



**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number: R-4

Date: May 9, 2007

Subject: Request that the City Council consider adopting a Resolution agreeing to provide defense and indemnity to a certain City official and certain City employees who are defendants in a lawsuit brought against them in their capacity as City employees.

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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 April 19, 2007, the City received a new lawsuit filed against the City and City employees 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, these employees 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 these employees, but also indemnifies them in the event damages are awarded.

The lawsuit is as follows: *Robert L. Clark vs. City of Tyler, Tyler Police Department; Frank Brewer, Ricky Graham, Destry Walsworth, Bill Goecking, Michael Malone, Darrell Gardner, Tommy Whitworth, John Brown, Jeff Rackliff, J. Ragland, Gary M. Swindle, Smith County, Smith County Sheriff Dept, J. B. Smith, Lt. Seul, Smith County District Attorney, Matt Bingham, Etc.* Cause No. 06-1323-C, 241st Judicial District Court6:06CV135, U. S. District Court for the Eastern District of Texas

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RECOMMENDATION:

It is recommended that the City Council adopt the attached Resolution expressing the City Council's continued support, defense and indemnification for all the City employees and all elected officials named in the lawsuit.

Gary C. Landers

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

Edited/Submitted By:
City Manager

RESOLUTION NO. R-2007-20

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 CERTAIN EMPLOYEES WHO HAVE BEEN SUED AS A RESULT OF ACTIONS TAKEN AS CITY EMPLOYEES; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Police Chief and several police officers have been sued in their individual and official capacity, in a lawsuit entitled *Robert L. Clark vs. City of Tyler, Tyler Police Department; Frank Brewer, Ricky Graham, Destry Walsworth, Bill Goecking, Michael Malone, Darrell Gardner, Tommy Whitworth, John Brown, Jeff Rackliff, J. Ragland, Gary M. Swindle, Smith County, Smith County Sheriff Dept, J. B. Smith, Lt. Seul, Smith County District Attorney, Matt Bingham, Etc.* Cause No. 06-1323-C, 241st Judicial District Court6:06CV135, U. S. District Court for the Eastern District of Texas; and

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

WHEREAS, it is in the public interest as well as these individual employees' interest for the City Council to officially state its support for them 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:

Frank Brewer, Ricky Graham, Destry Walsworth, Bill Goecking, Michael Malone, Darrell Gardner, Tommy Whitworth, John Brown, Jeff Rackliff, J. Ragland, Gary M. Swindle, Smith County, Smith County Sheriff Dept, J. B. Smith, Lt. Seul, Smith County District Attorney, Matt Bingham, Etc. in Cause No. 06-1323-C, 241st Judicial District Court6:06CV135, U. S. District Court for the Eastern District of Texas

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

ADOPTED this 9th day of May, 2007 A.D.

JOSEPH O. SEEBER, MAYOR
CITY OF TYLER, TEXAS

A T T E S T :

APPROVED:

CITY CLERK

CITY ATTORNEY