

Ordinance 2011-06

*BOROUGH OF HIGHTSTOWN
COUNTY OF MERCER
STATE OF NEW JERSEY*

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 2, "ADMINISTRATION," OF THE "REVISED GENERAL ORDINANCES OF THE BOROUGH OF HIGHTSTOWN, NEW JERSEY," TO ESTABLISH A NEW SECTION 2-47 THEREOF, TO BE ENTITLED "DEFENSE AND INDEMNIFICATION OF PUBLIC EMPLOYEES IN CIVIL ACTIONS."

WHEREAS, a municipality may make, amend, repeal and enforce ordinances not contrary to the laws of the State of New Jersey or the United States, as deemed necessary and proper for good government, order and protection of persons and property in accordance with N.J.S.A. 40:48-2; and

WHEREAS, it has been determined by the Mayor and Council of the Borough of Hightstown (the "Borough") that the Borough is authorized pursuant to N.J.S.A. 59:10-4 to provide for the defense and indemnification of its public employees; and

WHEREAS, the Mayor and Council of the Borough desire to so provide through the adoption of an ordinance establishing the standards and procedures for the defense of civil actions against and the indemnification of the Borough's public employees.

NOW, THEREFORE, BE IT ORDAINED, by the Governing Body of the Borough of Hightstown, County of Mercer, State of New Jersey, that Chapter 2, "Administration," of the "Revised General Ordinances of the Borough of Hightstown, New Jersey," is hereby amended and supplemented in order to establish a new Section 2-47 thereof, to be entitled "Defense and Indemnification of Public Employees in Civil Actions," as follows:

Section 2-47

DEFENSE AND INDEMNIFICATION OF PUBLIC EMPLOYEES IN CIVIL ACTIONS

Subsection 2-47.1 Intent.

It is the intent and purpose of this Ordinance to provide for the defense and indemnification of public employees, as defined herein, in civil actions in accordance with the provisions of this Section.

Subsection 2-47.2 Definitions.

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

- a. *Insurance:* Coverage afforded by insurance policies of every kind, whether the premiums are paid for by the Borough, the public employee or someone on their behalf.
- b. *Public Employee:* Any current or former elected or appointed official, officer or member of the boards, agencies and commissions of the Borough of Hightstown, or any employee or servant of the Borough, whether or not compensated or part-time,

who is authorized by the Borough to perform any act or service; provided, however, that this term does not include independent contractors.

Subsection 2-47.3 Provision of Defense.

The Borough shall provide for the defense of any civil action brought against, and the indemnification of, a public employee, as permitted by N.J.S.A. 59:10-4, on account of any act or omission arising out of or incidental to the good faith performance of their duties, and this obligation shall extend to any complaint, counterclaim, crossclaim or cross complaint against such public employee, unless excepted by the terms set forth in Subsection 2-47.5 below.

Subsection 2-47.4 Procedures.

- a. If a public employee is served with any summons, complaint, process, notice, demand or pleading in any civil action, the public employee shall deliver the original or copy of same to the Borough Clerk within ten (10) calendar days after the time the public employee is served with the same.
- b. The Borough will first notify its insurance carrier of the civil action and request that said insurance carrier provide a defense for the public employee. If the Borough's insurance carrier agrees to provide a defense, then the Borough's obligation to do so shall be automatically delegated to the Borough's insurance carrier with no further formal action needed by the Borough.
- c. If the Borough's insurance carrier declines to provide a defense, the Borough Council shall nevertheless agree to provide a public employee with the necessary defense of any civil action brought against the public employee, except in those circumstances where the Borough Council has determined that any of the exceptions referenced in Subsection 2-47.5 below are applicable.
- d. Upon approval by the Borough Council of a public employee's request to provide a defense, the public employee shall select an attorney from a list of attorneys provided by the Borough within ten (10) calendar days of the Borough Council's approval of the defense of the public employee. The rates of the attorneys contained within the said list shall be previously approved by the Borough. The Borough 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.
- e. If the public employee fails to select an attorney from the list of attorneys provided by the Borough within the ten (10) calendar day period stated above, or if the public employee elects not to utilize the procedures set forth herein for the appointment of counsel, then the Borough shall neither provide a defense to, nor provide indemnification of, the public employee.

Subsection 2-47.5 Exceptions to Defense of Civil Actions.

The provisions of this Section shall not be applicable when the Borough Council has determined that:

- a. The act or omission was not within the scope of or incidental to the employment or duties of the public employee;
- b. The act or omission was the result of actual fraud, actual malice, willful misconduct or an intentional wrong;
- c. The defense of the civil action or proceeding is provided for by insurance, whether obtained by the Borough or by any other person;

- d. The legal action has been brought by the Borough itself against the public employee, or the defense of the civil action or proceeding would create a conflict of interest between the Borough and the public employee;
- e. The legal action is a criminal or disciplinary action;
- f. The public employee failed to deliver to the Borough Clerk, within ten (10) calendar days after the time the public employee is served with any summons, complaint, process, notice, demand or pleading, the original or a copy of the same; or
- g. The public employee has failed to cooperate fully with the defense.

Subsection 2-47.6 Indemnification.

- a. In any case where the Borough is required to provide a defense under this Section, the Borough shall indemnify and pay, or shall reimburse the public employee for, the following:
 - 1. Any bona fide settlement agreement entered into by the Borough on behalf of the public employee.
 - 2. Any judgment entered against the public employee.
- b. However, nothing in this Section shall authorize the Borough to indemnify public employees for punitive or exemplary damages.
- c. In any case where the Borough would be required to provide a defense under this Section, except for the fact that such defense is provided for by insurance, the Borough shall provide indemnification as aforesaid, but only to the extent that liability exists which is not covered by insurance and where not excepted by the terms of Subsection 2-47.5 above or by any other provision set forth in this Section.

BE IT FURTHER ORDAINED, that if any section, paragraph, subdivision, clause or provisions of this Ordinance shall be adjusted invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause, or provision as adjudged and the remainder of this Ordinance shall be deemed valid and effective.

BE IT FURTHER ORDAINED, that all other Ordinances and provisions thereof that are inconsistent with the provisions of this Ordinance shall be and are hereby repealed to the extent of such inconsistency.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect immediately upon its adoption and publication in accordance with the law.

Introduced:

Adopted:

ATTEST:

Debra L. Sopronyi, Municipal Clerk

Steven Kirson, Mayor