

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Motion Authorizing Legal Defense of <u>King et al v. Fimia et al</u> DEPARTMENT: City Manager, City Attorney PRESENTED BY: Ian R. Sievers, City Attorney

PROBLEM / ISSUE STATEMENT: King et al v Fimia et al. King Co. Superior Ct No. 06-2-00803-1. SEA was filed and served January 3, 2006 on Mayor Ransom, Deputy Mayor Fimia, Councilmember Way and former Councilmember Chang. The suit alleges violations of the Open Public Meetings Act, Chapter 42.30 RCW, for actions taken outside a public meeting and disclosure of information discussed in executive session. The Plaintiffs request a \$100 civil penalty against each of the named defendants, attorney fees and injunction against future violations.

Coverage is available for employees and officials under City's Legal Defense for "any conduct, act or omission of such official or employee performed or omitted on behalf of the city in their capacity as a city official or employee, which act or omission is within the scope of their service or employment with the city." SMC 2.40.020. This coverage includes lawsuits against officials who are no longer in office if the conduct occurred while in office.

Coverage under the ordinance is approved by the Council upon recommendation of the City Manager and is a determination that the coverage meets the criteria of the ordinance.

Criteria for providing defense are as follows:

1. Conduct was on behalf of the city and within the scope of services.
2. Defendant has cooperated in defense.
3. There is no primary coverage under other policies.
4. The tendered suit is not a lawsuit brought against the employee by the city.
5. Conduct was not a dishonest, fraudulent, criminal, willful, intentional or malicious act.

The plaintiffs are asking for civil penalties that can only be awarded if there was a knowing violation of the Open Meetings Act. Staff recommends approval of defense under the above criteria but reserving the right not to indemnify against civil penalties if proven, since this would be a willful or intentional act that would not be covered under the fifth criteria.

RECOMMENDATION

Staff recommends that the City Council find the criteria for providing a defense under SMC Chapter 2.40 are met and authorize the City Attorney to provide legal defense to the defendants through outside counsel for King v. Fimia under a reservation of rights.

Approved By: City Manager  City Attorney 