



**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number: R-1

Date: September 27, 2006

Subject: Request that the City Council consider adopting a Resolution agreeing to provide defense and indemnity to a certain City employee who is a defendant in a lawsuit brought against him in his capacity as a City employee.

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Item Reference: The Tyler City Code in Section 2-62 sets forth direction and guidelines for the City in providing a defense and indemnity to City employees when they are sued as defendants in either their official or individual capacities in a lawsuit. In the past, the City has provided a defense to City employees and expects to continue to do so in the future. Only in those circumstances where it would appear that the actions of the City employee were either not authorized or were contrary to public policy, state or federal law, or policy of the City, would there be any possibility of the City not providing a defense. Under some of those circumstances, it might be against public policy to defend actions that the City did not agree with and would in fact take disciplinary action against employees involved.

On September 8, 2006, the City received a new lawsuit filed against a City employee where it would be appropriate for the City Council to adopt the attached written Resolution stating that based upon the investigations performed by the City, and all the evidence available at this time, the employee involved acted appropriately, and thus should be reassured by the adoption of this Resolution by the City Council. The attached Resolution not only agrees to continue to provide defenses for this employee, but also indemnifies him in the event damages are awarded.

The lawsuit is as follows: *Lesly Gatherright, Individually and Doing Business as ABD Associates vs. Gary Swindle, Raycom Media, Inc., and KLTN Channel 7 News*, filed in the United States District Court for the Northern District of Texas, Cause No. 9-06CV1533-L.

RECOMMENDATION:

It is recommended that the City Council adopt the attached Resolution expressing the City Council's continued support, defense and indemnification for the City employee involved.

Gary C. Landers

Drafted/Recommended By:
Department Leader Gary C. Landers, City Attorney

Edited/Submitted By:
City Manager

RESOLUTION NO. R-2006- 21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS EXPRESSING THE CITY COUNCIL'S SUPPORT FOR AND AGREEMENT TO PROVIDE A DEFENSE AND INDEMNIFICATION TO A CERTAIN EMPLOYEE WHO HAS BEEN SUED AS A RESULT OF ACTIONS TAKEN AS A CITY EMPLOYEE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Gary Swindle has been sued in his individual and official capacity, in a lawsuit entitled *Lesly Gatheright, Individually and Doing Business as ABD Associates vs. Gary Swindle, Raycom Media, Inc., and KLTV Channel 7 News*, filed in the United States District Court for the Northern District of Texas, Cause No. 9-06CV1533-L, and

WHEREAS, the City's investigation of the events involved in this lawsuit and the evidence available at this time, show that this employee was acting in good faith and in the course and scope of his duties as a City employee; and

WHEREAS, it is in the public interest as well as this individual employee's interest for the City Council to officially state its support for him by providing a defense and agreeing to this indemnification, based upon all information and evidence available to day; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS AS FOLLOWS:

PART 1. That the City Council, based upon all evidence and information available to it at this time, hereby agrees to provide a defense and indemnity to:

Chief Swindle in the lawsuit entitled *Lesly Gatheright, Individually and Doing Business as ABD Associates vs. Gary Swindle, Raycom Media, Inc., and KLTV Channel 7 News*, filed in the United States District Court for the Northern District of Texas, Cause No. 9-06CV1533-L.

PART 2. That this Resolution shall take effect immediately upon its adoption.

ADOPTED this 27th day of September, 2006 A.D.

JOSEPH O. SEEBER, MAYOR
CITY OF TYLER, TEXAS

A T T E S T :

APPROVED:

CITY CLERK

CITY ATTORNEY