

**PROPOSED BY:** ELENBAAS, GALLOWAY  
**INTRODUCED:** MARCH 17, 2026

**ORDINANCE NO.** \_\_\_\_\_

**AMENDING WHATCOM COUNTY CODE CHAPTER 2.56  
DEFENSE AND INDEMNIFICATION OF EMPLOYEES  
TO INCLUDE RESERVATION OF RIGHTS AND REIMBURSEMENT**

**WHEREAS,** Whatcom County Code Chapter 2.56 authorizes the County to provide defense and indemnification to county officers, officials, agents, and employees when claims arise from acts performed in the course of official duties; and

**WHEREAS,** the County Council recognizes that the defense of county employees is an important protection that ensures public servants may perform their duties without fear of personal liability for actions taken in good faith within the scope of employment; and

**WHEREAS,** modern public-entity risk management practices commonly allow governments to provide a defense to employees while reserving the right to deny indemnification or recover costs if a court later determines that the employee acted outside the scope of employment or engaged in bad faith misconduct; and

**WHEREAS,** the current provisions of Whatcom County Code Chapter 2.56 do not expressly address circumstances in which a court later determines that an employee acted with malice, fraud, corruption, or bad faith after the County has already provided legal defense; and

**WHEREAS,** establishing a reservation-of-rights and reimbursement provision will protect public funds while maintaining the County's ability to provide a defense to employees acting in good faith; and

**WHEREAS,** Washington law, including RCW 4.96.041, authorizes local governments to establish procedures governing the defense and indemnification of officers and employees; and

**WHEREAS,** the Whatcom County Council finds that adding a reimbursement and reservation-of-rights provision to Chapter 2.56 will clarify County policy, align the code with common municipal practices, does not conflict with the Washington Counties Risk Pool agreement with Whatcom County, and will provide additional protection for taxpayers.

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that Whatcom County Code Chapter 2.56, Defense and Indemnification of Employees, is hereby amended as shown in Exhibit A.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2026

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Cathy Halka, Clerk of the Council

\_\_\_\_\_  
Kaylee Galloway, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

Kimberly Thulin (by email 3.11.2026/ch)  
Civil Deputy Prosecutor

\_\_\_\_\_  
Satpal Sidhu, County Executive

( ) Approved      ( ) Denied

Date Signed: \_\_\_\_\_

EXHIBIT A

Chapter 2.56  
DEFENSE AND INDEMNIFICATION OF EMPLOYEES

2.56.010 Purpose.

The adoption of the ordinance codified in this chapter is in the interests of the public health, safety and general welfare of all of the citizens of Whatcom County, and is necessary for the protection of the county's existing public institutions.

(Prior code § 1.60.010; Ord. P-1-77 dated 2/14/1977 (part))

2.56.020 Defense – Reimbursement – Support of findings required.

A. The county of Whatcom may provide legal services for the defense of any of its officers, officials, agents or employees when a suit against them arises out of an official act, if the requirements of this section are met. Whether a defense will be provided by the county will be determined by the county council pursuant to a determination of merit in each case. Such a defense will not necessarily be for the benefit of the officer or employee but merely in support of his or her actions on behalf of the county. An attorney may be hired especially for the purpose of any such defense at county expense, or these services may be provided by the office of the prosecuting attorney, or county officials or employees may be reimbursed for the costs of legal services they have incurred.

B. Such services or reimbursement may be provided to both past and present officers and employees as long as the cause of action arose as a result of acts or omissions occurring during their tenure of office or employment. Such defense or reimbursement may be provided although it may turn out that the officer or employee exceeded his legal rights and authorities. Such defense may also be provided even though the result at a trial at law clearly shows that the acts were illegal; provided, such acts were done by the officers or employees in the bona fide discharge of their duties. On the other hand, legal services will not be provided to officers or employees of the county to defend a charge of official misconduct or to defend the right to hold office.

C. Before a defense may be provided for an officer or employee, the decision of the Whatcom County council must be supported by findings, in the record, qualifying the action as in conformity with the standard established by this chapter.

(Prior code § 1.60.020; Ord. P-1-77 dated 2/14/1977 (part); Ord. 93-048)

2.56.030 Findings.

Before authorizing the defense by the county of one of its officers, officials, agents or employees, the county council must affirmatively find the following:

- A. The official or employee must have been acting in a matter in which the county had an interest;
- B. The official or employee must have been acting in the discharge of a duty imposed or authorized by law;
- C. The official or employee must have acted in good faith.

(Prior code § 1.60.030; Ord. P-1-77 dated 2/14/1977 (part); Ord. 93-048)

#### 2.56.040 Indemnification.

Any officer, official, agent or employee of the county of Whatcom may be indemnified for all costs and judgments which he or she is actually obligated or called upon to pay if the act or omission resulting in judgment is one for which the individual would be eligible for legal services or reimbursement for legal services under this chapter; provided, that the same approval process and criteria for determining whether the county shall provide legal services for the defense of an action shall be employed in determining whether or not indemnification will be made by the county.

(Prior code § 1.60.040; Ord. P-1-77 dated 2/14/1977 (part))

#### 2.56.045 Reservation of Rights and Reimbursement.

A. When the County provides legal defense or reimbursement of legal expenses to an officer, official, agent, or employee under this chapter, such defense may be provided subject to a reservation of rights.

B. If a final judicial determination establishes that the officer, official, agent, or employee acted outside the scope of employment, or acted with malice, fraud, corruption, or bad faith, the County may:

1. Deny indemnification for any judgment, settlement, or claim arising from such acts; and
2. Seek reimbursement from the officer, official, agent, or employee for attorney fees, costs of defense, settlements, or other expenses paid by the County on that individual's behalf.

C. The County Council, County Executive, or their designee may require an officer, official, agent, or employee receiving a defense under this chapter to execute a written acknowledgment of the County's reservation of rights and potential reimbursement obligation prior to the County providing such defense.

D. Nothing in this section shall require the County to provide defense or indemnification for acts constituting intentional misconduct, criminal conduct, fraud, corruption, or actions undertaken for personal benefit unrelated to County duties.

E. Nothing in this section shall interfere with or limit the County's rights or obligations under any insurance policy or Washington Counties Risk Pool agreement with Whatcom County.

#### 2.56.050 County not party.

Legal services and indemnification may be provided by the county under this chapter irrespective of whether or not the county is either a party to the cause or itself subject to liability.

(Prior code § 1.60.050; Ord. P-1-77 dated 2/14/1977 (part))

#### 2.56.060 Operation of county vehicles – On call defined.

A. Those county employees operating county vehicles to and from work shall be deemed to be acting in a manner in which the county has an interest only when those employees are actually on call or are authorized to do so in writing by the county executive.

B. No county vehicle shall be operated by any employee for transportation to and from work unless that employee is on call or is authorized to do so in writing by the county executive.

C. An employee is "on call" on any day when:

1. He or she has a duty to respond to emergency calls outside of normal working hours; or

2. He or she is performing county business outside of normal working hours where a county vehicle is reasonably necessary for the performance of such business; or

3. The county-owned vehicle he or she is driving is an authorized emergency vehicle as defined by RCW 46.04.040.

(Res. dated 2/14/1977; Ord. 93-048)

2.56.070 Severability

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.