

STATE OF GEORGIA  
COUNTY OF HALL

**A RESOLUTION TO AMEND THE CODE OF ORDINANCES OF HALL COUNTY**  
**WITH REGARD TO DEFENSE AND INDEMNIFICATION OF OFFICERS AND**  
**EMPLOYEES**

**WHEREAS**, pursuant to the authority granted by O.C.G.A. § 45-9-20 Hall County's Board of Commissioners has purchased liability insurance which provides coverage for some of the claims and lawsuits against its officers or employees arising out of the performance of their official duties and employment or connected therewith; and

**WHEREAS**, pursuant to O.C.G.A. § 45-9-21 Hall County's Board of Commissioners has authority in its discretion to, in lieu of obtaining insurance or indemnity pursuant to O.C.G.A. § 45-9-20 or in addition thereto, adopt policies whereby the County will undertake to defend all or specified civil, criminal, or quasi-criminal actions brought or maintained against members of the County's Board of Commissioners, or against supervisors, administrators, employees, or other elected or appointed County officers arising out of the performance of their duties or connected therewith, whether based upon negligence, violation of contract rights, or violation of civil, constitutional, common law, or statutory rights, whether state, federal, or local; and

**WHEREAS**, pursuant to O.C.G.A. § 45-9-22 (a) Hall County's Board of Commissioners has authority in its discretion to adopt a policy establishing the terms and conditions under which it may pay part or all of any claim or civil judgment rendered against any person whose defense the County is authorized to undertake under O.C.G.A. § 45-9-21; and

**WHEREAS**, Hall County wishes to set forth the terms and conditions under which it will undertake to provide for defense and indemnification of members of its Board of Commissioners,

supervisors, administrators, employees, or other elected or appointed County officers arising out of the performance of their duties or connected therewith; and

**WHEREAS**, the County would best be served by the enactment of a County policy on defense and indemnification of officials and employees pursuant to O.C.G.A. §§ 45-9-21 and 45-9-22; and

**WHEREAS**, the Hall County Board of Commissioners believes that the changes to its Code of Ordinances described herein are in the best interests of residents and businesses of Hall County, Georgia, and would promote the public health, safety, and general welfare of such residents and businesses.

**NOW, THEREFORE**, the Board of Commissioners does hereby amend the Official Code of Hall County, Georgia as follows:

1.

The Official Code of Hall County, Georgia is hereby amended by inserting therein a new Chapter 2.150 (Officer and Employee Defense and Indemnification) which provides as follows:

“Chapter 2.150 – Defense and Indemnification.

2.150.010 – Purpose and Intent

It is the intent and purpose of this Chapter to provide for the policies, terms, and conditions under which Hall County may provide for the defense of claims, lawsuits, and administrative proceedings brought against its officials and employees, and for the payment thereof as permitted by Georgia law, including O.C.G.A. §§ 45-9-20 et seq. This Chapter shall be liberally construed to allow Hall County to provide the fullest defense allowed by law.

## 2.150.020 - Definitions.

For purposes of this Chapter, the following words and phrases shall have the meanings respectively assigned to them by this section:

- (a) Claim shall mean any formal allegation presented against an official or employee prior to the institution of a civil lawsuit or an administrative proceeding;
- (b) County shall mean Hall County, Georgia;
- (c) Commission or Board of Commissioners shall mean the Hall County Board of Commissioners;
- (d) County Attorney shall mean the County Attorney of Hall County, Georgia or any Deputy County Attorney or Assistant County Attorney employed by Hall County, Georgia in its Law Department;
- (e) Risk Manager shall mean the Hall County Risk Manager or any claims manager designated by the Hall County Risk Manager;
- (f) Plan shall mean the Officer and Employee Defense and Indemnification Plan established by this Chapter of the Hall County, Georgia Code of Ordinances;
- (g) Plan Member shall mean a natural person who is:
  - (i) a current or former supervisor, manager, administrator, employee, or other elected or appointed officer employed by Hall County, Georgia or appointed to his or her position by the Commission;
  - (ii) any current or former member of the Hall County Board of Commissioners;
  - (iii) any current or former County Officer as defined in the Constitution of the State of Georgia, Article IX, Section I, Paragraph III, including the Clerk of

Court, the Judge of the Probate Court, the Sheriff, and the Tax Commissioner, and his or her employees;

- (iv) any current or former Hall County State Court Judge, Juvenile Court Judge, or Magistrate; and
- (v) any current or former appointed member of an Authority, Board, or Committee created by the Commission.

#### 2.150.030 – Effective Date

This Plan is effective as of the date of its adoption by the County's governing authority and applies to all claims made against any Plan Member filed after that date and time.

#### 2.150.040 – Immunity and Defenses Not Waived

(a) Nothing contained in this ordinance shall be deemed to constitute any waiver of the governmental immunity or any other immunity or defense (whether sovereign immunity, official immunity, statutory immunity, qualified immunity, legislative immunity, judicial immunity, quasi-judicial immunity, or any other immunity or defense based on immunity of any sort) afforded to the County, its employees, its officials, or the Plan members by the United States Constitution, federal law, the Georgia Constitution, and/or by Georgia law. The County and its officials, employees, and Plan members specifically reserve the right to assert any applicable immunity or defense based thereon in any claim, action, lawsuit, or proceeding.

(b) The purchase by the County of any liability insurance policy shall likewise not be deemed to constitute any waiver of the governmental immunity or any other immunity or defense (whether sovereign immunity, official immunity, statutory immunity, qualified immunity, legislative immunity, judicial immunity, quasi-judicial immunity, or any other immunity or defense based on immunity of any sort) afforded to the County, its employees, its officials, or the

Plan members by the United States Constitution, federal law, the Georgia Constitution, and/or by Georgia law. Any such purchase of liability insurance by the County shall exhibit no intent by the County to waive any defense available to it, including any immunity-based defenses, as it is the explicit intent of the County to retain all such defenses to the extent that they are available under applicable law as to itself, its employees and officials, and its Plan members.

(c) Nothing contained in this ordinance shall be construed to in any way reduce or eliminate the rights of any Plan member against any other party.

#### 2.150.050 – Defense of Plan Members

Whenever any civil litigation or administrative proceeding is instituted or threatened in or before any court or administrative agency of the State of Georgia or any other State or of the United States against any Plan member in any such Plan member's individual or official capacity, asserting personal liability for damages arising out of the performance of said Plan member's duties as an official or employee of Hall County, Georgia, or in any way connected therewith, whether based upon negligence, violation of contract rights, or violation of civil, constitutional, common law, or statutory rights, upon the written request of such Plan member the County shall undertake to defend said civil litigation, administrative action, or claim on behalf of such Plan member, by and through the Office of the County Attorney, subject to the limitations and exclusions as hereinafter set forth below.

#### 2.150.060 – Notice of Claim or Suit and Cooperation of Plan Member

To be entitled to coverage under this Plan, a Plan member must:

- (a) notify his or her immediate supervisor and the Risk Manager within forty-eight (48) hours of actual notice of a claim, lawsuit, or administrative proceeding;

- (b) notify the County Attorney as soon as practicable upon receipt of written notice of a claim or service of a lawsuit or administrative proceeding, but no later than five (5) working days after such receipt;
- (c) execute a written contract for representation by or through the office of the County Attorney which may include at the discretion of the County Attorney the Plan member's agreement to representation under a reservation of the County's defenses to coverage hereunder;
- (d) execute a written waiver of any and all actual or potential conflicts of interest with the County and other Plan members;
- (e) cooperate fully with the County Attorney and Risk Manager and, upon request, assist in making settlements, the conduct of the litigation, and enforcing any right of contribution or indemnity against a person or organization who may be liable to the County;
- (f) provide insight, testimony, and documentation as requested by the County Attorney;
- (g) attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses;
- (h) not give any oral or written statement or enter into any stipulation or agreement concerning a claim or lawsuit, except upon advice of the Risk Manager or County Attorney or when questioned by a police officer at the scene of an accident; and
- (i) not make any voluntary payment, or admission of liability, assume any obligation, or incur any expense with respect to a claim or lawsuit without the prior consent of the County.

#### 2.150.070 – Limitation of Coverage

- (a) This Plan shall not apply unless the Plan member complies with all provisions of Code Section 2.150.060.

(b) If the Plan is canceled at any time in the future, the Plan shall apply as if it was still in effect as to all claims of which the Risk Manager received actual notice under Section 2.150.060 (a) on or prior to the date of the Plan cancellation.

(c) This Plan is only to provide for the defense and indemnification of Plan members in excess of coverage provided by any contract or policy of insurance from any source whatsoever, including, but not limited to: (1) a Plan member's professional liability insurance whether provided by the County or not, and/or (2) a Plan member's individual automobile insurance policy or other contract of individual liability insurance or other contract of insurance whether provided by the County or not.

#### 2.150.080 – Grounds for Refusal of Defense and/or Termination of Coverage

(a) The County may refuse to provide for the defense of a claim or proceeding brought against any Plan member if the County Attorney determines that:

(1) the act or omission giving rise to the claim did not arise out of and/or was not in the course of the Plan member's performance of duties within the scope of their employment with the County as defined by Section 2.150.050;

(2) the Plan member acted or failed to act because of actual or intentional misconduct, fraud, corruption, malice, or bad faith;

(3) the proceeding against the Plan member is a criminal prosecution;

(4) The County is a plaintiff in the claim or proceeding brought against the Plan member;

(5) the claim or proceeding against the Plan member arises out of such Plan member's intentional or knowing violation of a written policy of the Commission, of any department of the County government, and/or of the County Administrator;

(6) the Plan member acts or fails to act as a result of impaired judgment caused by the voluntary consumption of alcohol or by the voluntary illegal use of any controlled substance as defined by the laws of the State of Georgia;

(7) the Plan member acts or fails to act contrary to the advice of the County Attorney or the Risk Manager, except in an emergency situation or upon the existence of extenuating circumstances;

(8) the Plan member acts or fails to act in willful disregard of County policy or the specific instructions of the Plan member's superiors or supervisors;

(9) the Plan member fails to comply with any notice or cooperation requirement of this ordinance or engages in any act which is harmful or injurious to the common defense of the claim;  
or

(10) the defense of any such claim or proceeding by the County may create a conflict of interest between the County and the Plan member.

(b) Once the County has assumed the defense of a claim or proceeding, the County may terminate such Plan member's entitlement to defense under this Plan at any time if the County Attorney determines that:

(1) one or more of the conditions set forth within Subsection (a) of this Code section has become present;

(2) a court of competent jurisdiction has found that the Plan member is not entitled to defense under the terms of this Plan; or

(3) the Plan member refuses to comply with any requirement of this ordinance including the requirements of Section 2.150.060.

#### 2.150.090 – Defense Under Reservation of Rights

Where the County Attorney deems it appropriate, the County may assume the defense of a Plan member subject to a reservation of the County's right to raise all of its defenses to coverage, on the condition that the Plan member shall first have agreed in writing to defense on such terms. Where the Plan member does not agree to representation under a reservation of rights by the County, the County Attorney may tender an initial defense for the Plan member and promptly file a declaratory judgment action to determine the County's obligation, if any, to defend the Plan member as to the claim, lawsuit, or administrative proceeding at issue.

#### 2.150.100 – Conflicts of Interest Among Plan Members

(a) Nothing in this ordinance shall be construed to prohibit the County from undertaking to defend a civil action on behalf of any Plan member where there exists a conflict of interest with regard to another Plan member.

(b) If, at the initiation or during the course of any such civil litigation, a conflict of interest arises as to the representation of any Plan member(s), the County Attorney may provide representation as follows:

(1) As to claims arising out of or otherwise involving a dispute between elected officials and other Plan members, the County Attorney may represent the elected officials;

(2) As to claims arising out of or otherwise involving a dispute between Plan members, the County Attorney shall make the determination as to representation;

(3) As to claims arising out of or otherwise involving a dispute between elected officials which does not involve a member of the Board of Commissioners, a determination as to representation shall be made by the Board of Commissioners; and

(4) As to claims arising out of or otherwise involving a dispute between members of the Board of Commissioners, the County Attorney may approve outside counsel for each member of the Commission who is named as a party to the claims as set forth in Subsection (c) below, provided that any attorney so approved must charge no more than the “prevailing rates” approved by the County Attorney.

(c) Where any such conflict of interest as described herein exists and a determination has been made as to which Plan members, if any, may be represented by the County Attorney, those Plan members not represented by the County Attorney may employ outside counsel at the expense of the County; provided, however, that the selection and compensation of such other counsel shall be subject to the prior approval of the County Attorney, and any attorney so approved must charge no more than the “prevailing rates” approved by the County Attorney.

#### 2.150.110 – Payment of Judgments and Monetary Settlements

(a) Where the County has undertaken to defend a claim or civil action brought against a Plan member as provided by this Plan, the County shall pay any final judgment awarded against such Plan member(s) by a court of competent jurisdiction, or any amount determined to be appropriate and payable as a monetary settlement of any such claim or civil action, subject to the following limitations:

(1) No sum shall be paid where the County has terminated such Plan member’s defense as provided in this ordinance;

(2) No sum shall be paid where the Plan member has been represented by counsel other than the County Attorney or County Law Department without prior approval of the County Attorney as provided in this ordinance;

(3) No sum shall be paid unless the Plan member and all claimants unconditionally release and forever discharge the County, the Board of Commissioners and its members, County elected officials, and any and all of their officers, agents, attorneys, and employees from any and all liability, suits, claims, actions, causes of action, demands, damages, costs, expenses, and compensation of any kind which result from or in any way arise out of (or are related to) any such single or continuing incident or occurrence.

(4) Any sum paid in settlement or compromise of a claim, lawsuit, or administrative proceeding shall be paid only as provided in the County's settlement of claims ordinance.

(5) No sum shall be paid for any part of a judgment for punitive or exemplary damages unless the County's Board of Commissioners finds that all of the following circumstances exist:

(i) The judgment is based on an act or omission of a Plan member within the course and scope of his or her duties as a County employee or official;

(ii) At the time of the act giving rise to the liability, the Plan member acted, or failed to act, in good faith, without actual malice, and in the apparent best interest of the County;  
and

(iii) Payment of the judgment for punitive or exemplary damages would be in the best interests of the County.

(6) Where the County undertakes to defend a Plan member in a lawsuit, claim, administrative proceeding, or other action pursuant to an agreement with the Plan member reserving the County's right to assert its defenses to coverage, the County shall pay the judgment or settlement only if the County Attorney or a court of competent jurisdiction determines that the occurrence arose out of an act or omission in the course and scope of the Plan member's employment by the County.

(b) If the Plan member is not subject to any exclusion listed in Paragraph (a) above, in addition to payment of any final judgment awarded against such Plan member by a court of competent jurisdiction, or any amount payable as a monetary settlement of any such claim, lawsuit, or administrative proceeding, the County shall pay:

- (1) the County's expenses in investigating and defending the claim or lawsuit;
- (2) court costs, deposition costs, witness fees and compensation, and all other like costs, expenses, and fees incurred in the representation of the Plan member;
- (3) any costs taxed against a Plan member in a suit covered by this Plan and interest that may accrue after entry of the judgment before the County has deposited payment with the court on that part of the judgment which does not exceed the limits of coverage;
- (4) court costs and attorneys' fees awarded by the Court against a Plan member; and
- (5) the reasonable fees and expenses incurred by outside counsel in investigating and defending a claim against a Plan member where such outside counsel has been appropriately approved by the County Attorney as provided in this ordinance.

#### 2.150.120 – No Creation of Cause of Action

Nothing contained in this Plan shall be construed as creating a right or cause of action against a Plan member nor as a right to a third party to institute or maintain a suit which would not otherwise exist under law as a legal claim against a Plan member. Nothing in this Plan shall be construed as creating a right or cause of action against the County, its officers, or its employees for the denial of defense or indemnification under this Plan, it being expressly recognized that the County Attorney is vested by the Hall County Board of Commissioners with broad discretion in fulfilling his or her delegated duties hereunder.

2.150.130 – Non-Severability

The provisions of this section shall not be severable. If any part hereof is declared to be invalid or unconstitutional by the appellate courts of this state, then all remaining parts of this Plan shall be null, void, and unenforceable in their entirety.

2.150.140 – Repeal of Conflicting Ordinances and Resolutions

All ordinances and resolutions and parts of ordinances and resolutions in conflict with this ordinance are hereby repealed.

**SO RESOLVED**, this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**HALL COUNTY BOARD OF COMMISSIONERS**

By: \_\_\_\_\_  
Richard Higgins, Chairman

ATTEST:

\_\_\_\_\_  
Jennifer Rivera, County Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Van Stephens, County Attorney