

TOWNSHIP OF WASHINGTON
BERGEN COUNTY, NEW JERSEY

ORDINANCE NO. 18-09

**AN ORDINANCE AUTHORIZING THE TOWNSHIP TO PROVIDE LEGAL
COUNSEL AND INDEMNIFICATION FOR OFFICIALS, EMPLOYEES AND
APPOINTEES OF THE TOWNSHIP IN CERTAIN ACTIONS BROUGHT
AGAINST SAID OFFICIALS, EMPLOYEES AND APPOINTEES.**

BE AND IT IS HEREBY ORDAINED by the Township Council of the Township of Washington that the Code of the Township of Washington is hereby amended by creating Chapter 12 therein entitled "Defense and Indemnification" which shall provide as follows:

1. "Chapter 12

DEFENSE AND INDEMNIFICATION

§ 12-1. Indemnification.

Except as hereinafter provided, the Township of Washington (hereinafter referred to as the "Township") shall provide for indemnification and legal defense of any civil action brought against any present or former official, employee or appointee of the Township arising from an act or omission falling within the scope of their public duties.

§ 12-2. Exceptions.

The Township shall not indemnify any person against the payment of punitive damages, penalties, or fines, but may provide for the legal defense of such claims in accord with the standards set forth herein. The Township may refuse to provide for the defense and indemnification of any civil action referred to herein if the Township Council determines that (a) the act or omission did not occur within the scope of a duty authorized or imposed by law; (b) the act or failure to act was the result of actual fraud, willful misconduct or actual malice of the person requesting defense and indemnification; or (c) the defense of the action or proceeding by the Township would create a conflict of interest between the Township and the person or persons involved.

§ 12-3. Intent.

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;
- 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; and
- 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.

§ 12-4. Cross-Claims and Counterclaims.

For purposes of this ordinance, the duty and authority of the Township to defend and indemnify shall extend to a cross-claim or counterclaim against said official, employee or appointee. However, if such official, employee or appointee files a counterclaim, third-party claim, or any similar claim in the legal proceeding in which such official, employee or appointee is being indemnified by the Township, the Township shall not be obligated to provide counsel to pursue any such claim, or to reimburse said person for any attorneys' fees or costs attributable to said claims.

§ 12-5. Criminal Proceedings.

In any criminal proceedings, the Township may provide for the defense of a present or former official, employee or appointee, 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 within the scope of such person's public duties.

§ 12-6. Exclusive Control.

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 person defended, and such person shall cooperate fully with the Township. The Township may provide for the defense pursuant to this ordinance 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 defense.”

2. If any section, sub-section, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid such decision shall not affect the remaining portions of this Ordinance.

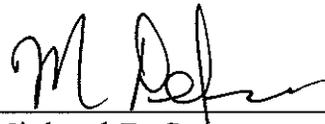
3. All Ordinances or any provisions of any ordinance inconsistent with the provisions of this Ordinance are hereby repealed as to such inconsistencies and not otherwise.

4. This Ordinance shall take effect upon final passage and publication and in accordance with the Charter, and subject to such emergency resolution as may be adopted pursuant to Section 17-32 thereof. [R.S. 40:69A-181 (b)].

ATTEST:

APPROVED:
TOWNSHIP COUNCIL OF THE
TOWNSHIP OF WASHINGTON


Susan Witkowski,
Township Clerk

BY 
Michael DeSena,
Council President

First Reading of Township Ordinance No. 18-09

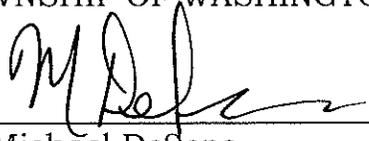
Introduction Date: June 18, 2018

MOTION		SECOND		COUNCIL	AYES	NAYES	ABSTAIN	ABSENT
Bruno	x	Bruno		Bruno	x			
Cascio		Cascio		Cascio	x			
Cumming		Cumming		Cumming	x			
DeSena		DeSena		DeSena	x			
Ullman		Ullman	x	Ullman	x			

ATTEST:

APPROVED:
TOWNSHIP COUNCIL OF THE
TOWNSHIP OF WASHINGTON


Susan Witkowski,
Township Clerk

BY 
Michael DeSena,
Council President

Second Reading of Township Ordinance No. 18-09

Adoption Date: July 2, 2018

MOTION		SECOND		COUNCIL	AYES	NAYES	ABSTAIN	ABSENT
Bruno		Bruno		Bruno	x			
Cascio	x	Cascio		Cascio	x			
Cumming		Cumming		Cumming	x			
DeSena		DeSena		DeSena	x			
Ullman		Ullman	x	Ullman	x			