

**ORDINANCE 7 – 2016
WASHINGTON TOWNSHIP
GLOUCESTER COUNTY**

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 2 OF THE CODE OF
THE TOWNSHIP OF WASHINGTON TO ESTABLISH A NEW SECTION TO BE
ENTITLED DEFENSE AND INDEMNIFICATION OF PUBLIC OFFICIALS AND
EMPLOYEES AS PERMITTED BY N.J.S.A 59:10-4 ET SEQ**

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 Council of Township of Washington (“Township”) that the Township is authorized pursuant to N.J.S.A. 59:10-4 et seq. to provide for the defense and indemnification of its public officials and employees.

NOW, THEREFORE, BE IT ORDAINED, by the Township Council of the Township of Washington, in the County of Gloucester, State of New Jersey, that Chapter 2, “Administration,” of the Code of the Township of Washington, is hereby amended and supplemented in order to establish a new section to be entitled “Defense and Indemnification of Public Officials and Employees in Civil Actions,” as follows:

1. Intent and purpose.

It is the intent and purpose of this ordinance to provide for the defense of actions against, and the indemnification of public employees and officials as permitted by N.J.S.A. 59:10-1 et seq.

2. Definitions.

PUBLIC EMPLOYEE or OFFICIAL – Includes an officer, employee, board or committee member, servant or official, whether or not compensated or part-time, who is authorized to perform any act or service; provided, however, that the term does not include an independent contractor.

INSURANCE – Coverage afforded by insurance policies of every kind whether the premiums are paid by the Township, the public official or employee or someone on his behalf.

3. Defense of actions.

The Township of Washington shall provide for the defense of any action brought against a public employee or official on account of any act or omission in the scope of his employment, and this obligation shall extend to any cross-actions, counterclaims or cross-complaints against such employee.

4. Exceptions.

The provisions of paragraph 3 shall not be applicable when the governing body determines that:

- A. The act or omission was not within the scope of employment.
- B. The act or failure to act was because of actual fraud, willful misconduct or actual malice.
- C. The defense of the action or proceeding would create a conflict of interest between the Township and the public employee or official.

- D. 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.
- E. The public employee or official failed to deliver any summons, complaint, process, notice, demand or pleading, the original or a copy of the same to the Township Clerk within ten (10) calendar days after the time he is served.
- F. The public employee or official has failed to cooperate fully with the defense.

5. Withholding defense; defense under reservation.

If it appears to the governing body that a particular claim, lawsuit action or proceeding may not be properly the subject for municipal indemnification because of factual disputes which can only be resolved as the case develops (during investigation, discovery motion or trial), the governing body may elect to either:

- A. Withhold a defense until such time as the matter is established to be a proper one for indemnification. In such case, the employee, officer or official shall engage his or her own counsel to defend the claim, lawsuit, action or proceeding, subject to reimbursement of reasonably necessary fees and costs. Reimbursement shall be made only in the case of a later determination that the claim was the proper subject of indemnification.
- B. The Township may elect to provide a defense in such case but subject to a reservation of rights with respect to any obligation to indemnify the employer, officer or official.

6. Methods of providing defense.

The Township may provide any defense required of it under this ordinance through an attorney from its own staff or by employing other counsel.

7. Control over litigation.

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

8. Indemnification.

- A. In any case where the Township is required to provide a defense under this ordinance, the Township shall pay or shall reimburse the public employee or official for:
 - 1) Any bona fide settlement agreements entered into by the employee or official.
 - 2) Any judgments entered against the employee or official.
 - 3) If the Township has failed to provide such required defenses, all costs of defending the action, including reasonable attorneys' fees and expenses, together with costs of any appeal.
- B. In addition, in any case where the Township would be required to provide a defense under this ordinance except for the fact that such defense is provided for by insurance, the Township shall provide indemnification as aforesaid, but only to the extent not covered by insurance.

9. Punitive damages.

A. The Township shall also indemnify any employee or official in any case where a defense has been provided with respect to awards of punitive or exemplary damages except in the following cases:

- 1) The act or omission was not within the scope of employment for the Township.
- 2) The employee or official engaged in actual fraud.
- 3) The employee or official engaged in willful misconduct or actual malice.

B. In these cases where no defense has been provided or a defense has been provided under a reservation of rights, the Township shall not indemnify any person for liability or an award of damages, whether compensatory, punitive or exemplary, unless the governing body has first declared and determined that the employee or official is properly entitled to indemnification.

10. Precedence of statute applying to police.

To the extent N.J.S.A. 40A:14-155 provides broader indemnification to members of a police department of the Township, that statute shall supersede this chapter.

All other Ordinances or parts of Ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such subdivision, clause or provision and the remainder of this Ordinance shall be deemed valid and effective.

This Ordinance shall take effect thirty (30) days after final passage by Council or twenty (20) days after approval by the Mayor, whichever comes first.

Introduced: February 10, 2016

	NEWMAN	FAZZIO	MARTIN	DONATO	LONGFELLOW
YES	✓		✓	✓	✓
ABSTAIN					
NO					
ABSENT		✓			
RECUSE					

Public Hearing: February 24, 2016

	NEWMAN	FAZZIO	MARTIN	DONATO	LONGFELLOW
YES		✓	✓	✓	✓
ABSTAIN					
NO					
ABSENT	✓				
RECUSE					

TOWNSHIP OF WASHINGTON

BY: 
SEAN LONGELLOW, COUNCIL PRESIDENT

ATTEST:


JILL MCCREA, TOWNSHIP CLERK

On this 29TH day of FEBRUARY, 2016, I hereby approve the above Ordinance.


Barbara A. Wallace, Mayor