

INDENMIFICATION  
Ordinance No. 123009

Council Bill No. ~~116460~~ 116460

AN ORDINANCE relating to indemnification of employees and officers, providing that penalties imposed by the Ethics and Elections Commission shall not be paid by the City; and amending section 4.64.016 of the Seattle Municipal Code.

CF No. \_\_\_\_\_

|                              |   |  |
|------------------------------|---|--|
| Date Introduced:             | <del>2-17-09</del> <u>2-17-09</u>                           |  |
| Date 1st Referred:           | <u>2-17-09</u>  |  |
| Date Re - Referred:          | To: (committee) <u>Planning, Land Use and Neighborhoods</u> |  |
| Date Re - Referred:          | To: (committee)   |  |
| Date of Final Passage:       | Full Council Vote:  |  |
| <u>6-15-09</u>               | <u>8-0</u>  |  |
| Date Presented to Mayor:     | Date Approved:  |  |
| <u>6-16-09</u>               | <u>6-22-09</u>  |  |
| Date Returned to City Clerk: | Date Published:   | T.O. _____                               |
| <u>6-24-09</u>               | <u>3P</u>   | F.T. <input checked="" type="checkbox"/> |
| Date Vetoed by Mayor:        | Date Veto Published:  |  |
| Date Passed Over Veto:       | Veto Sustained:   |  |

# The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: *Samy Luna*  
Councilmember

## Committee Action:

6-10-09 APPROVE 3-0  
SC, TB, DG

6-15-09 Pass 8-0 (TR excused)

This file is complete and ready for presentation to Full Council. Committee: \_\_\_\_\_ (initial/date)

*Law Department*

Law Dept. Review      OMP Review      City Clerk Review      Electronic Copy Loaded      Indexed

ORDINANCE 123009

AN ORDINANCE relating to indemnification of employees and officers, providing that penalties imposed by the Ethics and Elections Commission shall not be paid by the City; and amending section 4.64.016 of the Seattle Municipal Code.

WHEREAS, the Seattle Ethics and Elections Commission has recommended that the Seattle Municipal Code be amended to prohibit officers and employees from being indemnified by the City against fines imposed by the Commission for violations of the Ethics Code; and

WHEREAS, the Commission also recommended that the costs of any defense provided by the City to an employee charged with an ethics violation be recovered if the employee is determined to have intentionally violated the Ethics Code, and

WHEREAS, there currently exists a method to accomplish recovery of defense costs through the process of reservation of rights by the City, but legislation is necessary to amend the code to prevent employees from being indemnified by the City against for fines imposed by the Commission, NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. Section 4.64.016, last amended by Ordinance 117655, is amended as follows:

In the event there is made against any City officers or employees any administrative charge of misconduct which is the subject of any proceedings before any administrative tribunal of any City, state, or federal agency that (which) may lead to the administrative imposition of a monetary penalty, the making of any recommendation regarding the City employment of the officer or employee, or the imposition of any discipline or sanction related to a professional license, the officer or employee shall be entitled to request that the City defend the officer or employee in such administrative proceedings. Any City employee or officer (The Mayor or subordinate departmental employees) shall make their request for defense to the Chief of the



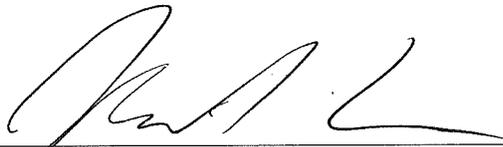
1 Civil Division of the Law Department. Thereafter, the Chief of the Civil Division of the Law  
2 Department shall, after receiving a report and recommendation regarding the request from the  
3 relevant department head, make a determination as to whether the acts or omissions which form  
4 the basis of the administrative charge and proceeding arose in the course and scope of City  
5 employment. Department heads and the presiding officers of City boards or commissions shall  
6 make their request for defense to the Mayor, who shall, after receiving a report and  
7 recommendation regarding the request from the Chief of the Civil Division of the Law  
8 Department, make the determination as to whether the acts or omissions which form the basis of  
9 the administrative charge and proceeding arose in the course and scope of City employment. If  
10 the determination is made that such acts or omissions arose in the course and scope of City  
11 employment then the City shall defend the officer or employee in such administrative  
12 proceedings, including any judicial review of such proceedings. There shall be no appeal from  
13 such determinations made by the Mayor or the Chief of the Civil Division of the Law  
14 Department. If the determination is made that the City will defend in administrative proceedings,  
15 other than a proceeding involving a charge brought by the Executive Director of the Ethics and  
16 Elections Commission, the City will indemnify the officer or employee with respect to any  
17 monetary penalty imposed, subject to any reservation of rights exercised under SMC 4.64.015.  
18 The City will not indemnify any officer or employee with respect to any monetary penalty  
19 imposed on a charge brought by the Executive Director of the Ethics and Elections Commission.

20  
21  
22  
23  
24 The duty to defend in administrative proceedings and the indemnification of any  
25 monetary penalty is subject to the limitations and reservations contained in SMC Section  
26 4.64.015.  
27  
28



1 Section 2. This ordinance shall take effect and be in force thirty (30) days from and after  
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days  
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

4 Passed by the City Council the 15<sup>th</sup> day of June, 2008, and  
5 signed by me in open session in authentication of its passage this  
6 15<sup>th</sup> day of June, 2008.

7  
8  
9  
10   
President \_\_\_\_\_ of the City Council

11 Approved by me this 22<sup>nd</sup> day of June, 2008~~8~~<sup>9</sup>

12  
13   
14 Gregory J. Nickels, Mayor

15  
16 Filed by me this 24<sup>th</sup> day of June, 2008<sup>9</sup>

17  
18  
19   
20 Acting City Clerk

21 (Seal)



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

| <b>Department:</b> | <b>Contact Person/Phone:</b> | <b>DOF Analyst/Phone:</b> |
|--------------------|------------------------------|---------------------------|
| Legislative        | Michael Fong/5-1675          | N/A                       |

**Legislation Title:**

AN ORDINANCE relating to indemnification of employees and officers, providing that penalties imposed by the Ethics and Elections Commission shall not be paid by the City; and amending section 4.64.016 of the Seattle Municipal Code.

• **Summary of the Legislation:**

This ordinance amends the Seattle Municipal Code to prohibit City officers and employees from being indemnified by the City against fines imposed by the Seattle Ethics and Elections Commission for Ethics Code violations. Absent the amendment, the City’s Judgment Claims Fund may be responsible for paying ethics fines issued by the Commission when an officer or employee has been granted indemnification by the City Attorney. With this action, the City will not indemnify any officer or employee from monetary penalties imposed on a charge brought by the Executive Director of the Seattle Ethics and Elections Commission.

In addition, the ordinance amends the Seattle Municipal Code to clarify that any city employee or officer shall make their request for defense to the Chief of the Civil Division of the Law Department. The existing language in the code only refers to “The Mayor or subordinate department employees” and omits any reference to the City’s Legislative branch.

- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

In September of 2008, the Seattle Ethics and Elections Commission voted 6-1 to forward a recommendation to the City Council to amend the SMC to prohibit City officer and employees from being indemnified by the City against fines imposed by the Commission for violations of the Ethics Code. The Commission believes such fines should be paid for out of an employee’s personal funds. In addition, the Commission recommended permitting the City to seek repayment of legal costs associated with defending officers or employees that have been found guilty of violating the Ethics Code intentionally or in bad faith.

The City Council’s Planning, Land Use and Neighborhoods Committee had an initial discussion about this topic on December 10, 2008.

- *Please check one of the following:*

**This legislation does not have any financial implications.** *(Stop here and delete the remainder of this document prior to saving and printing.)*



Note: This legislation should have no measurable impact on the City's Judgment Claims Fund. In recent history, there has been no use of the Judgment Claims Fund to pay fines issued by the Seattle Ethics and Elections Commission. This legislation eliminates indemnification by the City for such monetary fines, and therefore should have no negative fiscal impact on the City.



---

**STATE OF WASHINGTON – KING COUNTY**

--SS.

---

240878  
CITY OF SEATTLE, CLERKS OFFICE

No.

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

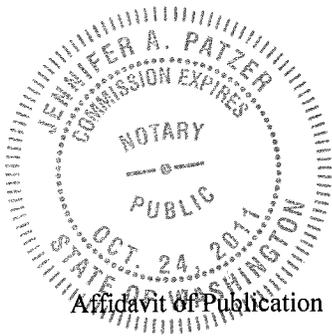
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORD 123009 INDEMINIF

was published on

06/26/09

The amount of the fee charged for the foregoing publication is the sum of \$ 162.73, which amount has been paid in full.



Affidavit of Publication

Subscribed and sworn to before me on

06/26/09

Notary public for the State of Washington,  
residing in Seattle

# State of Washington, King County

## City of Seattle

### ORDINANCE 123009

AN ORDINANCE relating to indemnification of employees and officers, providing that penalties imposed by the Ethics and Elections Commission shall not be paid by the City; and amending section 4.64.016 of the Seattle Municipal Code.

WHEREAS, the Seattle Ethics and Elections Commission has recommended that the Seattle Municipal Code be amended to prohibit officers and employees from being indemnified by the City against fines imposed by the Commission for violations of the Ethics Code; and

WHEREAS, the Commission also recommended that the costs of any defense provided by the City to an employee charged with an ethics violation be recovered if the employee is determined to have intentionally violated the Ethics Code, and

WHEREAS, there currently exists a method to accomplish recovery of defense costs through the process of reservation of rights by the City, but legislation is necessary to amend the code to prevent employees from being indemnified by the City against fines imposed by the Commission, NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**Section 1. Section 4.64.016, last amended by Ordinance 117655, is amended as follows:

In the event there is made against any City officers or employees any administrative charge of misconduct which is the subject of any proceedings before any administrative tribunal of any City, state, or federal agency that (which) may lead to the administrative imposition of a monetary penalty, the making of any recommendation regarding the City employment of the officer or employee, or the imposition of any discipline or sanction related to a professional license, the officer or employee shall be entitled to request that the City defend the officer or employee in such administrative proceedings. Any City employee or officer (~~The Mayor or sub-ordinates—departmental—employees~~) shall make their request for defense to the Chief of the Civil Division of the Law Department. Thereafter, the Chief of the Civil Division of the Law Department shall, after receiving a report and recommendation regarding the request from the relevant department head, make a determination as to whether the acts or omissions which form the basis of the administrative charge and proceeding arose in the course and scope of City employment. Department heads and the presiding officers of City boards or commissions shall make their request for defense to the Mayor, who shall, after receiving a report and recommendation regarding the request from the Chief of the Civil Division of the Law Department, make the determination as to whether the acts or omissions which form the basis of the administrative charge and proceeding arose in the course and scope of City employment. If the determination is made that such acts or omissions arose in the course and scope of City employment then the City shall defend the officer or employee in such administrative proceedings, including any judicial review of such proceedings. There shall be no appeal from such determinations made by the Mayor or the Chief of the Civil Division of the Law Department. If the determination is made that the City will defend in administrative proceedings, other than a proceeding involving a charge brought by the Executive Director of the Ethics and Elections Commission, the City will indemnify the officer or employee with respect to any monetary penalty imposed, subject to any reservation of rights exercised under SMC 4.64.015. The City will not indemnify any officer or employee with respect to any monetary penalty imposed on a charge brought by the Executive Director of the Ethics and Elections Commission.

The duty to defend in administrative proceedings and the indemnification of any monetary penalty is subject to the limitations and reservations contained in SMC Section 4.64.015.

Section 2. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 15th day of June, 2009, and signed by me in open session in authentication of its passage this

15th day of June, 2009.

RICHARD CONLIN,

President of the City Council.

Approved by me this 22nd day of June, 2009.

GREGORY J. NICKELS,

Mayor.

Filed by me this 24th day of June, 2009.

(Seal) JUDITH E. PIPPIN,

City Clerk.

Publication ordered by JUDITH PIPPIN,  
City Clerk.

Date of publication in the Seattle Daily  
Journal of Commerce, June 26, 2009.

6/26(240878)