

O-22-19

**AN ORDINANCE ADDING CHAPTER 26: DEFENSE AND INDEMNIFICATION TO
THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF WHARTON,
COUNTY OF MORRIS, STATE OF NEW JERSEY**

BE IT ORDAINED by the Governing Body of the Borough of Wharton that Chapter 26: Defense and Indemnification to the revised general ordinances of the Borough of Wharton is hereby added as follows:

§ 26 - 1. Title.

This chapter shall hereafter be known and cited as the “Indemnification of Municipal Employees, Appointees and Officials.”

§ 26 - 2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

OFFICIAL or MUNICIPAL OFFICER

A present or former municipal employee, appointee, official, elected official or member of the various boards, agencies and commissions of the Borough of Wharton, County of Morris, New Jersey.

§ 26 - 3. Civil Actions.

- A. The Borough of Wharton is hereby authorized to provide for the defense of actions brought against its officials and to indemnify such officials to the extent hereinafter set forth and shall save harmless and protect such persons from any financial loss resulting from litigation.**
- B. The obligation of the Borough of Wharton to defend and indemnify its officials for acts or omissions arising out of or in the course of the performance of the duties of that person shall be limited to those circumstances under which the Borough itself would be liable for the acts of its officials under the doctrine of respondeat superior.**
- C. In the event an official or municipal officer is required to defend an action relating to his or her position subsequent to leaving office or municipal employment, the terms, conditions and provisions of this chapter shall apply.**
- D. In the event the official or municipal officer is being sued for punitive damages, the Borough of Wharton shall not indemnify said official or municipal officer with respect to the same but shall, to the extent provided herein, defend said official or municipal officer in said action and defray the costs of said defense.**

§ 26 - 4. Criminal Actions.

- A. The Borough of Wharton shall defray the costs of defending any criminal action against any official (if the underlying allegations of said criminal action reasonably relate to or arise from the official's execution of his or her official duties), provided that:
 - (1) It is authorized by state statute, municipal ordinance or by resolution, and provided that the criminal proceedings have been dismissed or result in a final disposition in favor of the official.**
 - (2) The Mayor and Borough Council determine that there is no good cause to dismiss the official arising out of the incident or related incidents of the criminal proceedings.****
- B. The Borough of Wharton shall provide for the defense of any criminal action against any official, provided that:
 - (1) It is authorized by state statute, municipal ordinance or by resolution and such defense is not herein otherwise limited.****

§ 26 - 5. Limitations.

The Borough of Wharton shall not approve indemnification of the defense of any action if:

- A. The act or omission complained of was not within the scope of employment or authority.**
- B. The act or omission complained of 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 Borough and the official involved.**
- D. There exist policies of insurance, either obtained by the Borough or by another, by virtue of which the municipal official is entitled to a defense of the action in question from the insurer. In the event the aforesaid insurance covers less than an entire defense to the particular action, indemnification shall be approved for that part of the defense not covered by insurance.**
- E. The municipal official has failed to deliver to the Mayor and Borough Council, within 14 days of the time he or she is served with any summons, complaint, process, notice, demand or pleading, the original or a copy of such document or thereafter fails to cooperate with the Borough in the defense of the matter.**
- F. The official fails to request the defense of any action.**
- G. If the action was brought by the Borough.**

§ 26 - 6. Methods to provide for the defense of actions.

If the Mayor and Borough Council determine to provide a defense as authorized in this chapter, they may do so by:

- A. The Borough Attorney, if the Borough Attorney and the official or municipal officer requiring defense determine that there is no ethical conflict created by said representation;
- B. Hiring an attorney of their choice and paying the same directly; or
- C. Reimbursing the municipal official for reasonable attorney's fees expended or obligated to be expended by such official in the defense of the action.

§ 26 - 7. Additional provisions.

In addition to the provisions hereof, all officials of the Borough of Wharton shall be entitled to defense and indemnification as provided in N.J.S.A. 59:10-1 et seq. and N.J.S.A. 59:10A-1 et seq.

§ 26 - 8. Costs.

All costs of defense and legal fees to be provided herein by the Borough of Wharton shall be calculated as reasonable prevailing fees as charged in the County of Morris at the time they are incurred, and the Borough shall only be responsible to that extent. In the event of a dispute as to the reasonableness of any fee to be paid by the Borough in defense of an official or municipal officer, as provided herein, either party may seek review before the Superior Court of New Jersey, Morris County, for adjudication.

First Reading: December 9, 2019

Second Reading: December 30, 2019

BOROUGH OF WHARTON

ATTEST:

Gabrielle Evangelista,
Borough Clerk

WILLIAM J. CHEGWIDDEN,
MAYOR