

**TOWNSHIP OF VERONA
COUNTY OF ESSEX, STATE OF NEW JERSEY**

ORDINANCE NO. 2019-35

**AN ORDINANCE ESTABLISHING CHAPTER 15 (DEFENSE AND
INDEMNIFICATION) OF THE CODE OF THE TOWNSHIP OF VERONA**

BE IT ORDAINED by the Township Council of the Township of Verona, in the County of Essex and New Jersey, as follows:

SECTION 1. Chapter 36 (Personnel Policies) Article III (Defense and Indemnification of Officers and Employees) of the Code of the Township of Verona is hereby repealed.

SECTION 2. There is hereby established a Chapter 15 (Defense and Indemnification) of the Code of the Township of Verona to read as follows:

§ 15-1 Intent.

- A. It is the intent and purpose of this Ordinance to provide for the defense and indemnification of actions against Municipal Officials and Employees as described herein.
- B. Definitions: For the purposes of this Chapter the following terms shall be defined as described herein.
 - 1) "Municipal Official/Employee" shall mean any present or former officer, official or employee of the Township, whether or not compensated, whether full time or part time, whether appointed, elected or hired as an employee to perform any act or service, including every member of the Township Council, Zoning Board of Adjustment, Verona Police Department, Verona Rescue Squad, Historical Preservation Commission, Municipal Alliance Committee, Planning Board, Shade Tree Commission, Board of Trustees of the Free Public Library of the Township of Verona, staff of the Verona Public Library, and other individuals serving on the various boards, agencies and commissions of the Township and volunteers serving the Township and any person appointed to fill a vacancy in any position.
 - 2) Volunteer shall mean an individual who performs hours of service for the Township or any of the various boards, agencies and commissions of the Township referenced in (1) above for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered (other than reimbursement for actual expenses incurred) is considered to be a Volunteer during such working hours.
- C. The terms of this Ordinance and the definition of "Municipal Official/Employee" and "volunteer" are to be construed liberally in order to effectuate the purposes of this Ordinance except that the term shall not mean (1) any person who is not a natural person; or (2) any independent contractor; or (3) any person who as a condition of his or her appointment or contract is required to indemnify and defend the Township and/or secure insurance.

§ 15-2 Civil Actions.

- A. To the extent set forth in *N.J.S.A. 59:10-4*, the Township is authorized to provide for the legal defense of civil actions brought against a Municipal Official/Employee or Volunteer arising from an act or omission falling within the scope of, or incidental to, his or her employment or official Township duties. For purposes of this section, the Township's duty to defend shall extend to any complaint, counterclaim, cross claim or cross complaint of a non-criminal nature brought against such Municipal Official/Employee or Volunteer, except as set forth in Section 8 below. If the Municipal Official/Employee files a counterclaim or cross claim in the legal

proceedings, the Township shall not be obligated to reimburse for any attorney fees or court costs attributable to such counterclaim or cross claim.

- B. Except as set forth in Section 8 below, the Township shall indemnify such Municipal Official/Employee or Volunteer to the extent permissible by law and shall save harmless and protect such Municipal Official/Employee or Volunteer from settlements and judgments arising from the aforesaid civil actions.
- C. The Township may also indemnify an Municipal Official/Employee or Volunteer for exemplary or punitive damages resulting from the Municipal Official/Employee or Volunteer's civil violation of state or federal law, if, in the opinion of the Township Council as set forth in a resolution the acts committed by the Municipal Official/Employee or Volunteer and upon which damages are based did not constitute "actual fraud", "actual malice", "willful misconduct" or an "intentional wrong" within the meaning of *N.J.S.A. 59:10-4*.

§ 15-3 Criminal Actions.

- A. The Township shall not defray the cost of defending any criminal action against any Municipal Official/Employee or Volunteer except as may be determined by the Township in its sole discretion and only as authorized by state statute or by other municipal ordinance or by specific resolution of the Township Council.
- B. In those circumstances, the responsibility for defraying the cost of defending such Municipal Official/Employee or Volunteer shall be applicable only in circumstances when such criminal action shall have been dismissed or result in a final disposition in favor of the Municipal Official/Employee or Volunteer.
- C. Should the Township Council determine that there is good cause to dismiss the Municipal Official/Employee or Volunteer for reasons arising out of the incident(s) giving rise to the criminal action, the Township shall not reimburse the Municipal Official/Employee or Volunteer for legal defense and costs in defending the suit, even though criminal proceedings against the Municipal Official/Employee or Volunteer may have been dismissed or the Municipal Official/Employee or Volunteer found not guilty.

§ 15-4 Required Notification to Township.

The Municipal Official/Employee or Volunteer shall not be entitled to indemnification or reimbursement pursuant to this Ordinance unless the Municipal Official/Employee or Volunteer makes written request that the Township do so and delivers to the Township Manager the original or a copy any summons, complaint, process, notice, demand or pleading served upon the Municipal Official/Employee or Volunteer within 20 calendar days of the time such Municipal Official/Employee or Volunteer is served therewith (unless such time period is expanded or enlarged as otherwise determined by the Township Council by resolution). Service of any summons, complaint, process, notice, demand or pleading upon the Municipal Official/Employee or Volunteer at Township offices shall be considered delivery of a copy to the Township so long as the Township is provided a duplicate copy thereof.

§ 15-5 Defense (including Payment of Attorneys' Fees).

- A. If the Township Council determine to provide a defense as authorized by this Ordinance, then:
 - 1)
 - a. If legal counsel is available to defend the legal action through Insurance, the Municipal Official/Employee or Volunteer shall be

obliged to be represented by such counsel.

- b. "Insurance" shall mean coverage afforded by insurance policies of every kind, whether the premiums are paid by the Township, the Municipal Official/Employee or Volunteer or someone on their behalf.
- 2) Whenever legal counsel is not available through Insurance, the Township Council in their sole discretion , may:
 - a. engage the services of the Township Attorney, an attorney for any board or committee of the Township, or hire another attorney of the Township's choice to defend the action. If the Township selects an attorney the Municipal Official/Employee or Volunteer shall be obligated to be represented by that attorney; or
 - b. allow the Municipal Official/Employee or Volunteer to select an attorney of his or her choosing and thereafter reimburse the Municipal Official/Employee or Volunteer for reasonable fees and costs charged by such attorney in connection with the defense of the action.
- B. A resolution shall be adopted appointing counsel for the defense and determining counsel fees. Unless otherwise determined by Insurance, the hourly rate shall not exceed the then rate paid to the Township Attorney without a written resolution of the Township Council. The Township shall in no event be responsible for the cost of attorney's fees incurred by anyone unless the Township shall agree in writing to the terms of the representation.
- C. Nothing in this Ordinance shall preclude the Township and/or Township Attorney from demanding and reviewing periodically any costs and attorney's fees in connection with the defense of the Municipal Official/Employee or Volunteer. In the event a dispute over attorney's fees arises, the Township reserves the right to submit the dispute to the Fee Arbitration Committee under the rules of the New Jersey courts or pursue any other course of legal action.

§ 15-6 Indemnification.

- A. In any case where the Township is required to provide a defense under this Ordinance, the Township shall, in addition to the costs of defense as set forth above, pay or reimburse the Municipal Official/Employee or Volunteer for the following:
 - 1) any bona fide settlement agreement entered into by the Township on behalf of the Municipal Official/Employee or Volunteer, provided, however, if the legal proceeding is terminated by an agreement among or between the parties, then the Township shall not be obligated to reimburse the Municipal Official/Employee or Volunteer unless the Township approves the settlement agreement; and/or
 - 2) any judgment entered against the Municipal Official/Employee or Volunteer.
- 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 (as defined above), the Township shall provide indemnification as aforesaid, but only to the extent that liability exists which is not covered by said Insurance and not excepted by terms of Section 8.
- C. The amount the Township is obliged to reimburse the Municipal Official/Employee or Volunteer shall be reduced by the net amount of any money received by the Municipal Official/Employee or Volunteer in any

counteraction against the person or persons bringing the action against him or her (that is, any recovery less attorneys' fees, disbursements and Court costs) and shall also be reduced by the net amount of any Insurance proceeds payable to the Municipal Official/Employee or Volunteer (that is, any recovery less attorneys' fees, disbursements and Court costs).

§ 15-7 Control of litigation.

- A. Whenever the Township provides for the defense of any action set forth herein, the Township may, as a condition of such defense, assume exclusive control over the representation of the Municipal Official/Employee or Volunteer defended and such Municipal Official/Employee or Volunteer shall cooperate fully with the Township, provided, however, that such Municipal Official/Employee or Volunteer may at any time at such Municipal Official/Employee or Volunteer's option take control over representation by waiving all rights to indemnification and all rights to payment for costs of defense.
- B. The refusal of the Municipal Official/Employee or Volunteer to cooperate with the Township shall terminate the Township's obligation to reimburse the Municipal Official/Employee or Volunteer.

§ 15-8 Exceptions.

- A. The Township shall not be obligated to provide any defense or reimbursement where the Township Council determine in their opinion that:
 - 1) the act or omission was not within the scope or incidental to the duties of the Municipal Official/Employee or Volunteer's employment or authority; or
 - 2) the act or omission was the result of "actual fraud", "actual malice", "willful misconduct" or an "intentional wrong" within the meaning of *N.J.S.A. 59:10-4*; or
 - 3) the legal proceeding involves a question concerning the election laws; or
 - 4) the legal proceeding is instigated or brought by the Township against the Municipal Official/Employee or Volunteer, provided, however, if any such legal proceeding shall be dismissed or finally determined in favor of the Municipal Official/Employee or Volunteer, then the Municipal Official/Employee or Volunteer shall be reimbursed for the expense of the defense providing (1) the Municipal Official/Employee or Volunteer proves that the act or omission was within the scope or incidental to the duties of employment or authority and (2) in the opinion of the Township Council of the Township, the act or omission did not constitute "actual fraud", "actual malice", "willful misconduct" or an "intentional wrong" within the meaning of *N.J.S.A. 59:10-4*; or
 - 5) the action is a criminal proceeding except as otherwise set forth in Section 3; or
 - 6) the defense of the action or proceeding would constitute a conflict of interest between the Township and the Municipal Official/Employee or Volunteer; or
 - 7) the defense of the action or proceeding is covered by Insurance except as set forth in Section 6(b) or Section 6(c); or
 - 8) unless otherwise determined by the Township Council, the Municipal Official/Employee or Volunteer has failed to provide to the Township Administrator within 20 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; or

- 9) the Municipal Official/Employee or Volunteer has failed to fully cooperate with the defense; or
- 10) the act or omission is in violation of the New Jersey Local Government Ethics Law, *N.J.S.A. 40A:9-22.1 et seq.*, or any ethics code adopted pursuant to the statute.

§ 15-9 Time of Payment.

- A. The obligation of the Township to reimburse a Municipal Official/Employee or Volunteer for expenses shall arise upon final determination of the legal proceedings.
- B. Notwithstanding the provisions of subsection (a), the Township in its discretion may reimburse a Municipal Official/Employee or Volunteer for all or a portion of defense expenses incurred prior to the settlement or final trial or appellate decision in the underlying case so long as in making such payment the Township reserves its right to seek restitution from the Municipal Official/Employee or Volunteer of the amount so paid if additional facts are revealed during discovery and/or determined at trial proving that the Municipal Official/Employee or Volunteer engaged in conduct constituting an exclusion under Section 8.

§ 15-10 Severability.

Any article, Section or Subsection of this Ordinance is declared for any reason to be unconstitutional or invalid by a court of confident 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.

§ 15-11 When Effective.

This ordinance shall take effect immediately upon final passage and publication as required by law. The obligations as described herein requiring the Township 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.

§ 15-12 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 this 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 Township.

§ 15-13 Effective Date; Effect on Prior Actions.

This Ordinance shall take effect upon final passage and publication according to law. Any legal proceeding which may be covered by this Ordinance which has not been reduced to a final judgment as of the date of passage shall be covered by the terms of this Ordinance.

SECTION 3. If any section, sub-section, paragraph, sentence or any other part of this ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance.

SECTION 4. All ordinances or parts of ordinances which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 5. This ordinance shall take effect after final adoption and publication and otherwise as provided by law.

ATTEST:

JENNIFER KIERNAN
MUNICIPAL CLERK

I HEREBY CERTIFY THAT THE AFOREMENTIONED ORDINANCE WAS PUBLISHED IN THE STAR LEDGER, A NEWSPAPER PUBLISHED IN THE COUNTY OF ESSEX AND CIRCULATED IN THE TOWNSHIP OF VERONA, IN THE ISSUE OF NOVEMBER 22, 2019 AND XXX.

JENNIFER KIERNAN
MUNICIPAL CLERK

**INTRODUCTION:
PUBLIC HEARING:
EFFECTIVE DATE:**