

ORDINANCE 10 - 2010
ORDINANCE PROVIDING FOR
THE DEFENSE AND INDEMNIFICATION
OF MUNICIPAL OFFICIALS AND EMPLOYEES
FROM CIVIL CLAIMS

BE IT ORDAINED by the Borough Council of the Borough of Woodbury Heights, County of Gloucester and State of New Jersey, as follows:

Section 1 - Definitions. For the purposes of this Ordinance, unless the context clearly indicates a different meaning:

"Municipal Official" shall mean a present or former municipal employee, appointee, official, elected official or member of the various boards, agencies and committees of the Borough of Woodbury Heights whether full or part time, appointed, elected or hired.

Section 2 - Indemnification - Civil Actions. Pursuant to the provisions of N.J.S.A. 59:10-1 et seq. and subject to the provisions of this Chapter, the Borough is authorized to provide for the defense of actions brought against its municipal officials and shall indemnify such officials to the extent permissible by law and shall save harmless and protect such persons from financial loss resulting from litigation. Such indemnification shall arise out of any action or legal proceeding of a non-criminal nature directly related, or incidental to, the performance of the duties of the position or office held by such municipal official. The Borough may indemnify an official for exemplary, actual or punitive damages resulting from the official's civil violation of State or federal law, if, in the opinion of the Borough Council the acts committed by the official upon which damages are based did not constitute actual fraud, actual malice, willful misconduct or an intentional wrong.

Section 3 - Indemnification - Criminal Actions. The Borough shall not defray the cost of defending any criminal action against any municipal official except as may be required by state statute or other municipal ordinance or resolution of the Borough, and in those circumstances, the responsibility for defraying the cost of defending such employee shall be applicable only when such criminal proceeding shall have been dismissed or result in a final disposition in favor of the municipal official. However, should the

Borough Council determine that there is good cause to dismiss the employee arising out of the incident(s) giving rise to the criminal prosecution, the Borough will not reimburse the municipal official for legal defense and costs in defending this suit, even though criminal proceedings against the employee may be dismissed or the employee found not guilty.

Section 4 - Notification of Borough; Cooperation with Borough. The municipal official shall not be entitled to indemnification or reimbursement pursuant to this Chapter unless within ten calendar days of the time such official is served with any summons, complaint, process, notice, demand or pleading, the official delivers the original or a copy thereof to the Borough Administrator. The municipal official shall be obliged to cooperate with the Borough in the conduct of the official's defense. Whenever competent and disinterested legal counsel is available to the Borough through any insurance coverage, the municipal official shall be obliged to be represented by such counsel. If the Borough wishes to use the Borough Attorney or the attorney for any board or committee of the Borough to defend that action, the municipal official shall be obligated to be represented by that attorney unless there is a conflict of interest. The refusal of the municipal official to cooperate with the Borough shall terminate the Borough's obligation to reimburse the municipal official.

Section 5 - Method to Provide for Defense; Attorney's Fees. If the Borough Council determines to provide a defense as authorized by this Chapter it may do so by:

- (1) Hiring an attorney of its choice; or
- (2) Reimburse the municipal official for reasonable attorney's fees and costs incurred in connection with the defense of the act.

A Resolution shall be adopted appointing counsel for the defense and determining counsel fees.

Nothing in this ordinance shall preclude the Borough and/or Borough Attorney from demanding and reviewing periodically any costs and attorney's fees in connection with the defense of the municipal official. In the event a dispute over attorney's fees arises, the Borough reserves the right to submit the dispute to the Fee Arbitration Committee of the District or pursue any other course of legal action.

Section 6 - Exceptions. The Borough shall not be obligated to provide reimbursement in the following instances:

(1) Where the act or omission was not within the scope of employment or authority. The Borough shall be the sole entity empowered to determine whether the claim arises from acts or omissions to act within the scope of employment or authority of the municipal official;

(2) Where the act or omission complained of was because of actual fraud, willful misconduct or actual malice;

(3) Where the legal proceeding is instigated or brought by the Borough of Woodbury Heights against the municipal official;

(4) Where the legal proceeding involves a question concerning the election laws;

(5) Where the action is brought against the Borough by the municipal official.

(6) Where the defense of the action or proceeding would constitute a conflict of interest between the Borough and the municipal official.

(7) Where the defense of the action or proceeding is covered by an insurance policy or policies, however, the Borough shall be responsible for the cost of the deductible.

(8) The municipal official has failed to fully cooperate with the defense.

(9) Where the act or omission is in violation of the New Jersey Local Government Ethics Law, N.J.S.A. 40A:9-22 et seq. or any ethics code adopted pursuant to the statute.

(10) Where a legal proceeding is instigated or brought by one or more municipal officials against one or more other municipal officials.

Section 7 - Exclusive Control as a Condition for Defense. The Borough shall have exclusive control over the representation of the municipal official and such person shall cooperate fully with the Borough and the designated attorney, provided, however, that the municipal official may at any time at the municipal official's option take control of the representation by waiving all rights to indemnification and all rights to payment for the defense costs.

Section 8 - Reduction of Reimbursement. The amount the Borough is obliged to reimburse the municipal official shall be reduced by any insurance coverage payable to the municipal official by the net amount, (that is, any recovery less attorney's fees, disbursements and Court costs), of any money received by the municipal official in any counteraction against the person bringing the action against him.

Section 9 - Approval of Settlement. If the legal proceeding is terminated by an agreement among or between the parties, then the Borough shall not be obligated to reimburse the municipal official unless the Borough approves the settlement agreement.

Section 10 - Cause Attributable to Counterclaim or Crossclaim. If the municipal official files a counterclaim or crossclaim in the legal proceedings, the Borough shall not be obligated to reimburse for any attorney fees or court costs attributable to such.

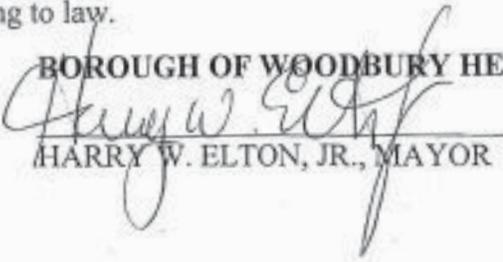
Section 11 - Time of Payment. The obligation of the Borough to reimburse a municipal official for expenses shall arise upon final determination of the legal proceedings. In its discretion the Borough may reimburse a municipal official for a portion of expenses incurred prior to a final decision.

Section 12 - Severability. If any article, Section or Subsection of this Ordinance is declared for any reason to be unconstitutional or invalid by a court of competent jurisdiction, such provision(s) shall be deemed severed from the remainder of the Ordinance and shall not affect the enforceability of the remainder of the Ordinance.

Section 13 - Repealer. Any and all ordinances or parts thereof inconsistent with the provisions of this ordinance are hereby repealed to such extent as they are so in conflict or inconsistent, provided, however, that the adoption of the ordinance shall not prevent or bar the continuance or institution of any proceedings for offenses heretofore committed in violation of any existing ordinance of the Borough of Woodbury Heights.

Section 14 - Effective Date. This Ordinance shall take effect upon final passage, publication and otherwise according to law.

BOROUGH OF WOODBURY HEIGHTS

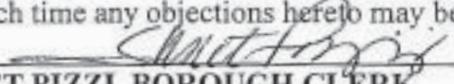

HARRY W. ELTON, JR., MAYOR

ATTEST:


Janet Pizzi, Administrator/Clerk

NOTICE

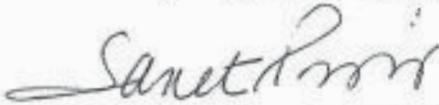
The foregoing Ordinance was introduced at a Meeting of the Mayor and Borough Council of the Borough of Woodbury Heights conducted on March 17, 2010 and will be considered for final hearing and adoption at a meeting to be held on the 21 day of April, 2010, at 7:30 P.M., at which time any objections hereo may be heard.


JANET PIZZI, BOROUGH CLERK

PUBLIC NOTICE

ORDINANCE 10 - 2010
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Notice is hereby given that the above Ordinance was adopted at a Regular meeting of the Mayor and Borough Council of the Borough of Woodbury Heights held on the 21st day of April, 2010.


JANET PIZZI, BOROUGH CLERK