

ORDINANCE NO. 98- 5074

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY ADDING SECTIONS TO BE NUMBERED 2-226 THROUGH 2-228; AND ESTABLISHING AND EXTENDING STATUTORY IMMUNIZATION, DEFENSE AND IMDEMIFICATION OF PUBLIC OFFICIALS, AND PUBLIC EMPLOYEES AND MEMBERS OF ALL BOARDS, COMMISSIONS AND COMMITTEES SERVING THE CITY IN AN ADVISORY OR EX-OFFICIO CAPACITY FOR ANY AND ALL LIABILITY WHICH MAY RESULT FROM ALLEGED OR PROSECUTED VIOLATIONS OF CONSTITUTIONAL INITIATIVE 75 (CI-75) .

WHEREAS, on November 3, 1998, the registered voters of Montana approved the implementation of Constitutional Initiative 75 which requires a vote of the electorate on all new taxes and also eliminates immunity for any public official or employee violating the initiative; and

WHEREAS, considerable uncertainty exists concerning the statutes of the previous statutory indemnification of public officers, and employees and advisory or ex-officio individuals for duties performed within the course and scope of their employment or volunteer functions with the City of Billings pursuant to MCA Section 2-9-305; and

WHEREAS, actual or threatened liability assessed to public officers, and employees and advisory or ex-officio individuals may substantially discourage future participation in City Government from qualified citizens or may discourage necessary and qualified individuals from seeking employment with the City; and

WHEREAS, the ultimate applicability and interpretation of the civil liability provisions of Constitutional Initiative 75 remain uncertain, it is deemed essential by the City of Billings to avoid and protect against alleged liability for claimed errors in judgment during the implementation of Constitutional Initiative 75 by public officers, and employees and advisory or ex-officio individuals of the City;

NOW, THEREFORE, be it ordained by the City Council of the City of Billings, Montana:

Section 1. That the Billings, Montana City Code be amended by adding Sections 2-226 through 2-228 to read as follows:

Sec. 2-226. Immunization, defense and indemnification of public officers, and public employees and advisory or ex-officio individuals.

It is the intent and purpose of the City Council of the City of Billings to provide for the specific immunization, indemnification and defense of all public officers, or public employees of the City and members of all boards, commissions and committees serving the City in an advisory or ex-officio capacity who are subjected to any civil action brought against them for alleged violations of Constitutional Initiative 75. In the event that any civil action is brought against City officers, or employees, or advisory or ex-officio individuals, the City of Billings shall defend the action on their behalf of the public officer or public employee and indemnify the same for any liability resulting from any alleged violation of Constitutional Initiative 75 except as provided in Section 2-227 below.

Sec. 2-227. Exceptions to immunization, indemnification and defense of public officer, or public employee and advisory or ex-officio individuals.

In any civil action brought against a public officer, or public employee or advisory or ex-officio individual of the City of Billings which names them as a party defendant for alleged violations of Constitutional Initiative 75, the public officer, or public employee, advisory or ex-officio individual shall not be defended or indemnified by the City of Billings for any money judgments or litigation expenses, including attorney's fees, which may be incurred by them officer or employee as a result of such a civil action if a judicial determination is made that:

- (a) The conduct of the City officer, or employee, and advisory or ex-officio individual upon which the alleged violation of Constitutional Initiative 75 is based constitutes oppression, fraud or malice, or for any other reason such conduct does not arise out of the course and scope of the public officer or public employee's employment or advisory or ex-officio individual's volunteer functions with the City of Billings;
- (b) The public officer, or public employee, advisory or ex-officio individual unilaterally compromised or settled the claim without the consent of the City of Billings; or
- (c) The public officer, or public employee, advisory or ex-officio individual failed or refused to reasonably cooperate in the defense of the alleged violations of Constitutional Initiative 75.

(d) If no judicial determination has been made applying any or all of the ~~exclusions~~ noted immediately above, the City of Billings may independently determine whether any of the exclusions apply to a particular case. If there is a dispute between the City of Billings and a ~~public officer or public employee~~ any covered group or individual concerning whether any or all of the exclusions apply, and the City of Billings determines that it should clarify its obligation to the ~~public officer or public employee~~ covered group or individual as provided within section 2-226 by commencing a declaratory action or other legal action, the City of Billings remains obligated to provide indemnification and defense of a ~~public officer or public employee~~ covered group or individual until such time as a final judgment is issued ruling that the City of Billings has no such obligation to defend and indemnify the ~~public officer or public employee~~ covered group or individual.

However, the City of Billings has no obligation to represent or otherwise provide a defense to any ~~public officer or public employee~~ covered group or individual in a declaratory action or other legal action brought by the City of Billings and against the ~~public officer or public employee~~ covered group or individual in an effort to determine the respective rights and obligations of the City and its officer, ~~or employee, advisory or ex-officio individual~~.

**Sec. 2-228. Notice required of public officer, or public employee, advisory or ex-officio individual.**

Upon receipt of service of a Summons and Complaint against a public officer or public employee of the City of Billings which alleges a violation of Constitutional Initiative 75, such officer, or employee, advisory or ex-officio individual shall give written notice to the City Administrator or to the City Attorney requesting that a defense to the action be provided by the City of Billings.

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid

provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 23 day of November, 1998.

PASSED, ADOPTED and APPROVED on second reading this 14<sup>th</sup> day of December, 1998.

CITY OF BILLINGS



By Charles J. Tailey  
Mayor

ATTEST:

By Marita Herold  
City Clerk