

**TOWNSHIP OF MILLBURN
ORDINANCE 2655-23
ORDINANCE AMENDING AND SUPPLEMENTING THE TOWNSHIP OF MILLBURN
INDEMNIFICATION ORDINANCE**

WHEREAS, the Township of Millburn seeks to extend certain notice periods provided in the Indemnification Ordinance of the Township of Millburn, and to further identify the circumstances that will provide for indemnification by the Township.

NOW THEREFORE, BE IT ORDAINED BY THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MILLBURN, IN THE COUNTY OF ESSEX AND STATE OF NEW JERSEY, AS FOLLOWS (additions are underlined and deletions appear as strikethroughs);

§ 2-46. INDEMNIFICATION.

§ 2-46.1. Purpose. [Ord. No. 02-95 § 1]

The Millburn Township Committee hereby finds that it is appropriate to provide for the defense and indemnification of Township officials and employees consistent with the provisions of N.J.S.A. 59:10-1, et seq., which empowers local public entities to provide for such defense and indemnification.

§ 2-46.2. Definition. [Ord. No. 02-95 § 1]

TOWNSHIP OFFICIAL OR EMPLOYEE AS USED IN THIS SECTION — Shall mean each person presently or formerly holding any Township office, position or employment, elective or appointive, full-time or part-time, whether or not compensated, by fixed salary or hourly rate, and including members of the various boards, commissions or agencies of the Township, but shall not include any person furnishing professional or extraordinary unspecifiable services as an independent contractor under separate appointment, retainer or contract.

§ 2-46.3. Providing Defense of and Indemnification for Civil Actions. [Ord. No. 02-95 § 1; Ord. No. 2352-10; Ord. No. 2384-11]

The Township of Millburn is hereby authorized to provide out of public funds for the defense of actions brought against its officials and employees and to indemnify such officials and employees for compensatory damages or any settlement approved by the Township Committee, to the fullest extent permitted by law, and subject to the limitations, exceptions and procedures of this section. The defense and indemnification shall extend to a cross-action, counterclaim or cross-complaint against a Township official or employee. The Township of Millburn is also authorized to indemnify any person as defined in Section 2-46-2 hereof, and pay any fees and the legal defense costs of any such person that may result from a clerical error or inadvertent omission in the completion and submission of any report or other form required or permitted to be submitted to any local, state or federal government. The obligation of the Township to defend and indemnify its officials or employees shall be limited to acts or omissions which are within the scope of their employment.

§ 2-46.4. Indemnification for Costs of Defense for Criminal or Disciplinary Proceeding if Found

Innocent. [Ord. No. 02-95 § 1]

If any criminal or disciplinary action is instituted against a Township official or employee based upon the act or omission of that person arising out of and directly related to the lawful exercise of his or her official duties or under color of his or her authority, and that action is dismissed or results in a final disposition in favor of that officer or employee, the Township shall reimburse that person for the costs of defending the action, including attorneys' fees and costs of trial and appeals which are determined by the Township Committee to be reasonable.

§ 2-46.5. Exceptions. [Ord. No. 02-95 § 1; Ord. No. 2384-11 § 2]

Indemnification or the defense of any action shall not be provided or shall be disclaimed if the Township Committee determines by resolution that any of the following conditions shall exist or occur:

- a. The act, clerical error or omission complained of was not within the scope of the official's or employee's authority, duty to or employment by the Township.
- b. The act, clerical error, omission or failure to act complained of was a crime or because of actual fraud, actual malice, willful misconduct or an intentional wrong.
- c. The defense of the action or proceeding would create a conflict of interest between the Township and the official or employee.
- d. There exist policies of insurance, either obtained by the Township or by another, by virtue of which the Township official or employee is entitled to a defense of the action from the insurer. However, the Township shall provide a defense and indemnification as provided by this section to the extent the official or employee is not covered by insurance.
- e. The Township official or employee has failed to deliver to the Township Business Administrator within ~~ten (10)~~ twenty (20) days of the time he or she is served with the summons, complaint, process, notice, demand or pleading, the original or copy of such document; provided, however, that this time period may be extended by the Township Committee for good cause shown.
- f. The official or employee fails to request the defense of any action.
- g. The official or employee fails to cooperate fully with the Township in the defense of the matter.
- h. If the action or proceeding is brought by or on behalf of the Township.

§ 2-46.6. Reimbursement of Township. [Ord. No. 02-95 § 1; Ord. No. 2352-10; Ord. No. 2384-11 § 3]

Notwithstanding any municipal ordinance to the contrary, if a Township official or employee is found guilty of a crime, or if the Township Committee determines that the act or omission complained of constitutes actual fraud, actual malice, willful misconduct or an intentional wrong, the Township official or employee shall not be indemnified by the Township, the Township shall not pay any compensatory, exemplary and/or punitive damages on behalf of the Township official or employee, and the Township official or employee shall be obligated to reimburse the Township for the cost of the legal defense (if any is provided by the Township) within such time and upon such terms as determined by the Township Committee. A determination by the Township Committee that the act or omission complained

of constitutes actual fraud, actual malice, willful misconduct or an intentional wrong shall be made at the conclusion of any alternative dispute resolution or litigation and exhaustion of all appeals, and shall be made by resolution of the Township Committee.

§ 2-46.7. Procedures. [Ord. No. 02-95 § 1; Ord. No. 2352-10; Ord. No. 2384-11 §§ 4, 5]

- a. Official's or Employee's Duty to Notify, Request Defense By and Cooperate with, the Township. A Township official or employee shall not be entitled to a defense or indemnification under this section unless within ~~ten (10)~~ twenty (20) calendar days of the time he or she is served with any summons, complaint, process, notice, demand or pleading he or she delivers the original or copy thereof to the Township Business Administrator, requests that the Township provide a defense and fully cooperates with the Township during the defense. After the Business Administrator has received the summons, complaint, process notice, demand or pleading and a request from the Township official or employee that the Township provide a defense, the Business Administrator shall notify the Township Committee. If the Township official requesting a defense or indemnification under this section serves as the Township Business Administrator at the time the Township official is served with any summons, complaint, process, notice, demand or pleading, then the Township Business Administrator shall deliver the original or a copy of the summons, complaint, process, notice, demand or pleading, and his or her request for defense or indemnification, directly to the Township Committee.
- b. Notification of Township Committee. If the Township Committee determines that the official or employee requesting defense or indemnification is not entitled to a defense or indemnification under this section, then within ~~thirty (30)~~ forty-five (45) days after the Township Committee has received the notice required pursuant to subsection 2-46.7a, the Township Committee shall adopt a resolution declining to provide a defense or indemnification. The time periods for actions pursuant to paragraphs a and b of this subsection may be extended by the Township Committee for good cause shown.
- c. Township to Control Representation. Whenever the Township provides for the defense of a Township official or employee pursuant to this section, the Township may, through its attorney, assume exclusive control over the representation of such Township official or employee.
- d. Methods of Providing Defense. The Township may provide for a defense pursuant to this section by an attorney representing the Township or by employing other counsel for this purpose or by asserting the Township's right under any appropriate insurance policy which requires the insurer to provide the defense.
- e. Selection of Attorney and Approval of Fees. If the Township Committee decides not to select counsel to represent the official or employee, the official or employee may propose his or her own counsel, subject to the approval of the Township Committee, who shall enter an agreement with the Township, setting forth the rate of compensation and the estimated total cost of the defense.

§ 2-46.8. Punitive Damages. [Ord. No. 02-95 § 1; Ord. No. 2384-11 § 6]

Nothing in this section shall require the Township to pay for punitive or exemplary damages resulting from the commission of a crime, actual fraud, actual malice, willful misconduct or an intentional wrong. However, the Township Committee may indemnify an official or employee for punitive or exemplary damages provided the Township Committee determines the acts complained of did not constitute a crime, actual fraud, actual malice, willful misconduct or an intentional wrong. Such a determination shall

be made by resolution of the Township Committee.

§ 2-46.9. Retroactivity. [Ord. No. 02-95 § 1]

The events giving rise to a cause of action or claim for which a defense or indemnification is sought must have occurred after January 1, 1990, and any claim based on an event prior to that date shall not be covered by this section.

Ordinance 2655-23

ATTEST:

Christine A. Gatti, Municipal Clerk

MILLBURN TOWNSHIP

By: _____
Maggee Miggins, Mayor

Introduced: 11/21/2023
Published: 11/30/2023
Public Hearing/Adopted: 12/19/2023
Published: 1/4/2024

CERTIFICATION

I, Christine A. Gatti, Clerk of the Township of Millburn, in the County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Township Committee at a regular meeting held on the 19th day of December, 2023.

Christine A. Gatti, RMC
Municipal Clerk