

ORDINANCE NO. 13 - 2005

ORDINANCE AMENDING CHAPTER 1 OF THE ARTICLE XXI GENERAL CODE OF THE TOWNSHIP OF LIVINGSTON BY ADDING A NEW "INDEMNIFICATION" INDEMNIFYING AND HOLDING HARMLESS OFFICIALS FROM CLAIMS OCCURRING WITHIN THE SCOPE OF AN OFFICIAL'S RESPONSIBILITIES TO THE TOWNSHIP OF LIVINGSTON

WHEREAS, N.J.S.A. 59:10-4 allows local public entities to indemnify its officers and employees; and

WHEREAS, the State of New Jersey provides indemnification for its employees pursuant to N.J.S.A. 59:10-5; and

WHEREAS, the State Legislature has taken the position that indemnification of all public employees should be encouraged; and

WHEREAS, certain liability policies have specific exclusions which do not provide coverage or defense by the carrier; and

WHEREAS, liability policies provide certain deductible limits leaving a portion of the costs of litigation uncovered; and

WHEREAS, it has been the policy of the Township of Livingston to encourage participation in Township government, and the lack of an indemnification policy could be a deterrent to such participation.

NOW, THEREFORE, BE IT ORDAINED by the Township of Council of the Township of Livingston that the following policy/procedure is hereby adopted:

Section 1: Statutory Authorization - The Township shall hereby indemnify its officials, employees, and appointees pursuant to N.J.S.A. 59:10-4.

Section 2: Definitions - As used herein, the terms "officials" and Township officials" shall mean present or former elected members of the Township Council present and former constitutional officers; and present or former appointees, employees, or members of various boards, agencies, and commissions of the Township of Livingston.

Section 3: Indemnification. Intent – The Township of Livingston shall provide for the defense of actions or proceedings brought against its officials, employees, and appointees and shall indemnify such officials to the extent hereinafter set forth; the intent of this Section being to save harmless and protect such persons from financial losses resulting from litigation.

Section 4: Scope - The indemnification provided by this Section shall apply to any act or omission of said official, employee, or appointee, whether intentional or not, occurring

within the scope of his or her employment by the County, or if said official, employee, or appointee were or is a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit, or proceeding, whether criminal, civil, administrative, or investigative, by reason of the fact that he or she was an official, employee, or appointee of the Township. The Township shall indemnify said official, employee, or appointee, and shall save him or her harmless from any claim, loss, expense, attorney fees, judgment, fine, and amount paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding to the full extent permitted by the laws of the State of New Jersey, except as specifically modified herein.

Section 5: Prohibitions - Notwithstanding the prior provisions of this Section, this Policy shall not provide any indemnification in the following circumstances:

- A. For any act or omission not within the scope of employment as a Township official.
- B. For any act or failure to act, constituting actual fraud, willful misconduct, actual malice, or constitutes a crime.
- C. For any situation in which the defense of an action or proceeding is provided by an insurance policy or policies, whether obtained by the Township or by any other person.
- D. Where the Township official fails to deliver to the Township Clerk, within fifteen (15) days after he or she is served with any summons, complaint, process, notice, demand, or pleading, the original or an accurate copy of the same. .
- E. Where the Township official fails to cooperate with the defense.
- F. Where the Township official fails to request the indemnity provided by this Section.
- G. Where the action or proceeding is instituted by the Township against the official.

Section 6: Cost of Defense Defrayed - The Township shall defray the cost of defending any criminal action or proceeding brought against the Township official, providing:

- A. The defraying of such cost is not prohibited by statute, ordinance, or resolution where the criminal action has been dismissed or results in a final disposition inconsistent with the guilt of the official.
- B. When providing for the defense of any official, the Township may make such necessary demands as it deems reasonable, in its sole discretion, to determine that the official is innocent of the charges brought or to be brought against him or her. In this regard, the Township Council may approve of such actions as it deems appropriate in

written form, the contents of which may be withheld from public dissemination until the conclusion of the action or proceeding in the discretion of the Council.

Section 7: Exceptions - Nothing herein shall be deemed to authorize the Township to pay or agree to pay punitive damages resulting from actual fraud, willful misconduct, or actual malice.

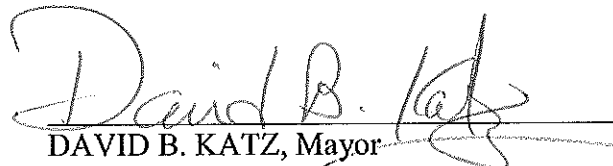
Section 8: Legal Representation. Exclusive Control - Whenever the Township determines, pursuant to the authority provided in this Ordinance, to provide any defense required of it hereunder, the Township, through counsel, shall assume exclusive control of the representation of the official and may designate defense counsel for such official.

Section 9: Defense Attorney. Sole Discretion of Township - Whenever the Township provides a defense pursuant to the authority provided hereunder, the Township may elect to, in its sole discretion:

- A. Hire an attorney (who may be Township Counsel) and pay that attorney directly, or
- B. Approve an attorney selected by the official involved and reimburse the official for reasonable attorney fees expended or obligated to be expended in defense of such official, but not at a rate higher than that paid to Township Counsel.

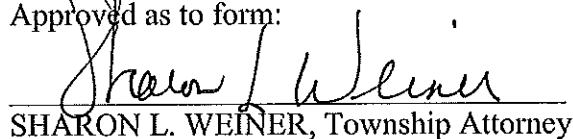
Section 10. Except as hereby amended, the Code of The Township of Livingston shall remain in full force and effect.

Section 11. This Ordinance shall take effect upon final passage and publication in accordance with the law.


DAVID B. KATZ, Mayor


GLENN R. TURTLETAUB, Township Clerk

Approved as to form:


SHARON L. WEINER, Township Attorney

Adopted: 5/16/05