

DEFENSE AND INDEMNIFICATION

Chapter 4A

DEFENSE AND INDEMNIFICATION

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[HISTORY: Adopted by the Mayor and Common Council of the City of Gloucester City 7-5-1990 as Ord. No. 19-1990. Amendments noted where applicable.]

GENERAL REFERENCES

Administrative Code — See Ch. 4.

Be it ordained by the Mayor and Common Council of the City of Gloucester City, in the County of Camden and State of New Jersey, that:

§ 4A-1. Intent and purpose.

It is the intent and purpose of this ordinance to provide for the defense of actions against and the indemnification of public employees and officials as permitted by N.J.S.A. 59:10-1 et seq.

§ 4A-2. Definitions.

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

EMPLOYEE or OFFICIAL — Includes an officer, employee, servant or official, whether or not compensated or part-time, who is authorized to perform any act or service; provided, however, that the term does not include an independent contractor.

PUBLIC EMPLOYEE or PUBLIC OFFICIAL — Any employee or official or former employee or former official of the City of Gloucester City.

§ 4A-3. Defense of actions.

The City of Gloucester City shall provide for the defense of any action brought against a public employee or official on account of any act or omission in the scope of his employment, and this obligation shall extend to any cross-actions, counterclaims or cross-complaints against such employee.

§ 4A-4. Exceptions.

The provisions of § 4A-3 shall not be applicable when the governing body determines that:

- A. The act or omission was not within the scope of employment.
- B. The act or failure to act 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 city and the public employee.

- D. The defense of the action or proceeding is provided for by an insurance policy or policies, whether obtained by the city or by any other person.
- E. The public employee or official failed to deliver any summons, complaint, process, notice, demand or pleading, the original or a copy of the same to the City Clerk of the City of Gloucester City within ten (10) calendar days after the time he is served.
- F. The public employee or official has failed to cooperate fully with the defense.

§ 4A-5. Withholding defense; defense under reservation.

If it appears to the governing body that a particular claim, lawsuit action or proceeding may not be properly the subject for municipal indemnification because of factual disputes which can only be resolved as the case develops (during investigation, discovery motion or trial), the governing body may elect to either:

- A. Withhold a defense until such time as the matter is established to be a proper one for indemnification. In such case, the employee, officer or official shall engage his or her own counsel to defend the claim, lawsuit, action or proceeding, subject to reimbursement of reasonably necessary fees and costs. Reimbursement shall be made only in the case of a later determination that the claim was the proper subject of indemnification.
- B. The City of Gloucester City may elect to provide a defense in such case but subject to a reservation of rights with respect to any obligation to indemnify the employer, officer or official.

§ 4A-6. Methods of providing defense.

The city may provide any defense required of it under this ordinance through an attorney from its own staff or by employing other counsel.

§ 4A-7. Control over litigation.

Whenever the city provides any defense required of it under this ordinance, the city, through counsel, may assume exclusive control over the representation of the public employee or official, and such employee or official shall cooperate fully with the defense.

§ 4A-8. Indemnification.

- A. In any case where the city is required to provide a defense under this ordinance, the city shall pay or shall reimburse the public employee or official for:
- (1) Any bona fide settlement agreements entered into by the employee or official.
 - (2) Any judgments entered against the employee or official.
 - (3) If the city has failed to provide such required defenses, all costs of defending the action, including reasonable attorneys' fees and expenses, together with costs of any appeal.
- B. In addition, in any case where the city would be required to provide a defense under this ordinance except for the fact that such defense is provided for by insurance, the city shall provide indemnification as aforesaid, but only to the extent not covered by insurance.

§ 4A-9. Punitive damages.

- A. The City of Gloucester City shall also indemnify any employee or official in any case where a defense has been provided with respect to awards of punitive or exemplary damages except in the following cases:
- (1) The act or omission was not within the scope of employment for the city.
 - (2) The employee or official engaged in actual fraud.
 - (3) The employee or official engaged in willful misconduct or actual malice.

- B. In these cases where no defense has been provided or a defense has been provided under a reservation of rights, the city shall not indemnify any person for liability or an award of damages, whether compensatory, punitive or exemplary, unless the governing body has first declared and determined that the employee or official is properly entitled to indemnification.

§ 4A-10. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

§ 4A-11. Repealer.

All inconsistent ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed.