

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

ORDINANCE

An Ordinance Amending *The Code of Ordinances, City of Lowell, Massachusetts*, with respect to **Chapter 56**, entitled *Personnel*, is hereby amended as follows:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOWELL, as follows:

I

The Code of Ordinances City of Lowell, Massachusetts, ("the Code") adopted by the City Council on December 23, 2008, as amended, is hereby further amended with respect to **Chapter 56**, entitled *Personnel* by amending various sections.

By deleting Article II., §56-4 (C) in its entirety.

By adding to Article II., §56-6 E. (1) the word to "involuntary" as follows, addition in bold:

"Upon an employee's retirement, death or **involuntary** termination of employment (other than for just cause) or involuntary separation from service due to layoff, abolition of position or termination or a department head's employment..."

By adding to Article II., §56-8 a new subsection (H) entitled: **Indemnification**

"The City shall indemnify and save harmless members of the City Council, the Mayor, City Manager, department heads and all its employees, from personal financial loss and expenses, including legal fees, costs, and other related expenses or reasonable charges, if any, in an amount not to exceed \$1,000,000.00 arising out of any claim, action, award, compromise, settlement or judgment by reason of an intentional tort or by reason of any act or omission which constitutes a violation of the civil rights of any person under federal or state law if such aforementioned official or employee at the time of such intentional tort or act or omission

was acting within the scope of his or her official duties of employment; provided, however, that such aforementioned official or employee shall provide reasonable cooperation to the city in the negotiation, investigation and defense of any claim or action brought as a result of such intentional tort or act or omission. No such aforementioned official or employee shall be indemnified under this section for violation of any civil rights if he acted intentionally or in a grossly negligent, willful or malicious manner.

The defense and/or settlement of any such claim shall be undertaken or negotiated by the city solicitor, the city solicitor's agent or designee. However, if the city solicitor determines that a conflict of interest has arisen or is likely to arise by the mutual defense of the city and the officer(s) or employee(s) in question, the officer(s) or employee(s) shall not be defended by the city solicitor, the city solicitor's agent or designee, but shall seek outside counsel for such defense. The expense incurred by the official or employee for outside counsel shall be borne by the city unless the mayor and/or city council shall deem such legal fees to be unreasonable, in which event such legal fees shall be subject to the fee arbitration procedure of the Massachusetts Bar Association.

Nothing in this section shall be deemed to limit the effect of any indemnification statute applicable to the city at the time of any such intentional tort or act or omission. This section shall apply to any settlement or judgement made in compliance with this section on or after the date this section is approved.”

II

All provisions of the Code of the City of Lowell, as amended, which are not inconsistent with this Ordinance, shall continue in effect, but all provisions of said Code inconsistent herewith are repealed.

III

This Ordinance shall take effect upon its passage in accordance with the provisions of Chapter 43 and 40A of the General Laws of the Commonwealth of Massachusetts.

APPROVED AS TO FORM:
/s/Hannah Pappenheim
Hannah Pappenheim
Assistant City Solicitor



City of Lowell - Law Department

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November 16, 2018

City Manager Eileen Donoghue EVA
Mayor William Samaras
Members of the City Council

Re: Amendment to Personnel Ordinance

Dear Manager Donoghue, Mayor Samaras and Members of the City Council:

The Law Department, at the request of the City Manager, has prepared an amendment to Chapter 56 of the Code of Ordinances. This amendment addresses several different issues. First, it deletes a provision relative to ordinance employees which contained outdated and unused provisions regarding probationary periods and termination.

Second, a change to the sick leave provision serves to clarify that voluntary resignations shall not be eligible for payment of unused accumulated sick leave.

Third, the amendment provides indemnification to City employees from personal and financial loss and expenses due to legal claims made against them through the course of their employment with the City. This includes indemnification for the Mayor and City Council members.

Passage of this ordinance will help to address these outstanding issues with the Personnel Ordinance, and will provide City of Lowell employees with indemnification should legal claims be brought against them due to their work for the City.

Sincerely,

Hannah Pappenheim
Assistant City Solicitor