

**Ordinance #2020-48**

**AN ORDINANCE BY THE MUNICIPALITY OF PRINCETON CONCERNING THE DEFENSE, INDEMNIFICATION AND COMPENSATION OF MUNICIPAL EMPLOYEES AND AMENDING CHAPTER 11A OF THE "CODE OF THE BOROUGH OF PRINCETON, NEW JERSEY, 1974" AND CHAPTERS 6A AND 14A OF THE "CODE OF THE TOWNSHIP OF PRINCETON, NEW JERSEY, 1968".**

WHEREAS, the Borough of Princeton and Township of Princeton pursuant to the provisions of the New Jersey Municipal Consolidation Act, N.J.S.A. 40:43-66.35 consolidated as Princeton on January 1, 2013; and

WHEREAS, pursuant to N.J.S.A. 40:43-66.64, the Princeton Council on January 1, 2013 adopted a Resolution continuing in effect Ordinances of the former Borough of Princeton and the former Township of Princeton as a new Code for Princeton is prepared; and

WHEREAS, the Princeton Council has reviewed Chapter 11A of the "Code of the Borough of Princeton, New Jersey, 1974" and Chapter 6A of the "Code of the Township of Princeton, New Jersey, 1968," which address the defense and indemnification of municipal employees, and updated same for consolidation into a single chapter; and

WHEREAS, the Princeton Council has also reviewed Chapter 14A of the "Code of the Township of Princeton, New Jersey, 1968," which addresses the compensation of personnel, and seeks to repeal same because its substance is duplicated in Council's annual salary ordinance; and

WHEREAS, the Princeton Council wishes to adopt said Code revisions which will become a part of the new Princeton Code at a future date.

NOW, THEREFORE, BE IT ORDAINED by the Princeton Council as follows:

Section 1. Chapter 11A of the "Code of the Borough of Princeton, New Jersey, 1974" ("Borough Code"), entitled "Employees—Defense and Indemnification," is hereby amended as follows (additions are underlined; deletions are [bracketed]):

**CHAPTER 11A. EMPLOYEES - DEFENSE AND INDEMNIFICATION.**

**Sec. 11A-1. Intent and purpose.**

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

**Sec. 11A-2. Definitions.**

As used in this chapter:

*Employee.* Any officer, employee or servant, 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.* Any employee or former employee of the [borough]municipality.

**Sec. 11A-3. Defense of actions.**

The [borough]municipality shall provide for the defense of any action brought against a public employee on account of any act or omission in the scope of [his]said employee's employment, and this obligation shall extend to any cross-actions, counterclaims or cross-complaint against such employee.

**Sec. 11A-4. Exceptions.**

The provisions of section 11A-3 shall not be applicable when the mayor and council determines that:

- (a) The act or omission was not within the scope of employment; or
- (b) The act or failure to act was because of actual fraud, willful misconduct or actual malice; or
- (c) The defense of the action or proceeding would create a conflict of interest between the [borough]municipality and the public employee; or

(d) The defense of the action or proceeding is provided for by an insurance policy or policies, whether obtained by the [borough]municipality or by any other person; or

(e) The public employee failed to deliver to the [borough]municipal administrator, within ten calendar days after the time [he]said employee is served with any summons, complaint, process, notice, demand or pleading, the original or a copy of the same; or

(f) The public employee has failed to cooperate fully with the defense.

**Sec. 11A-5. Methods of providing defense.**

The [borough]municipality may provide any defense required of it under this chapter through an attorney from its own staff or by employing other counsel.

**Sec. 11A-6. [Borough]Municipal control over litigation.**

Whenever the [borough]municipality provides any defense required of it under this chapter, the [borough]municipality, through counsel, may assume exclusive control over the representation of the public employee, and such employee shall cooperate fully with the defense.

**Sec. 11A-7. Indemnification.**

In any case where the [borough]municipality is required to provide a defense under this chapter, the [borough]municipality shall pay or shall reimburse the public employee for:

(a) Any bona fide settlement agreements entered into on behalf of the employee; and

(b) Any judgments entered against the employee; and

(c) Any exemplary or punitive damages resulting from the employee's civil violation of state or federal law if, in the opinion of council, the acts committed by the employee upon which damages are based did not constitute actual fraud, actual malice, willful misconduct or an intentional wrong; and

([c]d) If the [borough]municipality has failed to provide such required defense, all costs of defending the action, including reasonable counsel fees and expenses, together with cost of any appeal.

In addition, in any case where the [borough]municipality would be required to provide a defense under this chapter except for the fact that such defense is provided for

by insurance, the [borough] municipality shall provide indemnification as aforesaid, but only to the extent not covered by insurance.

Nothing in this chapter shall authorize the [borough]municipality to pay for punitive or exemplary damages or damages resulting from the commission of a crime.

Section 2. The following portions of the Township Code are hereby repealed:

- Chapter 6A of the Township Code, entitled “Employees—Defense and Indemnification;” and
- Chapter 14A of the Township Code, entitled “Personnel.”

Section 3. All ordinances and resolutions or parts thereof inconsistent with this ordinance are repealed.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court 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 portion thereof.

Section 5. The provisions of this ordinance shall be applicable within Princeton upon final adoption and shall become a part of the new Princeton Code once completed and adopted.

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Delores Williams, Clerk

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Liz Lempert, Mayor

Ordinance Introduced:

Ordinance Adopted:

This ordinance is part of the ongoing process of merging and harmonizing the code provisions of former Princeton Borough and former Princeton Township into a new code for the consolidated municipality of Princeton. It consolidates the provisions from both the Borough and Township Codes which address the defense and indemnification of municipal employees, and

repeals the “Personnel” chapter of the Township Code, which is addressed through council’s annual salary ordinance.