

ORDINANCE No. 200

AN ORDINANCE ENTITLED "INDEMNIFICATION IN DEFENSE OF PUBLIC OFFICERS, EMPLOYEES, OR OFFICIALS OF THE TOWNSHIP OF LITTLE FALLS"

BE IT HEREBY ORDAINED by the Township Committee of the Township of Little Falls in the County of Passaic, and State of New Jersey as follows:

Section 1: Intent

It is the intent and purpose of the Ordinance to provide for the indemnification and defense of actions against certain public officials and employees as described herein:

Section 2: Definitions

For the purposes of this Chapter, unless the context clearly indicates a different meaning, the following words and phrases shall have the meanings set forth:

Insurance - Coverage afforded by insurance policies of every kind, whether the premiums be paid by the Township, the Municipal Official or someone on their behalf.

Municipal Official - Any officer or official, employee, Township Committee member, Mayor, Board Member or other individual appointed or hired by the Mayor or the Township Committee or the Town Administrator, whether full or part time. The term shall also include any volunteer serving the Township on the Recreation Commission or as a coach or assistant on a team organized under the auspices of the Recreation Commission, member of the Volunteer Fire Department, member of the Ambulance Corps. The term shall also include any person elected by the voters to fill any official position in the Township or any person subsequently appointed to fill such position.

Section 3: Provisions for Defense

The Township shall provide for the defense of any action brought against a municipal official on account of any act or omission arising out of or incidental to the performance of their duties, and this obligation shall extend to any complaint, counterclaim, crossclaim or cross complaint against such municipal official, unless excepted by the terms of Section 4.

Section 4: Exceptions

The Township shall not be required to provide any defense when the Township Committee determines that:

- (a) The act or omission was not within the scope or incidental to the duties of the public officials;
- (b) The act or failure to act was the result of actual fraud, actual malice, willful misconduct or any intentional wrong;
- (c) The defense of the action or proceeding is provided for by an insurance policy or policies, whether obtained by the Township or by any other person or entity;
- (d) Where the action has been brought by the municipality itself against the public official, or where the action is a criminal proceeding;
- (e) Where the public official has failed to provide to the Township within fifteen (15) calendar days after the time the public official is served with any summons, complaint, process, notice, demand or pleading, the original or a copy thereof;
- (f) Where the public official has failed to cooperate fully with the defense.

Section 5: Methods of Providing Defense

The Township may provide any defense required of it under this Chapter through an attorney from its own staff or by employing other counsel. The Township shall in no event be responsible for the cost of attorney's fees incurred by anyone unless it shall agree in writing to the terms of the representation.

Section 6: Control of Litigation

Whenever the Township provides any defense required of it under this Chapter, the Township, through counsel, may assume exclusive control over representation of the public official, and such official shall cooperate fully with the defense.

Section 7: Indemnification

(a) Any case where the Township is required to provide a defense under this Chapter, the Township shall pay or shall reimburse the public official for the following:

1. Any bona fide settlement agreement entered into by the Township on behalf of the employee.
2. Any judgment entered against employee.

(b) In addition, in any case where the Township would be required to provide a defense under this Chapter, except for the fact that such defense is provided for by the insurance, either through a policy of the Township or of the individual, the Township shall provide indemnification as aforesaid, but only to the extent that liability exists which is not covered by insurance and not excepted by terms of Section 4.

(c) In addition to the above, the Township shall indemnify public officials as defined herein for exemplary or punitive damages, provided that the acts committed by the Township Official upon which said damages are based, did not constitute actual malice, willful misconduct or an intentional wrong.

Section 8: When Effective

This ordinance shall take effect immediately upon final passage and publication as required by law. The obligations as described herein requiring the municipality to provide a defense and indemnify certain public officials shall be retroactive to the extent that any pending claims, complaints, pleadings against public officials as defined herein shall be covered under this Ordinance, and the Township shall immediately assume the defense and provide indemnification.

PASSED AND ADOPTED: _____

Chairman, Terry M Ryan

ATTEST: _____
Township Clerk