

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

ORDINANCE NO. 2021-002

**AN ORDINANCE ADOPTING KITTITAS COUNTY CODE CHAPTER 2.73 – DEFENSE AND
INDEMNIFICATION OF COUNTY OFFICERS, EMPLOYEES, AND VOLUNTEERS**

- Whereas:** RCW 4.96.041(2) authorizes counties to implement a policy and procedure providing for the defense and indemnification of county officers, employees, and volunteers who are subject to a claim or action for damages;
- Whereas:** Kittitas County previously adopted Resolution 87-20 regarding the defense and indemnification of county officers, employees, and volunteers who are subject to a claim or action for damages;
- Whereas:** The provisions of Kittitas County Resolution 87-20 should be updated and should be made a part of county code;
- Whereas:** The Board of Kittitas County Commissioners continues to believe it is in the best interests of Kittitas County that those employed, volunteering, or otherwise engaged in official Kittitas County business and activities be defended and indemnified from potential liability arising out of their actions;
- Whereas:** A public hearing was held on January 5, 2021, and the public was provided due notice and opportunity to provide testimony on the proposed ordinance;

NOW, THEREFORE, BE IT ORDAINED, Chapter 2.73 -Defense and Indemnification of County Officers, Employees, and Volunteers, shall be created and included in the Kittitas County Code and shall read (additions are shown by underline and deletions by ~~strikeout~~) as set forth in Exhibit A.

BE IT ALSO ORDAINED, the Information Technology Department is charged with incorporating and updating the amendments authorized herein on the Kittitas County web page.

BE IT FURTHER ORDAINED, the Prosecuting Attorney's Office is charged with correcting any scrivener's errors arising out of the amendment process. No further authorization will be needed from the Kittitas Board of County Commissioners for the Prosecuting Attorney's Office to effect correction of scrivener's errors relating to this Ordinance.

ADOPTED this 5th day of January, 2021, at Ellensburg, Washington.

**BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON**



Chair



Vice-Chair



Commissioner





Clerk of the Board

EXHIBIT A

Chapter 2.73

DEFENSE AND INDEMNIFICATION OF COUNTY OFFICERS, EMPLOYEES, AND VOLUNTEERS

Sections:

- 2.73.005 Purpose.
- 2.73.010 Definitions.
- 2.73.020 Request for defense of claim.
- 2.73.030 Authorizing defense of claim.
- 2.73.040 Indemnification and payment of judgment.
- 2.73.050 Action for malicious prosecution authorized.
- 2.73.060 Duties of employees
- 2.73.070 Effective Date
- 2.73.080 Severability

2.73.005 Purpose.

The purpose of this chapter is to establish a procedure, as authorized by RCW 4.96.041, under which an officer, employee, or volunteer who is subject to a claim or action for damages may request that Kittitas County authorize and provide the defense of the claim and pay the costs and expenses of the defense, and to establish a procedure under which Kittitas County may pay damage awards.

2.73.010 Definitions.

The definitions in this section apply to the following terms as used in this chapter:

- A. "Claim" means a demand for monetary compensation as a result of injury or damages allegedly caused by the county, its officers, employees, or volunteers, and includes any threatened, pending, or completed civil action or lawsuit brought under chapter 4.96 RCW or 42 U.S.C. §1981 et seq.
- B. "Employee" means any person who is or was an employee of Kittitas County. "Employee" includes the estate, marital community, or personal representative of an employee.
- C. "Officer" means any person who is or was an elected or appointed official or officer of Kittitas County. "Officer" includes the estate, marital community, or personal representative of an officer.
- D. "Prosecuting Attorney" means the elected Prosecuting Attorney of Kittitas County or individual, such as a Deputy Prosecuting Attorney, designated by the Prosecuting Attorney of Kittitas County to carry out the functions and responsibilities of this chapter
- E. "Volunteer" means any person who is or was a volunteer, as defined in RCW 51.12.035, of Kittitas County. "Volunteer" includes the estate, marital community, or personal representative of a volunteer.

2.73.020 Request for defense of claim.

An officer, employee, or volunteer may request that Kittitas County defend and pay the necessary expenses of defending any claim or action for damages arising from acts or omissions while performing or in good faith purporting to perform his or her official duties. Such request shall be in writing and shall be submitted to the Board of County Commissioners and the Prosecuting Attorney.

2.73.030 Authorizing defense of claim.

A request for defense of claim shall be granted if the Board of County Commissioners finds:

1. The acts or omissions of the officer, employee, or volunteer were, or in good faith purported to be, within the scope of his or her official duties; and
2. That, for purposes of the issues raised by the claim or action for damages, a particular person is, or was during the relevant time period, in fact, a county officer, employee, or volunteer.

However, Kittitas County reserves the right to deny a request for defense of claim against an officer, employee, or volunteer charged with official misconduct, malfeasance, or willful neglect of duty in his or her office; or alleged to have unlawfully obtained personal benefits, or benefits for any person not entitled thereto, while acting in his or her official capacity; or if Kittitas County itself initiates the action against the officer, employee, or volunteer.

2.73.040 Indemnification and payment of judgment.

When Kittitas County has defended a claim or action for damages against an officer, employee, or volunteer pursuant to this chapter, and the court hearing the action finds the officer, employee, or volunteer was acting within the scope of his or her official duties, Kittitas County shall indemnify the officer, employee, or volunteer, and shall pay any non-punitive, final monetary judgment for costs and damages entered on such claim, after termination of all appellate review, if any. Pursuant to RCW 4.96.041(4), a judgment creditor shall seek satisfaction for a judgment only from Kittitas County and a judgment for costs and damages shall not become a lien upon any property of the officer, employee, or volunteer. Payment of any punitive damages judgment against an officer, employee, or volunteer shall only be made by specific resolution of a majority of the Board of County Commissioners.

2.73.050 Action for malicious prosecution authorized.

The Board of County Commissioners hereby authorizes the Prosecuting Attorney to bring an action or counterclaim for malicious prosecution, under RCW 4.24.350, on behalf of a county officer, employee, or volunteer when, in the sole discretion of the Prosecuting Attorney, the Prosecuting Attorney determines it is in the best interest of the county to bring such action or counterclaim. The Prosecuting Attorney is authorized to provide legal services for the county officer, employee, or volunteer, and to expend county funds to prosecute such action or counterclaim.

2.73.060 Duties of employees.

Any officer, employee, or volunteer contacted or served with a claim, demand, summons, or complaint shall immediately notify and deliver any documentation received, as well as any request for defense, to the Board of County Commissioners and the Prosecuting Attorney. The officer, employee, or volunteer

shall cooperate with Kittitas County and its liability carrier, assist in the conduct of suits and in enforcing any right of contribution or indemnity, shall attend pre-trial hearings and trials, and assist in securing and giving evidence and obtaining the attendance of witnesses. Except as specifically directed by the Prosecuting Attorney or assigned special counsel, no officer, employee, or volunteer may engage in any of the following acts with respect to claims or actions for damages defended pursuant to this chapter.

1. Engage or retain legal counsel at Kittitas County's expense;
2. Negotiate or otherwise affect the settlement of such claim or action for damages;
3. Make an admission of fault or liability involving such claim or action for damages;
4. Discuss with persons who are not county employees, assigned special counsel or others approved by the Prosecuting Attorney, or collective bargaining unit representatives, facts and circumstances of the claim.

Any violation of the provisions of this section may result in the revocation and cancellation of the continued defense and indemnification of the officer, employee, or volunteer, and may also result in Kittitas County taking legal action against the officer, employee, or volunteer for reimbursement of the costs, expenses, and damages incurred or expended by Kittitas County under this chapter.

2.73.070 Effective date.

The effective date of the ordinance codified in this chapter shall be January 5, 2021.

2.73.080 Severability.

Should any provision of this chapter be declared invalid, the remainder of this chapter or the application of such provision to other persons or circumstances shall not be affected and shall be valid and enforceable to the fullest extent allowed by law.