

ORDINANCE NO. 11-17

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING CHAPTER 31, "CITY OFFICIALS AND EMPLOYEES", BY AMENDING SECTION 31.17, "INDEMNIFICATION" IN ORDER TO PROVIDE FOR PENALTIES FOR CITY OFFICIALS AND EMPLOYEES COMMITTING ULTRA VIRES ACTS, PROVIDING THAT EACH AND EVERY OTHER SECTION AND SUBSECTION OF CHAPTER 31 SHALL REMAIN IN FULL FORCE AND EFFECT AS PREVIOUSLY ADOPTED; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Section 31.17, of the City of Delray Beach Code of Ordinances, in accordance with Florida Statute 111.07, indemnifies City officials and employees who are personally liable for any claims arising out of a civil action, settlement or judgment where the activities of the City official or employee were done in good faith, were such that the City had an interest, were done within the court of employment or course of performance of public duty of the person so acting, and were not willful, wanton or malicious; and

WHEREAS, the current Ordinance fails to protect the City of Delray Beach and its residents from *ultra vires* acts committed by City officials and employees where said individuals act outside the scope of the authority conferred upon them by their position or employment, where the activities are conducted in bad faith, negligently, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety or property; and

WHEREAS, the City Commission believes that these revisions will promote compliance with the City's ordinances by City officials and employees as well as provide penalties for those alleged to have committed ultra vires acts against the City; and

WHEREAS, the City Commission finds that this ordinance serves a municipal purpose and deems the restrictions contained herein to be in the best interest of the health, safety and welfare of the residents and citizens of Delray Beach.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That Chapter 31, "City Officials and Employees", Section 31.17, "Indemnification", of the Code of Ordinances of the City of Delray Beach is hereby amended to read as follows:

Sec. 31.17. - INDEMNIFICATION.

(A) City officials or employees who are personally liable for the payment of any claims arising out of a civil action, settlement or judgment, or the expenses, costs and awards of attorney's fees

arising therefrom, shall be entitled to indemnification from the City (except to the extent the City's insurance coverage provides payment) where the claim resulted from activities:

- ~~(A)~~(1) Which were done in good faith;
- ~~(B)~~(2) In which the City has an interest;
- ~~(C)~~(3) Which were within the course and scope of employment or in the course of performance of public duties of the persons so acting; and
- ~~(D)~~(4) Were not willful, wanton or malicious.

(B) Notwithstanding the foregoing, any City official or employee who acts outside the scope of his or her authority or employment, in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property in the course of performance of his or her public duties, shall not be indemnified by the City.

(1) Any such action shall be considered to be an *ultra vires* act, shall not be approved, and the City shall not be bound or obligated thereby. However, the City Commission may ratify any such action or actions and/or chose to indemnify such official or employee by affirmative vote of at least three (3) City Commissioners.

(2) Any person who violates this section shall be subject to the penalties set forth at Section 10.99 of the Code of Ordinances, Chapter 37 of the Code of Ordinances, Chapter 162, Florida Statutes, and/or any other means of enforcement available under both state and federal law inclusive.

Section 2. All ordinances or parts of ordinances in conflict be and the same are hereby repealed.

Section 3. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

Section 4. Specific authority is hereby given to codify this Ordinance.

Section 5. This Ordinance shall become effective immediately upon adoption.

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2017.

Cary Glickstein, Mayor

ATTEST:

City Clerk

First Reading_____

Second Reading_____