISSIONER

  
MIKE EISNER, COMMISSIONER

  
PANAGIOTIS KOULIAS, COMMISSIONER

MOTION BY: VICE MAYOR LUNT  
SECOND BY: COMMISSIONER EISNER

VOTE ON MOTION

COMMISSIONER KOULIAS	<u>Yes</u>
COMMISSIONER EISNER	<u>Yes</u>
COMMISSIONER KARR	<u>Yes</u>
VICE MAYOR LUNT	<u>Yes</u>
MAYOR VATIKIOTIS	<u>Yes</u>

ATTEST:

  
IRENE S. JACOBS, CMC  
CITY CLERK & COLLECTOR

APPROVED AS TO FORM:

  
ANDREW SALZMAN  
ATTORNEY