

CHAPTER 02 MAYOR AND COUNCIL¹

ARTICLE I. IN GENERAL

Sec. 2-1. Definitions in General

The definitions in A.R.S. tit. 9 (A.R.S. § 9-101 et seq.) shall be applicable to this Chapter unless a term is specifically defined in this Chapter, or unless the context requires otherwise.

Sec. 2-2. Definitions Pertaining to this Chapter

For the purposes of interpretation of this Chapter, the following words and phrases shall mean:

- (a) *Clerk* – the office of the city clerk, including duly appointed deputies thereof.
- (b) *Manager* – the office of the city manager.
- (c) *Person* – includes officers, employees and city councilmembers of the City of Maricopa.
- (d) *Proceedings* – includes any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administered or investigated.

Secs. 2-3--2-10. Reserved.

ARTICLE II. MAYOR AND COUNCIL IN GENERAL

Sec. 2-11. Elected Officers

- (a) The elected officers of this city shall be a mayor and six councilmembers. The mayor and six councilmembers shall constitute the council and shall continue in office until their successors are elected and qualified.
- (b) The term of office for the mayor shall be two years.
- (c) The term of office for councilmembers shall be four years. Terms shall be staggered such that three councilmembers shall stand for election at one election and three shall stand for election at the following election.
- (d) A candidate shall not run for both mayor and councilmember in the same election.

¹ Amended Chapter 02

Sec. 2-12. Corporate Powers

(a) The corporate powers of the city shall be vested in the council and shall be exercised only as directed or authorized by law. All powers of the council shall be exercised by ordinance, resolution, order or motion.

(b) The council may adopt ordinances which authorize the exercise of specific corporate powers by appointive officers of the city.

Sec. 2-13. Vacancies in Council

The council shall fill any vacancy in council by one of the following methods, at the option of council:

(a) By appointment for the unexpired term; or

(b) By appointment until the next regularly scheduled council election if the vacancy occurs more than thirty (30) days before the nomination petition deadline. The councilmember appointed shall be a qualified elector in the city and shall meet the qualifications set forth in Section 2-51 of this Code. A councilmember elected pursuant to this paragraph shall be elected to serve for the unexpired term.

Sec. 2-14. Compensation

The compensation of elected officers of the city shall be fixed from time to time by resolution of the council, provided that the compensation of any elected officer shall not be increased or decreased except in conformance with the provisions of the state constitution, article IV, part 2, section 17.

Sec. 2-15. Naming of Facilities

The naming of all city facilities shall be the sole responsibility and authority of the mayor and council and shall be accomplished in one of the following manners:

(a) Adoption of a resolution setting forth the name of the facility; or

(b) Designation of an advisory board or appointment of an advisory committee with guidelines and parameters to be used by the committee to provide recommendations to the mayor and council who shall then decide, by resolution, on the name of the facility.

Secs. 2-16--2-30. Reserved.

ARTICLE III. MAYOR

Sec. 2-31. Election

The mayor shall be directly elected by the qualified electors of the city.

Sec. 2-32. Vice Mayor

At the first regular meeting in June following an election, the council shall designate one of its members as vice mayor, who shall serve at the pleasure of the council. The vice mayor shall perform the duties of the mayor during his absence or disability.

Sec. 2-33. Acting Mayor

In the absence or disability of both the mayor and vice mayor, the council member with the most total years as a member of the council shall serve as acting mayor who shall have all the powers, duties and responsibilities of the mayor during such absence or disability. The city clerk shall prepare and keep on file a list of total years of service for council members as of January 1 of each year. If there are council members with the same number of years of total service, then the acting mayor shall be chosen by a vote of the council members present at the meeting.

Sec. 2-34. Powers and Duties of the Mayor

The powers and duties of the mayor shall include:

- (a) Be the chief executive officer of the city performing all duties authorized or required by state statute and this Code.
- (b) Be the chairperson of the council and preside over its meetings. The mayor may make and second motions and shall have a voice and vote in all its proceedings.
- (c) Execute and authenticate by his signature such instruments as the council, or any statutes, or ordinances of this Code shall require.
- (d) By proclamation, declare a local emergency to exist due to fire, conflagration, flood, earthquake, explosion, war, bombing, acts of the enemy or any other natural or manmade calamity or disaster by reason of threats or occurrences of riots, routes or affrays or other acts of civil disobedience which endanger life or property within the city. After declaration of such emergency, the mayor shall govern by proclamation and impose all necessary regulations to preserve the peace and order of the city including, but not limited to:
 - (1) Imposition of a curfew on all or any portion of the city.
 - (2) Ordering the closing of any business.
 - (3) Closing to public access any public building, street or other public place.
 - (4) Calling upon regular or auxiliary law enforcement agencies and organizations within or without the political subdivision for assistance.
- (e) Provide an annual State of the City Address in February of each year at a time and place to be determined by the mayor

Sec. 2-35. Absence of the Mayor

The mayor shall notify the clerk if he will be absent from the city for a period greater than seven calendar days.

Sec. 2-36. Failure to Sign Documents

If the mayor refuses or fails to sign any ordinance, resolution, contract, warrant, demand or other document or instrument requiring his signature for five days consecutively, a majority of the members of the council may, at any regular or special meeting, authorize the vice mayor or, in his absence, an acting mayor to sign such ordinance, resolution, contract, warrant, demand or other document or instrument which when so signed shall have the same force and effect as if signed by the mayor.

Secs. 2-37--2-50. Reserved.

ARTICLE IV. ELECTIONS

Sec. 2-51. Qualifications of Candidates

All candidates for elected office in the city shall be qualified electors of the city. Candidates shall have resided in the city for at least one year preceding the election in which he is running, except that a person living in an area that has been annexed into the city during the year preceding the election shall be qualified if he has resided in that annexed area at least one year prior to the election.

Sec. 2-52. Resignation of Other Office or Position

(a) In accordance with A.R.S. §38-296, except during the final year of the term being served, an incumbent of a salaried elective office, whether holding by election or appointment, shall resign his position upon filing a nomination paper for election or upon publicly declaring his candidacy for election to any salaried local, state or federal office, whichever occurs first.

(b) A non-salaried member of any committee, commission, task force or administrative board of the city, whether elected or appointed, shall resign his position upon filing a nomination paper for election or upon publicly declaring his candidacy for election to the council, whichever occurs first. This provision shall not apply to members of the council who, by law, policy or this Code, are required to act as members of other committees, commissions or administrative boards.

(c) A city employee shall resign his position upon filing a nomination paper for election to the council or upon publicly declaring his candidacy for election, whichever occurs first.

Sec. 2-53. Nonpolitical Ballot

Nothing on the ballot in any election shall be indicative of the support of a candidate.

Sec. 2-54. Primary Election

Any candidate who shall receive at the primary election a majority of all the votes cast shall be declared to be elected to the office for which he is a candidate effective as of the date of the general election, and no further election shall be held as to said candidate; provided that if more candidates receive a majority than there are offices to be filled then those equal in number to the offices to be filled receiving the highest number of votes shall be declared elected. For purposes of this Section a "vote cast" is the same as a "ballot."

Sec. 2-55. General Election Nomination

If at any primary election held as above provided there be any office for which no candidate is elected, as to such office said election shall be considered to be a primary election for nomination of candidates for such office, and the second or general municipal election shall be held to vote for candidates to fill such office. Candidates to be placed on the ballot at such second or general municipal election shall be those not elected at such first election, shall be equal in number to twice the number to be elected to any given office or less than that number if there be less than that number named on the primary election ballot, and persons who receive the highest number of votes for the respective offices at such first election shall be the only candidates at such second election, provided that if there be any person who, under the provisions of this article, would have been entitled to become a candidate for any office except for the fact that some other candidate received an equal number of votes therefore, then all such persons receiving an equal number of votes shall likewise become candidates for such office.

Sec. 2-56. General Election Declaration

(a) The candidates equal in number to the persons to be elected who shall receive the highest number of votes at such election shall be declared elected to such office.

(b) If among the candidates receiving the highest number of votes, two persons receive the lowest and same number of votes, the resulting tie for the last position to be filled shall be decided by lot between those two candidates, the winner of the lot being declared elected.

Sec. 2-57. Assumption of Office

The mayor and members of the council shall assume the duties of office at the first regular meeting of the council in June next following the date of the general election at which, or effective as of the date of which, the mayor and councilmembers were elected.

Sec. 2-58. Oath of Office

Immediately prior to assumption of the duties of office, the mayor and each councilmember shall, in public, take and subscribe to the oath of office.

Sec. 2-59. Bonds of Officers

Prior to taking office, the mayor and every councilmember shall execute and file an official bond, enforceable against the principal and his sureties, conditioned on the due and faithful performance of his official duties, payable to the state and to and for the use and benefit of the city or any person who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity. A person so injured or aggrieved may bring suit on such bond under provisions identical to those contained in A.R.S. §38-260. Bonds shall be in such sum as shall be provided by resolution, and the premium for such bonds shall be paid by the city. Nothing in this Section shall preclude the City from obtaining a blanket bond pursuant to the provisions of A.R.S. §9-302.

Sec. 2-60. Financial Disclosure Statement

The mayor, each councilmember, and each candidate for mayor or councilmember shall file a financial disclosure statement in a form and with such information as provided by Resolution No. 03-05 of the council, as amended, and pursuant to state law.

Sec. 2-61. Recall

Elective officers of the city shall be subject to recall from offices by the qualified electors of the city under the proceedings and in the manner prescribed for the recall of such officers by the state statutes.

Secs. 2-62--2-70. Reserved.

ARTICLE V. RULES OF ORDER AND PROCEDURE

Sec. 2-71. Regular Meetings

The council shall hold regular meetings on the first and third Tuesday of each month at 7:00 o'clock p.m., provided that when the day fixed for any regular meeting of the council falls upon a day designated by law as a legal holiday, such meeting shall be held at the same hour on the next succeeding day not a holiday. All regular meetings of the council shall be held at the Global Water Center, 22590 N. Powers Parkway, Maricopa, Arizona, or such other place as specifically designated in writing in all required public notices. However, when circumstances are such that there is no official business requiring council consideration or that there will be no quorum of the council present, the meeting may be cancelled by the mayor after notifying all members of the council, the manager and the clerk. Notice of cancellation of the meeting shall be posted at least forty-eight hours prior to the time originally scheduled for the meeting in at least three public places in the city. At no time, however, shall the council meet less than once per month. The clerk, upon request of the mayor, or upon the written request of any three members of the council, may schedule and convene a work session prior to any regularly scheduled council meeting by notifying members of the date, hour, place and purpose and providing appropriate public notice at least twenty-four hours in advance of the work session by posting the agenda in accordance with A.R.S. §38-431.02 and §38- 431.09, as each may be amended from time to time.

Sec. 2-72. Special Meetings

The mayor, upon his own motion, or the clerk upon the written request of three members, may convene the council at any time by notifying the members of the date, hour, place and purpose of such special meeting and by giving such additional notice as required by state law. The public shall be given at least twenty-four (24) hours notice of any such special meeting by the posting of such notice in at least three public places and preparation of an agenda in accordance with A.R.S. §38-431.09 as amended; except that in the case of an actual emergency, a meeting may be held upon such notice as is appropriate for the circumstances in accordance with A.R.S. §38-431.02 as amended. A special work session may be called in the same manner and upon the same notice as otherwise set forth in this Section for a special meeting of council.

Sec. 2-73. Meetings to Be Public

(a) All official meetings of the council at which any legal action is taken shall be open to the public. Notice of meetings shall be given in a manner consistent with state statutes. Upon approval by a majority vote of the council, the council may meet in a closed executive session for any purpose permitted by law.

(b) Minutes of executive sessions shall be kept confidential except from members of the council.

(c) No executive session may be held for the purpose of taking any legal action involving making a final vote or decision.

Sec. 2-74. Quorum

A majority of the council shall constitute a quorum for transacting business but a lesser number may recess from time to time and compel the attendance of absent members. Any member of the council, at any regular or specially called meeting, may, in writing, demand the attendance of any absent member, which demand shall be entered of record forthwith by the clerk. It shall thereupon be the duty of the chief of police, upon the entry of the demand to bring the member forthwith to attend the council meeting, and upon the failure or refusal of the member to forthwith attend the council meeting, it is the duty of chief of police to arrest the member and bring him to the meeting, and to remain there until the business of the meeting has been performed and such meeting has regularly adjourned.

Sec. 2-75. Agenda

(a) The manager and clerk are responsible for receiving and organizing all materials for the agenda. The manager and clerk are authorized to establish timeframes and guidelines to assure all materials are received in a uniform, complete and timely manner for placement on the agenda and to furnish each councilmember, the mayor, and designated staff with a copy of the agenda and any material pertinent thereto in a timely manner prior to the meeting.

(b) The manager will also place an item on the agenda at the request of the mayor or two councilmembers.

Sec. 2-76. Order of Business

The business of the council shall be taken up for consideration and disposition in the following order:

- (a) Call to Order. The mayor shall take the chair precisely at the hour set for the meeting and shall immediately call the council to order. In the absence of the mayor, the vice mayor shall call the council to order. In the absence of both the mayor and vice mayor, the clerk shall call the council to order and an acting mayor shall be selected to chair the meeting. Upon arrival of the mayor or the vice mayor, the vice mayor or the acting mayor shall immediately relinquish the chair upon the conclusion of the business immediately before the council.
- (b) Invocation and Pledge. The mayor or presiding official pursuant to paragraph (a) may request that a councilmember or member of the general public open the meeting by invocation, which shall be followed by the pledge of allegiance.
- (c) Roll Call. Before proceeding with the business of the council, the clerk shall call the roll of the members, and the names of those present shall be entered in the minutes. If a quorum is not present, the members may adjourn pursuant to Section 2-74 of this Code.
- (d) Introduction of Distinguished Guests and Visitors, Awards, Presentations and Communications. The council may wish to acknowledge the presence of an individual or individuals present in the audience. Proclamations issued by the mayor, presentations from other agencies and awards given to or received by the city will be considered at this time.
- (e) Mayor's Report. The mayor may present information pertinent to items under consideration or information related to the operations of the city.
- (f) Call to the Public. At this time the council shall, as it deems necessary, consider all business not specifically provided for herein. Requests, petitions, remonstrances, communications, comments or suggestions from citizens present shall be heard. All such remarks shall be addressed to the council as a whole and not to any member thereof. Such remarks shall be limited to a maximum of five minutes unless additional time is granted by the mayor. Where a group or organization wishes to present comments or discussion, one person from the group shall be designated to present said comments or discussion. No person other than the individual speaking shall enter into the discussion without the permission of the presiding officer.
- (g) Minutes. If not included as a consent agenda item, the clerk shall present the minutes of the preceding council meeting which shall be approved if correct. Any error noted shall be corrected and initialed by the clerk.
- (h) Public Hearings. Public hearings required by city ordinance, state statute or federal regulations shall be conducted by the council and all interested parties given the opportunity to speak. Public hearings shall be conducted on amendments to the zoning ordinance, if requested by the aggrieved party, any member of the public or any member of the council, or if no public hearing has been held by the planning and zoning commission.
- (i) Consent Agenda. The council may, at this time, take single action on any or all items listed as consent agenda items. These items may include, but are not limited to, acceptance of agenda, acceptance of minutes, acceptance of resignations and adoption of certain resolutions and other items which do not require a public hearing.
- (j) Regular Agenda. The council shall consider any business not heretofore considered including, but not limited to, acceptance of resignations, adoption of resolutions or

ordinances not requiring a public hearing, consideration of contracts, award of bids, appointments to boards and commissions and setting of dates for work sessions, special meetings and executive sessions. Council liaison reports and committee reports as required by the council shall be presented at this time. No member of the public shall be permitted to speak on these items unless they have first filed a written request to speak with the clerk or they have been invited to do so by the council.

(k) Executive Session. The council may, by a majority vote of those present, adjourn into executive session to receive advice from the city attorney regarding any item on the agenda or any item allowed by state statute that has been properly agendaized.

(l) Adjournment. The council may, by a majority vote of those present, adjourn at the conclusion of business. A motion to adjourn shall always be in order and decided without debate.

Sec. 2-77. Voting

(a) The mayor shall vote as a member of the council.

(b) The ayes and nays upon all questions shall be taken and entered in the minutes by voice vote or electronic vote.

(c) Upon the request of any member, the ayes and nays may be taken and entered in the minutes by roll call vote.

(d) The following actions of the council shall require at least four affirmative votes in order to become effective:

(1) Adoption of amendments to the City Code.

(2) Adoption of resolutions approving a new general plan or any amendments to the general plan.

(3) Adoption of amendments to the zoning code.

(4) Adoption of rezoning ordinances.

(5) Adoption of resolutions approving development agreements pursuant to A.R.S. § 9-500.05 or A.R.S. § 9-500.11.

(6) Authorizing any eligible ballot item to be referred to the voters.

(7) Adoption of the annual budget.

(8) Adoption of a capital improvements plan.

(9) Adoption of any property tax levy.

(10) Adoption of changes to the sales tax rate.

(11) Adoption of changes to fees and charges, including but not limited to utility rates and system development fees.

(12) Approval of lease-purchase agreements or issuance of debt instruments.

(13) Approval of amendments to personnel rules.

(14) Approval of memoranda of understanding with employee organizations.

(15) Authorizing the filing of any civil litigation.

(16) Approving any non-binding public declaration or resolution on policy or political issues.

Sec. 2-78. Conduct of Meetings

(a) *Preservation of order and decorum.* The mayor shall preserve order and decorum.

(b) *In accord with Robert's Rules of Order, Newly Revised.* The mayor shall conduct the proceedings of the meetings generally in accordance with the parliamentary rules contained in Robert's Rules of Order, Newly Revised, except where Robert's Rules of Order, Newly Revised, conflict with this Code or other applicable state or local laws. The city attorney shall serve as parliamentarian or a parliamentarian may be appointed by the council to be present at all regular meetings.

(c) *Reconsideration.* Any councilmember who voted with the prevailing side may move that the council reconsider any council decision or action at the same or the next meeting. For purposes of this Section only, the next meeting is the next meeting or session after the original vote is taken, in which the agenda provides notice of possible council action. Councilmembers may move for reconsideration by:

(1) Placing the proposed reconsideration motion on the agenda for consideration at the next meeting; or

(2) Making a request at either the same or next regular meeting that the proposed reconsideration motion be placed on the agenda for consideration at the next meeting following the request.

Sec. 2-79. Addressing the Council

The public in accord with other provisions of this Code shall have the right to petition council at the call to the public, the time for which to be prescribed by council, but otherwise any person wishing to address any regular or special meeting of the council shall obtain consent of the mayor or consent of a majority of the council members present.

Sec. 2-80. Disruption of Meetings; Penalty

It shall be unlawful to disturb or interrupt any regular or special meeting of the city council; any person violating this Section, in addition to being punishable as follows, shall be summarily ejected from said meeting. Any person violating any provision of this Section shall be subject to being fined not more than twenty dollars (\$20.00) and by imprisonment until payment of the fine.

Sec. 2-81. Misconduct of Members

(a) The mayor shall be authorized to assess a fine of not more than twenty dollars (\$20.00) upon any member for disorderly conduct at any meeting of the council upon a concurring vote of three (3) members thereof and to hold and direct such to be imprisoned until the payment of such fine.

(b) Any member of the council may be expelled for any cause determined sufficient by the council upon a vote of five (5) of the members.

(c) The judgment of the council as to the causes for fine or expulsion shall be conclusive.

Sec. 2-82. Committees and Commissions

The council may create such boards, committees, commissions or task forces, standing or special, as it deems necessary. Such boards, committees, commissions and task forces shall consist of as many members and shall perform such duties as the council may require and shall exist at the pleasure of the council. No employee or appointed officer of the city may serve as a voting member of any such board, committee or commission.

Sec. 2-83. Suspension of Rules

Any of the provisions of this Article may be temporarily suspended in connection with any matter under consideration by a recorded vote of three-fourths of the members present, except that this Section shall not be construed to permit any action that is contrary to state statutes.

Secs. 2-84--2-90. Reserved.

ARTICLE VI. LEGISLATION

Sec. 2-91. Prior Approval

All ordinances, resolutions and contract documents shall, before presentation to the council, have been reviewed as to form by the city attorney. When there are substantive matters of administration involved, all ordinances, resolutions and contract documents shall be referred to the person who will be charged with the administration of such ordinance, resolution or contract. Such person shall have an opportunity to present comments, suggestions and objections, if any, prior to the passage of the ordinance, resolution or acceptance of the contract.

Sec. 2-92. Introduction

Ordinances, resolutions, and other matters or subjects requiring action by the council shall be introduced and sponsored by a member of the council, except that the city attorney, the manager or the clerk may present ordinances, resolutions and other matters or subjects to the council, and any councilmember may assume sponsorship thereof by moving that such ordinance, resolution, matter or subject be adopted; otherwise, they shall not be considered.

Sec. 2-93. Requirements of an Ordinance

Each ordinance may have only one subject, the nature of which is clearly expressed in the title. Whenever possible, each ordinance shall be introduced as an amendment to this Code or to an existing ordinance, and, in such case, the title of the sections to be amended shall be included in the ordinance.

Sec. 2-94. Reading of Proposed Ordinance

All ordinances shall have at least one reading, which may be performed on the same day on which it was introduced or passed. All such readings shall be by title only unless the council, by majority vote, requires reading of the text of the ordinance in full.

Sec. 2-95. Adoption

All ordinances except emergency ordinances and ordinances described in Section 2-77(d) shall require the affirmative vote of a majority of all councilmembers present at any regular or special council meeting in order to become effective. Emergency ordinances and resolutions shall require the affirmative vote of three-fourths of all the members of the council. No ordinance shall be passed unless all councilmembers present at the meeting are in possession of copies of such ordinance.

Sec. 2-96. Effective Date

No ordinance, resolution or franchise shall become operative until thirty (30) days after its passage by the council and approval by the mayor, except emergency measures necessary for the immediate preservation of the peace, health, safety or welfare of the city. An emergency measure shall not become immediately operative unless it states in a separate section the reason why it is necessary that it shall become immediately operative, and unless it complies with the requirements of Section 2-95.

Sec. 2-97. Signatures Required

Every ordinance and resolution passed by the council shall, before it becomes effective, be signed by the mayor and attested by the clerk.

Sec. 2-98. Publication

Only such resolutions and ordinances of the city council shall be published as required by state law.

Sec. 2-99. Posting

Every ordinance imposing any penalty, forfeiture, or other punishment shall, after passage, be posted by the city clerk in three or more public places within the city, and a copy of such ordinance, with affidavit of posting attached, shall be filed in the office of the city clerk and shall be proof of posting as provided by law.

Secs. 2-100--2-110. Reserved.

ARTICLE VII. INDEMNIFICATION OF OFFICERS, EMPLOYEES AND COUNCILMEMBERS

Sec. 2-111. Indemnification

Any person made a party or threatened to be made a party to any proceeding by reason of the fact that said person is an officer, employee or city councilmember of Maricopa shall be indemnified by the city as hereinafter set forth.

Sec. 2-112. Action Other Than By or In the Right of City

If said proceeding is one other than an action by or in the right of the city, said person shall be indemnified against his expenses, including reasonable attorney's fees, and including judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such proceeding if he acted, or his failure to act was, in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the city.

Sec. 2-113. Criminal Proceeding

If said proceeding is a criminal proceeding, said person shall be indemnified if he had no reasonable cause to believe his conduct was unlawful.

Sec. 2-114. No Presumption Created

With respect to indemnification under Section 2-112 or 2-113 above, a termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, by itself, create a presumption that said person acted, or failed to act, other than in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the city; and with respect to any criminal proceeding, had reasonable cause to believe that his conduct was unlawful.

Sec. 2-115. Action By or In the Right of City

If said proceeding is one by or in the right of the city to procure a judgment in the city's favor, said person shall be indemnified against his expenses, including reasonable attorney's fees, but excluding judgments and fines, and, except as hereinafter set forth, amounts paid in settlement actually and reasonably incurred by him in connection with the defense or settlement of such proceeding if he acted, or his failure to act was, in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the city.

Sec. 2-116. Negligence and Misconduct

No indemnification under Section 2-115 shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the city except that such person may apply to the court in which such proceeding was brought and request a determination that such person is fairly and reasonably entitled to indemnity for such expenses when such court shall deem proper. The court in which any such proceeding was brought may determine upon application that, in view of

all circumstances of the case, indemnity for amounts paid in settlement is proper and may order indemnity for the amounts so paid in settlement and for the expenses, including attorneys fees, actually and reasonably paid in connection with such application, to the extent the court deems proper.

Sec. 2-117. Success on the Merits

To the extent that a person covered by this Article has been successful on the merits or otherwise in defense of any proceeding covered by this Article or in the defense of any claim, issue or matter therein, he shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by him in connection therewith.

Sec. 2-118. Determination by Council

(a) Any indemnification made pursuant to this Article, unless ordered by a court, shall be made by the city only as authorized in the specific case upon a determination that indemnification of the officer, employee or councilmember is proper in the circumstances because he has met the applicable standard of conduct set forth in this article. Such determination shall be made by any of the following:

- (1) By the city council by majority vote of a quorum consisting of councilmembers who were not party to the proceeding.
- (2) If a quorum is not obtainable, then in a written opinion of independent legal counsel acquired by majority of the disinterested councilmembers for that purpose.
- (3) If there are no disinterested councilmembers, by the court or other body before which the proceeding was brought or in the court of competent jurisdiction upon the approval of an application by any person seeking indemnification, in which case indemnification may include the expenses and attorneys fees actually and reasonably paid in connection with such application.

Sec. 2-119. Payment of Expenses in Advance

Expenses, including attorneys fees, incurred in defending a civil or criminal proceeding may be paid by the city in advance of the final disposition of such proceeding as authorized in the manner provided in Section 2-118 upon receipt of an undertaking by or on behalf of the officer, employee or council member to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the city as authorized by this Article.

Sec. 2-120. Indemnification Not Exclusive Remedy

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnity may be entitled.

Secs. 2-121--2-999. Reserved.