

**BERNARDSVILLE BOROUGH
ORDINANCE 98-# 1147**

**AN ORDINANCE PROVIDING FOR THE DEFENSE AND
INDEMNIFICATION OF BOROUGH EMPLOYEES
AND SUPPLEMENTING AND AMENDING CHAPTER II OF THE
BOROUGH CODE ENTITLED "ADMINISTRATION"**

BE IT ORDAINED by the Council of the Borough of Bernardsville, in the County of Somerset, New Jersey that Article VI - "Administrative Procedures and Policies" of Chapter II of the Borough Code entitled "Administration" is hereby supplemented and amended as follows:

Section 1. There is hereby created a new section 2-62 which shall be entitled "Defense and Indemnification of Borough Employees" and which shall read as follows:

2-62 Defense and Indemnification of Borough Employees.

2-62.1 Duty to Defend. Except as provided below, the Borough shall, upon a request of an employee of the Borough, provide for the defense of any action brought against such Borough employee on account of an act or omission in the scope of his or her employment or official Borough duties. For purposes of this section, the Borough's duty to defend shall extend to counterclaims or cross claims against an employee.

2-62.2 Exceptions. The Borough may refuse to provide for the defense of an action referred to in this section if it determines that:

- a. the act or omission was not within the scope of employment;
or
- b. the act or the failure to act was because of actual fraud, willful misconduct or actual malice; or
- c. the action is brought by the Borough itself against the employee; or
- d. the employee acted in violation the Municipal Ethics Law, *N.J.S.A. 40A:9:22.1, et seq.*

2-62.3 Punitive Damages. Nothing in this section requires the Borough to pay for punitive or exemplary damage or damages resulting from the

commission of a crime. The Borough may indemnify a Borough employee for exemplary or punitive damages resulting from the employee's civil violation of state or federal law if, in the opinion of the governing body, the acts committed by the employee upon which the damages are based did not constitute actual fraud, actual malice, willful misconduct or an intentional wrong.

2-62.4 Notice. It shall be the duty of the employee to immediately notify the Borough Clerk in writing as to any action threatened against the employee.

2-62.5 Exclusive Control as a Condition for Such Defense. The Borough shall have exclusive control over the representation of such person defended and such person shall cooperate fully with the Borough, provided, however, that such person may at any time and at such person's option take control over representation by waiving all rights to indemnification and all rights to payment for costs of defense.

2-62.6 Representation. The Borough may provide for the defense pursuant to this section by authorizing the Borough Attorney to act on behalf of the person being defended, or by employing other counsel for this purpose, or by asserting the Borough's right under any appropriate insurance policy which requires the insurance to provide the defense. Except as provided in subsection 2-62.7, the Borough shall not reimburse the employee for any legal costs incurred that were not authorized by the Borough in writing.

2-62.7 Indemnification. If the Borough refuses to provide for the defense of an employee as required above, the employee shall be entitled to indemnification from the Borough if he or she establishes that the act or omission upon which the claim or judgment was based occurred within the scope of his or her duties as an employee of the Borough and if he or she proves that the act or omission was not the result of fraud, malice or willful misconduct.

2-66.8 Definitions. For purposes of this ordinance, "employee" shall mean an officer, employee or servant of the Borough, whether or not compensated or part-time, who is authorized to perform any act or service, provided, however, that the term shall not include an independent contractor. Other terms shall have the meanings set forth in the New Jersey Tort Claims Act.

Section 2. Any or all other ordinances or parts thereof in conflict or inconsistent with any of the terms hereof are hereby repealed to such extent as they are so in conflict or inconsistent.

Section 3. In case any article, section or provision of this ordinance shall be held invalid in any court of competent jurisdiction, the same shall not affect any other article, section or provision of this ordinance except insofar as the article, section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

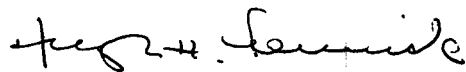
Section 4. This ordinance shall become effective immediately upon final passage and publication as required by law.

COUNCIL OF THE BOROUGH OF
BERNARDSVILLE IN THE COUNTY
OF SOMERSET

ATTEST:



Sandra G. Jones, Borough

BY: 

Hugh H. Fenwick, Mayor

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