

**TOWNSHIP OF PEMBERTON**  
**ORDINANCE NO. 1-2026**

**ORDINANCE OF THE TOWNSHIP OF PEMBERTON, COUNTY OF BURLINGTON, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER 34 OF THE TOWNSHIP CODE OF THE TOWNSHIP OF PEMBERTON ENTITLED “OFFICERS AND EMPLOYEES” SO AS TO REPEAL ARTICLE V ENTITLED “DEFENSE AND INDEMNIFICATION” AND REPLACE IT WITH NEW ARTICLE V ENTITLED “DEFENSE AND INDEMNIFICATION”**

**BE IT ORDAINED**, by the Township Council, Township of Pemberton, County of Burlington, State of New Jersey as follows:

**SECTION 1.**

Article V of Chapter 34 of the Township Code of the Township of Pemberton entitled “Defense and Indemnification” is hereby repealed in its entirety and replaced with the following:

**ARTICLE V. DEFENSE AND INDEMNIFICATION**

**§34-13. General conditions; civil actions.**

- A Subject to the limitations set forth in the subsequent sections of this chapter, whenever any civil action has been or shall be brought against any person (hereinafter referred to as “employee” or “official”) holding or formerly holding any office, position or employment with the Township of Pemberton for any action or omission arising out of or in the course of the performance of the duties of such office, position or employment, the Township shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such persons from any financial loss resulting from the litigation. The Township shall provide for defense of and indemnify any present or former employee or official of the Township who becomes a defendant in a civil action if the person or persons involved:
- (1) Acted or failed to act in a matter in which the Township has or had an interest;
  - (2) Acted or failed to act in the discharge of a duty imposed or authorized by law; and
  - (3) Acted or failed to take action in good faith.
- B. However, the Township shall not indemnify any employee or official against the payment of punitive damages, penalties, or fines, but may provide for the legal defense or such claims in accordance with the standards set forth in this chapter, The Township may refuse to provide for the defense and indemnification of any civil action referred to in this chapter if the Township Council determines that;
- (1) The act or omission did not occur within the scope of a duty authorized or imposed by law;
  - (2) The act or omission was the result of actual fraud, willful misconduct, or actual malice; or
  - (3) The defense of the action or proceeding by the Township would create a conflict of interest between the Township and the employee(s) or official(s) involved.

- C. In any other action or proceeding, including criminal proceedings, the Township may provide for the defense of a present or former employee or official if the Township Council concludes that such representation is in the best interest of the Township and that the person to be defended acted or failed to act in accordance with the standards set forth in this chapter.
- D. Whenever the Township provides for the defense of any action set forth herein and as a condition of such defense, the Township may assume exclusive control over the representation of such persons defended, and such person shall fully cooperate with the Township. The Township may provide for the defense pursuant to this chapter by authorizing its Attorney to act on behalf of the person being defended or by employing other counsel for this purpose or by asserting the right of the Township under any appropriate insurance policy that requires the insurer to provide the defense. The Township attorney or other attorney selected by the Township Council shall represent the Township official or employee at a cost not to exceed the hourly rate which the Township compensates its Township attorney.

**§34-14. Criminal actions.**

The Township shall not defray the costs of defending any criminal action against any Township employee or official except as may be authorized by state statute or other municipal ordinance or resolution of the Township of Pemberton, and in those circumstances, the responsibility for defraying the costs of defending such employee or official shall be applicable only when such criminal proceedings shall have been dismissed or result in a final disposition in favor of the employee or official. Further, in the event that the Township indemnifies the employee or official, the cost of that indemnification shall not exceed the hourly rate paid to the Township Attorney. Nonetheless, should the Township Council determine that there is good cause to dismiss the employee or official arising out of the incident or related incidents of the criminal prosecution, the Township will not reimburse the employee or official for legal defense and costs of defending the suit, even though criminal proceedings against the employee or official may be dismissed or the employee or official found not guilty,

**§34-15. Ethics proceedings.**

The Township will not provide a defense for employees or officials who are charged with ethical offenses or violations. The Township Council may, however, authorize the Township to reimburse the employee or official for the reasonable cost of the defense of ethics proceedings, including investigation, costs and reasonable legal fees, as further defined in this chapter, provided that the ethics proceeding is dismissed or is finally determined in favor of the employee or official. In addition, the Township may indemnify an employee or official if the Mayor and Council, by a majority vote, finds that the Township employee or official who is found to have committed an ethical offense acted in a manner that was reasonably debatable at the time that the violation occurred and that the employee or official's actions or omissions did not constitute willful misconduct or an intentional wrong.

**§34-16 Limitations**

A. The Township shall not be obligated to defend and indemnify its employees or officials if:

- (1) The alleged act or omission was not within the scope of employment or authority, or the act or omission does not arise out of and is not directly related to the employee's or official's lawful exercise of his or her authority or duty in furtherance of the employee's authority or duty;

(2) The claim arises from circumstances under which the Township itself would not be liable for acts of its employees or officials under the doctrine of respondent superior;

(3) The act or omission constitutes a criminal offense, ethical offense, actual fraud, intentional or willful misconduct, actual malice or an intentional or wrongful act or omission;

(4) There exists policies or insurance, either obtained by the Township or by any other, by virtue of which the employee or official is entitled to a defense in question from any insurer, including coverage pursuant to the Joint Insurance Fund or Municipal Express Liability Policies;

(5) If the action or proceeding was brought by the Township itself against the employee or official;

(6) If the Township employee or official has failed to substantially cooperate with the Township and its agents, servants, attorneys, and employees in connection with the matter;

(7) If it is not deemed appropriate by the Township Council pursuant to the provisions of Chapter 10 of the New Jersey Tort Claims Act, N.J.S.A. 59:10-1 et seq., or any other statute or applicable law.

B. Specifically, excluded from the provisions of this chapter are the following classes or employees, officials, or former employees or officials:

(1) Any municipal employee or official providing any form of professional medical services, such as doctors and nurses, insofar as said civil action arises out of or concerns those professional medical services.

(2) Any part-time professional municipal employee or official, such as the Township Attorney, Assistant Attorney, Auditor and Engineer, insofar as said civil action arises out of or concerns those professional services, this exclusion does not pertain to full-time professional employees such as the Township Engineering Administrator and Finance Officer.

#### **§34-17 Counterclaims or affirmative actions**

If the Township employee or official files any counteraction, or counterclaim, or asserts any affirmative claims in the legal proceedings, the Township shall not be obligated to reimburse the employee or official for any attorney's fees or costs attributed to such counteraction, counterclaim, or affirmative claim.

#### **§34-18 Notice of claims to be provided to Township.**

A Township employee or official shall not be entitled to indemnification or reimbursement pursuant to this chapter unless, within 15 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 a copy thereof to the Township. Any Township employee or official who receives notice of a claim or is named as a party in any civil suit, ethics proceeding, or criminal proceeding either in his or her official capacity or in an individual capacity for events arising out of or connected directly or indirectly with the performance of his or her duty as a Township employee or official shall promptly advise the Township Administrator and the Township Attorney of the claim or that the civil suit or criminal proceeding has been commenced and shall supply a copy of any and all notices and pleadings pertaining to the matter. The township employee or official shall thereafter cooperate with the appropriate Township agents, attorneys, servants and employees in effectuating the provisions of this chapter.

#### **§34-19 Definitions**

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

OFFICIAL or EMPLOYEE – Any person elected, appointed or employed by the Township, paid or unpaid, in any way connected with the municipal

government of the Township of Pemberton, except for persons appointed to committees having no powers other than to advise. "Employee" shall include all persons on the municipal payroll. These terms shall not mean:

- A. Any person who is not a natural person;
- B. Any person while providing goods or services of any kind under any contract with the Township 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 Township; or
- D. Any person who as a condition of his or her appointment or contract is required to indemnify and defend the Township and/or secure insurance.

**IT IS FURTHER ORDAINED THAT**, if any part of this Ordinance shall be declared to be invalid or inoperative, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this Ordinance.

**IT IS FURTHER ORDAINED THAT**, all Ordinances or portions of Ordinances inconsistent herewith are hereby repealed to the extent of their inconsistency only.

**IT IS FURTHER ORDAINED THAT**, the Township Council intends that all general provisions, terms, phrases, and expressions contained in this Ordinance be liberally construed in order that the Township Council's true intent and meaning may be fully implemented.

**IT IS FURTHER ORDAINED THAT**, this Ordinance shall take effect upon passage, approval, and publication, as required by law.

**TOWNSHIP OF PEMBERTON**  
**ORDINANCE NO. 1-2026**

**NOTICE OF PUBLIC HEARING**

**ORDINANCE OF THE TOWNSHIP OF PEMBERTON,  
COUNTY OF BURLINGTON, STATE OF NEW JERSEY,  
AMENDING AND SUPPLEMENTING CHAPTER 34 OF  
THE TOWNSHIP CODE OF THE TOWNSHIP OF  
PEMBERTON ENTITLED “OFFICERS AND  
EMPLOYEES” SO AS TO REPEAL ARTICLE V  
ENTITLED “DEFENSE AND INDEMNIFICATION”  
AND REPLACE IT WITH NEW ARTICLE V ENTITLED  
“DEFENSE AND INDEMNIFICATION”**

The foregoing Ordinance was introduced and passed on first reading by the governing body of Pemberton Township at a meeting held on January 7, 2026 and will be considered for final passage after a public hearing at a meeting of the said governing body to be held on January 28, 2026 at the Pemberton Township Municipal Building, 500 Pemberton-Browns Mills Road, Pemberton, New Jersey, at 6:00 p.m. prevailing time, at which time any interested member of the public may comment on said Ordinance. During the week prior to and up to and including the date of such meeting or further consideration, copies of said Ordinance in its entirety may be obtained from the Township Clerk.

ATTEST:

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SUNSHINE DASHIELL, RMC, DEPUTY TOWNSHIP CLERK

**TOWNSHIP OF PEMBERTON**  
**ORDINANCE NO. 1-2026**

**NOTICE OF FINAL PASSAGE**

**ORDINANCE OF THE TOWNSHIP OF PEMBERTON,  
COUNTY OF BURLINGTON, STATE OF NEW JERSEY,  
AMENDING AND SUPPLEMENTING CHAPTER 34 OF  
THE TOWNSHIP CODE OF THE TOWNSHIP OF  
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“DEFENSE AND INDEMNIFICATION”**

Notice is hereby given that Ordinance No. 1–2026 as entitled above has been finally adopted on final reading by the governing body of Pemberton Township after a public hearing, at a meeting held on January 28, 2026. Said Ordinance shall take effect in accordance with law.

ATTEST:

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AMY P. COSNOSKI, RMC, TOWNSHIP CLERK

ACKNOWLEDGEMENT OF APPROVAL BY MAYOR \_\_\_\_\_

MATTHEW BIANCHINI

DATE: January 30, 2026

ATTEST:

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AMY P. COSNOSKI, RMC, TOWNSHIP CLERK