**TOWN OF CAIRO**

**LOCAL LAW # OF 2016**

**DEFENSE AND INDEMNIFICATION OF EMPLOYEES AND OFFICIALS**

§1. Definitions.

As used in this local law, unless the context otherwise requires:

EMPLOYEE

Any commissioner, member of a public board or commission, trustee, director, officer, employee, volunteer expressly authorized to participate in a publicly sponsored volunteer program, or any other person holding a position by election, appointment or employment in the service of the Town, whether or not compensated. The term "employee" shall include a former employee, his/her estate or judicially appointed personal representative.

TOWN

The Town of Cairo and its departments and agencies.

§2. Defense of employee.

Upon compliance by the employee with the provisions of §4 of this local law, the Town shall provide for the defense of the employee in any civil administrative action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting within the scope of his/her public employment or duties. This duty to provide for a defense shall not arise where such civil administrative action or proceeding is brought by or at the behest of the Town.

§3. Indemnification.

A. The Town shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a state or federal civil administrative action or proceeding, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting within the scope of his/her public employment or duties; provided, further, that in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by the Town. The duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing, maliciousness, or recklessness on the part of the employee.

B. The Town shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that any employee acting within the scope of his/her public employment or duties has, without willfulness or intent on his/her part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any civil administrative action or proceeding of this state of the United States.

C. Punitive damages; confidentiality.

(1) The Town shall also indemnify and save harmless its employees in the amount of any punitive damages in accordance with the following procedure and such additional procedures as may be established by the Town Attorney as follows:

(a) Findings and determination by Town Attorney; Town Attorney as defendant. Within 20 days of employee's delivery of a summons, or complaint, process, notice, demand or pleading containing a demand for punitive damages, the Town Attorney shall make findings and an initial determination whether the employee should or should not be indemnified against any punitive damages, based upon the facts and circumstances then known to the Town Attorney as follows:

[1] Whether the employee's actions were or were not within the scope of his/her employment;

[2] Whether the employee's actions were or were not reckless, malicious, grossly negligent or otherwise outside of the standards required for employees holding comparable positions with the Town;

[3] Whether the employee's actions were or were not made in good faith in the best interest of the Town policy.

(b) In the event the Town Attorney is a named defendant in an action or proceeding or cannot serve for any other reason, the Town Supervisor shall appoint another Town officer to serve in the stead of the Town Attorney on the matter under review.

(2) In the event of a final judgment of punitive damages against the employee, the employee shall serve copies of such judgment personally or by certified or registered mail within 10 days of entry upon the Town Attorney and upon the Town Clerk on behalf of the Town Board. The Town Board shall meet as soon as practicable in executive session to review, make findings taking into consideration and giving weight to the initial and any additional findings made by Town Attorney (provided the employee did not formerly misrepresent or omit material facts evidenced at trial), and determine if the following have been met, and if so met, said Board shall appropriate the funds necessary to pay such punitive damages:

(a) The judgment of punitive damages is based on an act or omission of the employee acting within the scope of his/her employment;

(b) At the time of the action or omission giving rise to the liability, the employee acted without recklessness, without maliciousness, without gross negligence, and otherwise within the standards required for employees holding comparable positions within the Town;

(c) At the time of the act or omission, the employee acted in good faith and in the best interest of the Town; and

(d) At the time of the act or omission, the employee did not willfully violate a clearly established provision of law or Town policy.

(3) Deliberations, findings and determinations of the Town Attorney and the Town Board shall remain confidential.

§4. Conditions.

The duty to defend or indemnify and save harmless prescribed by this chapter shall be conditioned upon:

A. Delivery by the employee to the Town Attorney of a written request to provide for his/her defense, together with the original or a copy of any summons, complaint, process, notice, demand or pleading within 10 days after he/she is served with such document.

B. The full cooperation of the employee in the defense of such action or proceeding, and in defense of any action or proceeding against the Town based upon the same act or omission, and in the prosecution of any appeal.

§5. Eligibility; rights of other parties; affect on Workers' Compensation Law.

The benefits of this chapter shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party, nor shall any provision of this chapter be construed to affect, alter or repeal any provision of the Workers' Compensation Law.

§6. Effect on other obligations.

This chapter shall not in any way affect the obligation of any claimant to give notice to the Town under § 10 of the Court of Claims Act, § 50-c of the General Municipal Law, or any provision of law.

§7. Insurance.

The Town Supervisor is hereby authorized and empowered to purchase insurance from any insurance company created by or under the laws of this state, or authorized by law to transact business in this state, against any liability imposed by the provisions of this chapter or to act as a self-insurer with respect thereto.

§8. Payments.

All payments made under the terms of this chapter, whether for insurance of otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

§9. Rights and obligations of insurers.

The provisions of this chapter shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

§10. Effect on immunity to liability.

Except as otherwise specifically provided in this chapter, the provisions of this chapter shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to or conferred upon any unit, entity, officer or employee of the Town by, in accordance with, or by reason of any other provision of state or federal statutory or common law.

§11. Benefits to be supplemental.

Benefits accorded to employees under this chapter shall be in supplement to defense or indemnification protection accorded the same employees by other enactment.

§12. Severability.

If any provision of this chapter or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provisions of this chapter or the application of any such provision to any other person or circumstance.

§13. Applicability.

This chapter shall apply to all actions or proceedings in which final judgment has not yet been entered.