

AN ORDINANCE AMENDING TITLE II, CHAPTER 2.64
OF THE EL PASO CITY CODE (CITY EMPLOYEES' PENSION FUND)
TO PROVIDE FOR FIDUCIARY LIABILITY INSURANCE COVERAGE
FOR BOARD OF TRUSTEES AND RELATED MATTERS.

BE IT ORDAINED BY THE CITY OF THE CITY OF EL PASO:

That Chapter 2.64 of the El Paso City Code is amended by adding a new Section 2.64.071 to read as follows:

2.64.071 Liability Insurance and Indemnification.

A. The board of trustees may purchase from assets of the pension fund, from an insurer licensed to do business in this state, one (1) or more insurance policies that provide for the reimbursement of a member, officer or employee of the board for liability imposed as damages caused by, and for costs and expenses incurred by the individual in defense of, an alleged act, error, or omission committed in the individual's capacity as a fiduciary or co-fiduciary of assets of the pension fund. Any such policy may not provide for reimbursement of a member, officer or employee of the board for liability imposed or costs and expenses incurred because of the member's, officer's, or employee's personal dishonesty, fraudulent breach of trust, lack of good faith, intentional fraud or deception, intentional failure to act prudently, willful misconduct or gross negligence.

B. If an insurance policy, as described in Subsection A, is unavailable, insufficient or inadequate, the City may pay actual damages awarded, or settlements, against any member, officer or employee for liability caused by, and costs and expenses incurred by the individual in defense of an alleged act, error, or omission in the individual's capacity as fiduciary or co-fiduciary of assets of the pension fund. No such payment or reimbursement of damages awarded or settlement shall be approved by the City for liability alleged because

of the member's, officer's or employee's personal dishonesty, fraudulent breach of trust, lack of good faith, intentional fraud or deception, intentional failure to act prudently, willful misconduct or gross negligence. The city may also approve payment of court costs and attorney's fees awarded and may provide legal counsel by assigning an attorney from the City Attorney's office, or by retaining outside counsel.

C. If an insurance policy described by Subsection A of this section is unavailable, insufficient, inadequate, or otherwise not in effect, and if the City does not pay damages or settlements as provided in Subsection B, above, the board of trustees may indemnify from the assets of the pension fund, a member, officer, or employee of the board for liability imposed as damages, effect settlements and pay costs and expenses incurred by the individual in defense of an alleged act, error, or omission committed in the individual's capacity as a fiduciary or co-fiduciary of assets of the pension fund. No such payment or reimbursement of damages awarded or settlement or other costs and expenses shall be approved by the board for liability alleged because of the member's, officer's, or employee's personal dishonesty, fraudulent breach of trust, lack of good faith, intentional fraud or deception, intentional failure to act prudently, willful misconduct or gross negligence. A determination of indemnification under this subsection must be made by a majority of the board of trustees. If a proposed indemnification is of a board member, the member may not vote on the matter. The board of trustees may adopt a policy establishing a method for presentation, approval, and payment of claims for indemnification under this subsection.

PASSED AND APPROVED this the 5th day of January, 1993.

THE CITY OF EL PASO

ATTEST:

Carole Hunter
City Clerk

[Signature]
Mayor

APPROVED AS TO FORM:

[Signature]
Assistant City Attorney

jm\pension

011275