

ORDINANCE NO. 2021-28

AN ORDINANCE OF THE CITY OF VENICE, FLORIDA, AMENDING THE CODE OF ORDINANCES CHAPTER 2, ADMINISTRATION, ARTICLE III, OFFICERS AND EMPLOYEES, DIVISION 1, IN GENERAL, SECTION 2-161, DEFENSE AND INDEMNITY, PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Florida law recognizes that public officials are entitled to legal fee reimbursement from the local government that they served when they successfully defend themselves against claims arising out of the performance of their official governmental duties and when it serves a public purpose; and

WHEREAS, Section 2-161 of the City of Venice Code of Ordinances as presently adopted provides that the City shall pay attorney fees to defend any civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of any city official arising out of and within the scope of his city employment or function; and

WHEREAS, the City Council desires to expand Section 2-161 of the City Code so that it is explicitly broad enough to cover additional types of claims, suits, or threat of the same that may be pursued against a public official, past or present, consistent with public policy and common law principles.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA as follows:

SECTION 1. The above whereas clauses are ratified and confirmed as true and correct.

SECTION 2. Chapter 2, Administration, Article III, Officers and Employees, Division 1, In General, Section 2-161, Defense and indemnity, is hereby amended to read as follows:

DIVISION 1. IN GENERAL

Sec. 2-161. Defense and indemnity.

(a) *Definition.* The term "city official," as used in this section, shall mean and include all elected and appointed officials of the city that serve on any council, board or commission (including all members of advisory committees, whether formal or not), all Charter officers and all employees of the city, both past and present.

(b) *Defense of claims and civil actions.*

- (1) The city shall use available public funds, except to the extent coverage is provided by any applicable insurance, to furnish or pay ~~fees for or an attorney to defend any civil action arising from a complaint for damages or injury suffered as a result of~~ costs and attorney fees arising out of claims, suits, litigation, or threat of same, against a city official because of any act or omission of action of any city official arising out of and within the scope of his city employment or function. This subsection shall not apply to any action brought by the city against a city official.
- (2) The city shall be entitled to recover from a city official any attorney's fees or cost paid by the city on behalf of such city official where the city official is found to ~~be personally liable by virtue of acting~~ have acted outside the scope of his employment, or acted ~~acting~~ in bad faith, with malicious purpose, and in a manner exhibiting wanton and willful disregard of human rights, safety or property.

(c) *Payment of judgments or settlements.*

- (1) The city shall use available public funds, except to the extent coverage is provided by any applicable insurance, to pay any final judgment, including damages, costs and attorney fees, entered against a city official in his individual capacity and arising from a civil complaint for damages or injury suffered as a result of any act or omission of action of any city official, unless it is judicially determined that the city official acted outside the scope of his official duties, or with corrupt intent, in bad faith or with malicious purpose. The liability of the city under this subsection shall be limited to the sum of \$1,000,000.00 (including any applicable insurance) for all claims or judgments arising out of the same incident or occurrence. This subsection shall not apply to any action brought by the city against a city official.
- (2) The city is authorized to compromise or settle any claim or litigation as described in subsection (c)(1) of this section, subject to the limitations set forth in this subsection.
- (3) For purposes of this section, the term "final judgment" means a judgment upon completion of any appellate proceedings.
- (4) This section is not intended to be a waiver of sovereign immunity or a waiver of any other defense or immunity to such lawsuits.

SECTION 3. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4. If any part, section, subsection or other portion of this ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, such part, section, subsection or other portion, or the prescribed application thereof, shall be severable and the remaining provisions of this ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect.

The city council specifically declares that no invalid or prescribed provision or application was an inducement to the enactment of this ordinance and that it would have enacted this ordinance regardless of the invalid or prescribed provision or application.

SECTION 5. This Ordinance shall become effective immediately upon its approval and adoption, as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA THIS 24TH DAY OF AUGUST 2021.

First Reading: July 13, 2021

Final Reading: August 24, 2021

Adoption: August 24, 2021

Ron Feinsod, Mayor

ATTEST:

Lori Stelzer, MMC, City Clerk

I, Lori Stelzer, MMC, City Clerk of the City of Venice, Florida, a municipal corporation in Sarasota County, Florida, do hereby certify that the foregoing is a full and complete, true and correct copy of an Ordinance duly adopted by the Venice City Council, at a meeting thereof duly convened and held on the 24th day of August, a quorum being present.

WITNESS my hand and the official seal of said City this 24th day of August, 2021

Lori Stelzer, MMC, City Clerk

Approved as to form:

Kelly Fernandez, City Attorney