# ORDINANCE 2-2016

**OF THE GOVERNING BODY**

**OF THE BOROUGH OF BLOOMINGDALE**

**AN ORDINANCE OF THE BOROUGH OF BLOOMINGDALE, IN THE COUNTY OF PASSAIC AND STATE OF NEW JERSEY, AUTHORIZING THE BOROUGH OF BLOOMINGDALE TO PROVIDE LEGAL COUNSEL AND INDEMNIFICATION FOR OFFICIALS, EMPLOYEES**

**BE IT ORDAINED,** by the Borough Council of the Borough of Bloomingdale, in the County of Passaic, and State of New Jersey, that the following is hereby established as follows:

**SECTION 1.** Chapter 2, "Administration," to establish Article X, Section 2-92 "Defense and Indemnification," of the Code of the Borough of Bloomingdale is hereby amended to read and include the following:

# DEFENSE AND INDEMNIFICATION.

**2-92.1 Duty to Defend.**

Except as hereinafter provided, the Borough of Bloomingdale, hereinafter known as the Borough shall, upon the request of any present or former official, employee or appointee, herein after referred to as officials, of the Borough provide for indemnification and legal defense of certain civil or criminal actions brought against said person or persons arising from an act or omission falling within the scope of their public duties.

# 2-92.2 Exceptions.

Pursuant to N.J.S.A. 59:10-4, the indemnification and defense provided for in this ordinance shall include exemplary or punitive damages resulting from the official's civil violation of State or federal law if, in the opinion of the Borough Council the acts committed upon which the damages are based did not constitute actual fraud, actual malice, willful misconduct or an intentional wrong.

# 2-92.3 Limitations of Terms.

The terms of this ordinance and the definition of official, employee and appointee are to be construed liberally in order to effectuate the purposes of this ordinance except that these terms shall not mean a) any person who is not a natural person; and b) any person while providing goods or services of any kind under any contract with the Borough except an employment contract.

# 2-92.4 Civil Actions.

The Borough shall provide for defense of and indemnify any present or former official, employee or appointee of the Borough who becomes a defendant in a civil action if the person or persons involved a) acted or failed to act in a matter in which the Borough has or had an interest; b) acted or failed to act in the discharge of a duty imposed or authorized by law; and c) acted or failed to take action in good faith. For purposes of this ordinance, the duty and authority of the Borough to defend and indemnify shall extend to a cross-claim or counterclaim against said person.

# 2-92.5 Criminal Actions.

In any other action or proceeding, including criminal proceedings, the Borough may provide for the defense of a present or former official, employee or appointee, if the Borough Committee concludes that such representation is in the best interest of the Borough and that the person to be defended acted or failed to act in accord with the standards set forth in this ordinance.

# 2-92.6 Exclusive Control.

Whenever the Borough provides for the defense of any action set forth herein and as a condition of such defense, the Borough may assume exclusive control over the representation of such persons defended and such person shall cooperate fully with the Borough in accordance with the law.

# 2-92.7 Representation.

The Borough may provide for the defense pursuant to this ordinance by authorizing its attorney to act in behalf of the person being defended or by employing other counsel for this purpose or by asserting the right of the Borough under any appropriate insurance policy that requires the insurer to provide defense.

# 2-92.8 Notice

It shall be the duty of the employee to immediately notify the town as to any action threatened against the employee.

# 2-92.9 Methods of Providing Defense/Reimbursement

The Borough may provide any defense required of it under this Article through the Municipal Attorney or through the retention of another attorney. The cost of retention of an outside attorney shall be provided when the defense of the action

or proceeding creates a conflict of interest between the Borough and the public employee.

* + 1. When the Borough provides any defense required of it under this article through the Borough Attorney, the Borough may assume exclusive control over the representation of the public employee, and such employee shall cooperate fully with the defense.

1. The Borough Council may approve the retention of an outside attorney in accordance with the following conditions:
   1. The employee does not have the right to an attorney of his or her choice at Borough expense. However, the Borough Council may approve of an attorney requested by the employee at a rate not to exceed the hourly rate it presently compensates the municipal attorney.
   2. The attorney retained by the Borough shall provide a written retainer agreement and shall submit an affidavit of services rendered prior to payment.
   3. Nothing in this section shall prevent an employee from retaining an attorney of the employee's choice at his or her own expense, without reimbursement from the **B**orough.

# 2-92.10 When Effective.

This ordinance shall take effect immediately upon passage and publication as required by law.

**NOTICE**

NOTICE IS HEREBY GIVEN, that the above Ordinance was introduced and passed on first reading at the Reorganization/Work Session Meeting of the Governing Body of the Borough of Bloomingdale held in the Municipal Building on the 19th day of January 2016, and the same shall come up for final passage at an Official Meeting of the Governing Body to be held on the 2nd day of February, 2016 at 7:00 P.M., at which time any persons interested shall be given the opportunity to be heard concerning said Ordinance.

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Jane McCarthy, RMC

Municipal Clerk