08-16-94

AN ORDINANCE

PROVIDING FOR NOTICE TO THE CITY COUNCIL OF PROPERTY DAMAGE, PERSONAL INJURY, DEATH, PROVIDING THE TIME AND LOCATION WHERE SUCH NOTICE IS TO BE GIVEN; PROVIDING THAT SUCH NOTICE MAY NOT BE WAIVED; AND PROVIDING THAT THE TIMELY FILING OF NOTICE OF ANY CLAIM AND REFUSAL OF SAME BY THE CITY COUNCIL IS A CONDITION PRECEDENT TO THE INSTITUTION OF ANY SUIT; PROVIDING FOR VERIFICATION OF THE NOTICE OF CLAIM; AND PROVIDING A SEVERABILITY CLAUSE.

WHEREAS, the City Council is the ultimate repository of authority of the City; and

WHEREAS, the City Council has the management and control of the finances, properties, and the contractual obligations and the policies of the City; and

WHEREAS, in the course of providing the many services to its citizenry, claims in the nature of contracts, tort, property damage, personal injury, wrongful death, and equitable relief may from time to time arise; and

WHEREAS; it is in the best interest of the City, the citizenry, and the claimants that the City Council be expeditiously informed of the details of such claims; and

WHEREAS; as expeditious opportunity for the City Council to review and consider the validity of said claim can allow for resolution without resort being made to the already overburdened judiciary, and

WHEREAS; in order to realistically assess the merits of any presented to it, the City Council is in need of current, accurate factual documentation from those asserting such claims:

NOW THEREFORE, BE IT ORDAINED THAT:

SECTION 1

The City of FRANKSTON shall never be liable for any claim for property damage or for personal injury, whether such personal injury results in death or not unless the person damaged or injured, or someone in his behalf, or in the event the injury results in death, the person or persons who may have a cause of action under the law by reason of such death or injury, shall, within thirty days or within ~~three~~ months for good cause shown from the date the damage or injury was received, give notice in writing to the Mayor and City Council of the following facts:

A. The date and time when the injury occurred and the place where the injured person or property was at the time when the injury was received.

B. The nature of the damage or injury sustained.

C. The apparent extent of the damage or injury sustained.

D. A specific and detailed statement of how and under what circumstances the damage or injury occurred.

E. The amount for which each claimant will settle.

F. The actual place of residence of each claimant by street, number, city and state on the date the claim is presented.

G. In the case of personal injury or death, the names and addresses of all persons who, according to the knowledge or information of the claimant witnessed the happening of the injury or any part thereof and the names of the doctors, if any, to whose care the injured person is committed.

H. In the case of property damage, the location of the damaged property at the time the claim was submitted along with the names and addresses of all persons who witnessed the happening of the damage or any part thereof.

SECTION 2

No suit of any nature whatsoever shall be instituted of maintained against the City of FRANKSTON unless the plaintiff therein shall ever prove that previous to the filing of the original petition the plaintiff applied to the City Council for redress, satisfaction, compensation, or relief, as the case may be, and that the same was by vote of the City Council refused.

SECTION 3

All notice required by this ordinance shall be effectuated by serving them upon the (City Secretary, City Clerk or City Manager) at the following locations: 200 W. MAIN, FRANKSTON (Do not use post office box address) and all such notices shall be effective only when actually received in the office of the person named above.

SECTION 4

The above written notice requirements shall be waived if the City has actual knowledge of death, injury or property damage likely to result in a claim against the City. The City shall not be deemed to have actual knowledge unless that knowledge is attributable to an appropriate City Official whose job duties include the authority to investigate and/or settle claims against the City.

SECTION 5

The written notice required under this ordinance shall be sworn to by the person claiming the damage or injuries or by someone authorized by him to do so on his behalf. Failure to swear to the notice as required herein shall not render the notice fatally defective, but failure to so verify the notice may be considered by the City Council as a factor relating to the truth of the allegations and to the weight to be given to the allegations contained therein.

SECTION 6

If any provision of this ordinance or the application hereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without defeating the purpose or objective of the provisions, and to this end, the provisions of this ordinance are declared to be severable.

SECTION 7

WHEREAS, an emergency is apparent for the immediate preservation of order and good government that requires this ordinance to become effective at once; therefore, upon passage of this ordinance by a favorable vote of the Council, it shall be effective from and after the date of its passage.

PASSED AND APPROVED this 16th day of August, 19 94.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney