

ORDINANCE NO. 16-7-20

Indemnification of Officials, Officers and Employees of the Town of Pearl River.

- (a) **Definitions.** The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Official, officer or employee means such a person holding office or employment in the executive branch of Town government or in any department, office, division or agency thereof, or in any legislative branch of Town government including, without limitation, the mayor, a Town councilmember, the police chief, the Town attorney, the assistant Town attorney, the Town clerk, and any Town employee acting under the direct supervision of a Town official. The term "official, officer or employee" of the Town means the following boards and their members:

- (1) The planning and zoning commission; and
- (2) Any other board or commission appointed by the mayor or Town council according to law

As used in this section, the term "official, officer or employee" of the Town does not include an independent contractor, which includes persons who have been hired for a specific job with the Town.

- (b) **Holding harmless.** The Town shall hold harmless and indemnify each official, officer and employee of the Town from any financial loss which, for purposes of this ordinance, shall mean and include court costs, judicial interest and monetary damages, arising out of any claim, demand, suit or judgment in any court by reason of alleged negligence or other act by the official, officer or employee, including civil rights violations, if the official, officer or employee, at the time damages were sustained, was acting in the discharge of his duties and within the scope of his office, employment, contract or assignment, and such damages did not result from the intentional wrongful act or gross negligence of the official, officer or employee.

- (c) **Defense by Town attorney.** Upon receipt of any petition, summons, complaint, process, notice, demand or pledge to any official, officer or employee, he shall immediately deliver the original or a copy of the original to the Mayor. Upon delivery to the Mayor, the Town attorney shall assume control of the defense of the official, officer or employee, unless:

- (1) In such instances when the official, officer or employee states in writing that he does not wish to be represented by the Town attorney, the Town shall not be responsible for the fee of any counsel retained by the officer or employee.
- (2) The official, officer or employee is covered by a policy of insurance under the terms of which the insurance carrier is required to provide counsel, and the insurance carrier does in fact provide a defense for the full extent of the claims against the official, officer or employee.
- (3) After thorough investigation by the Town attorney, it appears that the official, officer or employee was not acting in the discharge of his duties and within the scope of his office, employment, contract or assignment at the time of the alleged act or omission; or that he was acting in an intentionally wrongful manner; or was grossly negligent; provided, however, that the Town shall not be obligated to indemnify the official, officer or employee for attorney fees incurred, unless the Town attorney had determined not to assume the defense of the officer or employee based on his investigation, and the court subsequently finds that the official, officer or employee was acting in the discharge of his duties and within the scope of his employment, contract or assignment, and the damages did not result from the intentional wrongful act or gross negligence of the officer or employee.
- (4) After thorough investigation, if it appears that representation of the official, officer or employee would conflict with the representation of another official, officer or employee of the Town or the

Town itself, the Town attorney with the approval of the Mayor shall secure special counsel to represent the official, officer or employee at Town expense.

- (d) **Decision not to defend by Town attorney.** In any case where the Town attorney does not undertake the representation of the official, officer or employee, the Town attorney may take such action as he deems necessary including enrolling as co-counsel, to protect the interests of the Town. The decision of the Town attorney not to defend an official, officer or employee and any and all information obtained by him as a result of the investigations conducted pursuant to subsection (c)(3) or (c)(4) shall be considered confidential and shall not be admissible as evidence in any legal proceeding and no reference thereto shall be made in any trial or hearing.
- (e) **Liability for monetary damages.** If an official, officer or employee of the Town is held liable for monetary damages for actions arising under the circumstances provided by this section, the Town shall appropriate a sum sufficient to reimburse the official, officer or employee. The court, upon request of any party, shall give written findings of fact as to whether the official, officer or employee was acting in the discharge of his duties and within the scope of his employment, and whether the damages were the result of the intentional wrongful act or gross negligence of the official, officer or employee. An out-of-court settlement shall have the effect of a judgment of a court of competent jurisdiction for purposes of this section, but the settlement shall be approved by the Town attorney.
- (f) **Private counsel.** Nothing in this section shall in any way impair, limit or modify the rights and obligations of any insurer under any policy of insurance or impair the right of the individual to obtain private counsel in his own behalf. However, the Town shall not be obligated to indemnify the individual for the attorney fees so incurred, except as provided in subsection (c)(3) of this section.
- (g) **Compromise settlement.** Nothing in this section shall prohibit the Town from entering into a compromise settlement or agreement with the claimant prior to any judgment.
- (h) **Death.** In the event of the death of officials, officers and employees of the Town, the benefits of this section shall inure to their heirs, legatees, successors or assigns.

BE IT THEREFORE ORDAINED by the Town Council of the Town of Pearl River that on July 19, 2016, this ordinance was adopted by a motion from Alderman Walsh and seconded by Alderman Phillips and will go into effect immediately upon its passage.

VOTING:

Yeas:	5
Nays:	0
Absent:	0
Abstain:	0

Clarence D. McQueen, Mayor

Carla Benelli, Town Clerk

ADOPTED this 19th day of July, 2016