



BOROUGH OF FLORHAM PARK
COUNTY OF MORRIS, STATE OF NEW JERSEY
ORDINANCE # 16-2

AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF FLORHAM PARK IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY AMENDING CHAPTER 20 ENTITLED “DEFENSE AND INDEMNIFICATION” AND AUTHORIZING THE BOROUGH OF FLORHAM PARK TO PROVIDE LEGAL COUNSEL AND INDEMNIFICATION FOR OFFICIALS, EMPLOYEES AND APPOINTEES OF THE BOROUGH OF FLORHAM PARK IN CERTAIN ACTIONS BROUGHT AGAINST SAID OFFICIALS, EMPLOYEES AND APPOINTEES

BE IT ORDAINED by the Governing Body of the Borough of Florham Park, County of Morris, State of New Jersey that Chapter 20 shall be amended in its entirety to read as follows:

SECTION 1. - Except as hereinafter provided, the Borough of Florham Park, hereinafter known as the Borough shall, upon the request of any present or former official, employee or appointee of the Borough provide for indemnification and legal defense of any civil action brought against said person or persons arising from an act or omission falling within the scope of their public duties.

SECTION 2. – The Borough shall not indemnify any person against the payment of punitive damages, penalties, or fines but may provide for the legal defense of such claims in accordance with the standards set forth herein. The Borough may refuse to provide for the defense and indemnification of any civil action referred to herein if the Borough determines that (a) the act or omission did not occur within the scope of duty authorized or imposed by law (b) the act or failure to act was the result of actual fraud, willful misconduct or actual malice of the person requesting defense and indemnification; or (c) the defense of the action or proceeding by the Borough would create a conflict of interest between the Borough and the person or persons involved.

Pursuant to N.J.S.A. 59:10-4, the indemnification and defense provided for in the Ordinance shall include exemplary or punitive damages resulting from the employee's civil violation of State or Federal law if, in the opinion of the Borough, the acts committed upon which the damages are based did not constitute actual fraud, actual malice, willful misconduct or an intentional wrong.

SECTION 3. The terms of this Ordinance and the definition of official employee and appointee are to be construed liberally in order to effectuate the purposes of this Ordinance except that these terms shall mean (a) any person who is not a natural person; (b) any person while providing goods or services of any kind under contract with the Borough except an employment contract; (c) any person while providing legal or engineering services for compensation unless said person is a full-time employee of the Borough; and (d) any person who as a condition of his or her appointment or contact is required to indemnify and defend the Borough and/or secure insurance.

SECTION 4. The Borough shall provide for defense of and indemnify any present or former official, employee or appointee of the Borough who becomes a defendant in a civil action if the person or persons involved (1) acted or failed to act in a matter which the Borough has or had an interest; (b) acted or failed to act in the discharge of a duty imposed or authorized by laws; and (c) acted or failed to take action in good faith. For purposes of this Ordinance,

the duty and authority of the Borough to defend and indemnify shall extend to a cross-claim or counterclaim against said person.

SECTION 5. In any action or proceeding, including criminal proceedings, the Borough may provide for the defense of a present or former official, employee or appointee, if the Borough concludes that such representation is in the best interest of the Borough and that the person to be defended acted or failed to act in accord with the standards set forth in this Ordinance.

SECTION 6. Whenever the Borough provides for the defense of any action set forth herein and as a condition of such defense, the Borough may assume exclusive control over the representation of such persons defended and such person shall cooperate fully with the Borough.

SECTION 7. The Borough may provide for the defense pursuant to this Ordinance by authorizing its attorney to act in behalf of the person being defended or by employing other counsel for this purpose or by asserting the right of the Borough under any appropriate insurance policy that requires the insurer to provide a defense.

SECTION 8 - All ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistencies.

SECTION 9 - If any article, section, subsection, paragraph, phrase or sentence of this ordinance is for any reason declared to be invalid, such declaration shall not affect the remainder of the ordinance.

SECTION 10 - This ordinance shall take effect upon final publication as provided for by law.

I HEREBY CERTIFY this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Florham Park introduced on January 21, 2016 and adopted by the Governing after Public Hearing on February 25, 2016.

INTRODUCED: January 21, 2016

ADOPTED: February 25, 2016

Mark Taylor, Mayor

ATTEST:

Sheila Williams, R.M.C.
Borough Clerk

Certified to be a true and correct copy of an Ordinance adopted on
February 25, 2016

Sheila A. Williams, R.M.C.