

COUNCIL POLICY NO. B-2

TITLE: DEFENSE OF CITY OFFICIALS IN PROCEEDINGS NOT SUBJECT TO THE OREGON TORT CLAIMS ACT

POLICY: See attachment.

REFERENCES: City Attorney/City Manager Staff Report dated 7/5/94, Agenda Item No. 7.2.h

**DEFENSE OF CITY OFFICIALS IN PROCEEDINGS NOT SUBJECT TO
THE OREGON TORT CLAIMS ACT**

1. It is in the public interest of the City of Salem that Salem’s elected officers, members of official City boards and commissions, and the City administrative employees be free of the fear of personal financial hardship resulting from having to defend claims and charges (other than “true” crimes punishable by imprisonment) which are beyond the scope of the OTCA and which arise out of their good faith performance of their duties.
2. In no event should the resources of the City be committed to the defense of a City officer or employee unless the Council is satisfied that :
 - A. The action or omission of the officer or employee was in good faith and without malice in the course of his or her official duties. Good faith is absent if the officer or employee knew or reasonably should have known that the action or omission would violate the law, rule or regulation which he or she is charged with violating; and
 - B. The officer or employee did not act contrary to the advice of legal counsel.
3. In no event should the resources of the City be committed to the defense of a City officer or employee unless the Council is satisfied that:
 - A. The offense charged is based solely on the alleged negligence of the officer or employee, and the officer or employee was not malfeasant in office nor willfully or wantonly neglectful of official duty.
 - B. It appears that the allegedly criminal act or omission was done or omitted as a conscious or good faith choice between evils in response to an emergency, or as a conscious and good faith attempt to protect persons from injury, disease, or to protect property from damage or destruction, either of which would have been likely and substantial had the officer or employee not acted in the manner charged.
 - C. The only basis for charging the official is vicarious liability for the misconduct of a subordinate, and where the official clearly did not participate in or condone the subordinate's conduct knowing or having good reason to know it to be unlawful.
4. Any such commitment of City resources must be contingent on the Council's continued satisfaction that the conditions found to justify defense continue to be met. Should it appear that the officer or employee has misstated or failed to disclose facts which, if known, would have changed the initial decision to defend, the City's commitment to that person's defense shall be withdrawn and the City shall be entitled to recover from that person any public funds expended on that person's defense.
5. Ordinarily the commitment to defense of an officer or employee will involve direct payment of defense costs as they are incurred. In any case, however, the Council may choose to commit only to reimbursement of validated expenses in the event the officer or employee is ultimately exonerated.

6. In no event will the office of the City Attorney be used to provide primary defense for a City officer or employee on a claim or charge outside the scope of the OTCA. The City Attorney may, however, provide information and assistance to the attorney retained to defend the case unless the City Attorney determines that such assistance would create a conflict of interest or otherwise violate the Code of Professional Responsibility governing attorneys.
7. Nothing in this policy should be construed to entitle any officer or employee to defense. The intent of the policy is to vest discretion with the Council with certain restrictions as to when defense funds may not be provided. In each case the Council should be guided by considerations of what is in the best interest of the City of Salem, subject to the above conditions and restrictions.
8. The exception to this policy is the case of citizen-signed traffic infraction citations issued to the City police officers for driving in the course of official duties. The current practice of the City Attorney is to provide a defense where such a citation is apparently groundless. This practice should be continued.

Discussion of Alternatives:

The above policy represents only one alternative, the other being a determination not to provide for defense of public officials.