

BOROUGH OF GLEN RIDGE
Ordinance No. 1719

AN ORDINANCE AMENDING TITLE 2, ADMINISTRATION AND PERSONNEL OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF GLEN RIDGE, TO PROVIDE FOR THE DEFENSE AND INDEMNIFICATION OF MUNICIPAL OFFICERS AND EMPLOYEES.

BE IT ORDAINED by the Borough of Glen Ridge, County of Essex and State of New Jersey, as follows:

Section 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) (1) For purposes of this Ordinance, the term “Municipal Official or Employee” shall mean any present or former officer, official or employee of the Borough, whether or not compensated, whether full time or part time, whether appointed, elected or hired to perform any act or service, including the Mayor and every member of the Borough Council, Board of Adjustment, Glen Ridge Police Department, Glen Ridge Volunteer Ambulance Squad, Historical Preservation Commission, Municipal Alliance Committee, Planning Board, Shade Tree Commission, staff of the Glen Ridge Public Library, and other individuals serving on the various boards, agencies and commissions of the Borough and volunteers serving the Borough and any person appointed to fill a vacancy in any position.

(2) For purposes of this Ordinance, an individual who performs hours of service for the Borough or any of the various boards, agencies and commissions of the Borough 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 hours.

(c) The terms of this Ordinance and the definition of “Municipal Official or 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 Borough and/or secure insurance.

Section 2: Civil Actions.

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

(b) Except as set forth in Section 8 below, the Borough shall indemnify such Municipal Official or Employee to the extent permissible by law and shall save harmless and protect such Municipal Official or Employee from settlements and judgments arising from the aforesaid civil actions.

(c) The Borough may also indemnify an Municipal Official or Employee for exemplary or punitive damages resulting from the Municipal Official or Employee’s civil violation of state or federal law, if, in the opinion of the Mayor and Council as set forth in a resolution the acts committed by the Municipal Official or Employee 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.

Section 3: Criminal Actions.

(a) The Borough shall not defray the cost of defending any criminal action against any Municipal Official or Employee except as may be determined by the Borough in its sole discretion and only as authorized by state statute or by other municipal ordinance or by specific resolution of the Mayor and Council.

(b) In those circumstances, the responsibility for defraying the cost of defending such Municipal Official or Employee 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 or Employee.

(c) Should the Mayor and Council determine that there is good cause to dismiss the Municipal Official or Employee for reasons arising out of the incident(s) giving rise to the criminal action, the Borough shall not reimburse the Municipal Official or Employee for legal defense and costs in defending the suit, even though criminal proceedings against the Municipal Official or Employee may have been dismissed or the Municipal Official or Employee found not guilty.

Section 4: Required Notification to Borough.

The Municipal Official or Employee shall not be entitled to indemnification or reimbursement pursuant to this Ordinance unless the Municipal Official or Employee makes written request that the Borough do so and delivers to the Borough Administrator the original or a copy any summons, complaint, process, notice, demand or pleading served upon the Municipal Official or Employee within 20 calendar days of the time such Municipal Official or Employee is

served therewith (unless such time period is expanded or enlarged as otherwise determined by the Mayor and Council by resolution). Service of any summons, complaint, process, notice, demand or pleading upon the Municipal Official or Employee at Borough offices shall be considered delivery of a copy to the Borough so long as the Borough is provided a duplicate copy thereof.

Section 5: Defense (including Payment of Attorneys' Fees).

(a) If the Mayor and Council determine to provide a defense as authorized by this Ordinance, then:

(1) (A) If competent and disinterested legal counsel is available to defend the legal action through Insurance, the Municipal Official or Employee shall be obliged to be represented by such counsel.

(B) "Insurance" shall mean coverage afforded by insurance policies of every kind, whether the premiums be paid by the Borough, the Municipal Official or Employee or someone on their behalf.

(2) Whenever competent and disinterested legal counsel is not available through Insurance, the Mayor and Council at their option, may:

(A) engage the services of the Borough Attorney or the attorney for any board or committee of the Borough to defend the action and the Municipal Official or Employee shall be obligated to be represented by that attorney unless there is a conflict of interest; or

(B) hire another attorney of their choice and the Municipal Official or Employee shall be obligated to be represented by that attorney unless there is a conflict of interest; or

(C) allow the Municipal Official or Employee to select an

attorney of his or her choosing and thereafter reimburse the Municipal Official or Employee 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 Borough Attorney without a written resolution of the Mayor and Council. The Borough shall in no event be responsible for the cost of attorney's fees incurred by anyone unless it shall agree in writing to the terms of the representation.

(c) 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 or Employee. In the event a dispute over attorney's fees arises, the Borough 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.

Section 6: Indemnification.

(a) In any case where the Borough is required to provide a defense under this Ordinance, the Borough shall, in addition to the costs of defense as set forth above, pay or reimburse the Municipal Official or Employee for the following:

(1) any bona fide settlement agreement entered into by the Borough on behalf of the Municipal Official or Employee, provided, however, 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 or Employee unless the Borough approves the settlement agreement; and/or

(2) any judgment entered against the Municipal Official or Employee.

(b) In addition, in any case where the Borough 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 Borough 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 Borough is obliged to reimburse the Municipal Official or Employee shall be reduced by the net amount of any money received by the Municipal Official or Employee 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 or Employee (that is, any recovery less attorneys' fees, disbursements and Court costs).

Section 7: Control of litigation.

(a) Whenever the Borough provides for the defense of any action set forth herein, the Borough may, as a condition of such defense, assume exclusive control over the representation of the Municipal Official or Employee defended and such Municipal Official or Employee shall cooperate fully with the Borough, provided, however, that such Municipal Official or Employee may at any time at such Municipal Official or Employee'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 or Employee to cooperate with the Borough shall terminate the Borough's obligation to reimburse the Municipal Official or Employee.

Section 8: Exceptions.

The Borough shall not be obligated to provide any defense or reimbursement where the Mayor and Council determine in their opinion that:

(a) the act or omission was not within the scope or incidental to the duties of the Municipal Official or Employee's employment or authority; or

(b) 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

(c) the legal proceeding involves a question concerning the election laws; or

(d) the legal proceeding is instigated or brought by the Borough against the Municipal Official or Employee, provided, however, if any such legal proceeding shall be dismissed or finally determined in favor of the Municipal Official or Employee, then the Municipal Official or Employee shall be reimbursed for the expense of the defense providing (1) the Municipal Official or Employee 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 Mayor and Council of the Borough, 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

(e) the action is a criminal proceeding except as otherwise set forth in Section 3; or

(f) the defense of the action or proceeding would constitute a conflict of interest between the Borough and the Municipal Official or Employee; or

(g) the defense of the action or proceeding is covered by Insurance except as set forth in Section 6(b) or Section 6(c); or

(h) unless otherwise determined by the Mayor and Council, the Municipal Official or Employee has failed to provide to the Borough 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

(i) the Municipal Official or Employee has failed to fully cooperate with the defense; or

(j) 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.

Section 9: Time of Payment.

(a) The obligation of the Borough to reimburse a Municipal Official or Employee for expenses shall arise upon final determination of the legal proceedings.

(b) Notwithstanding the provisions of subsection (a), the Borough in its discretion may reimburse a Municipal Official or Employee 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 Borough reserves its right to seek restitution from the Municipal Official or Employee of the amount so paid if additional facts are revealed during discovery and/or determined at trial proving that the Municipal Official or Employee engaged in conduct constituting an exclusion under Section 8.

Section 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 effect the enforceability of the remainder of the Ordinance.

Section 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 Borough 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 Borough shall immediately assume the defense and provide indemnification.

Section 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 Borough.

Section 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.