

RESOLUTION
AMENDMENT OF CHAPTER 2.16, TOWN MUNICIPAL CODE
APPROVED

Resolution by:

Seconded by:

WHEREAS the Town of Big Flats held a public hearing on July 9th, 2014 for the change in Chapter 12.16 of the Town of Big Flats municipal code when it should have been for a change in Chapter 2.16, and

WHEREAS at the public hearing on July 9th, 2014 no comments for or against nor in general as the change in chapter 2.16 of the municipal code, and

WHEREAS this provides legal defense and indemnification in civil actions against any employee, and

WHEREAS for environmental review purposes, interpreting an existing code, and adoption of regulations, policies, or procedures and local legislative decisions are Type II action in accordance with SEQRA 6 NYCRR, Part 617.5 (c) (31,27) and as such no further action is necessary regarding the same, now

BE IT THEREFORE be enacted by the Town Board of Big Flats as follows: That the presently existing Chapter 2.16 of the Town of Big Flats Municipal code shall be repealed and replaced by the following:

Chapter 2.16. DEFENSE AND INDEMNIFICATION OF OFFICERS AND EMPLOYEES

2.16.010 Title.

This chapter shall be known as "Legal Defense of Town Officers and Employees."

2.16.020. Definition of Employee.

As used in this chapter, unless the context otherwise requires the term Employee shall mean 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 a public entity, whether or not compensated, but shall not include an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

2.16.030. Employees to be defended; scope of defense.

A. Upon compliance by the employee with the provisions of 12.16.040 of this chapter, the town shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting or in good faith purporting to act within the scope of his public employment or duties. Such defense shall not be provided where such civil action or proceeding is brought by or on behalf of the Town.

B. Subject to the conditions set forth in this chapter, the employee shall be represented by the Town Attorney or an attorney chosen by the employee from among not less than three attorneys selected by the Town Attorney and Town Supervisor and approved by the Town Board on the basis of their qualification and experience to defend the litigation, to be employed or retained by the town for the defense of the employee. The employee shall be entitled to be represented by private counsel of his/her choice whenever the Town Attorney determines, based upon investigation and review of the facts and circumstances of the case, that representation by the Town Attorney would be inappropriate, or a court of competent jurisdiction determines that a conflict of interest exists and that the employee cannot be represented by the Town Attorney. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion. Reasonable attorney's fees and litigation expenses shall be paid by the Town to such attorney(s) employed or retained, from time to time, during the pendency of the civil action or proceeding subject to certification by the Town Supervisor that the employee is an employee, as defined in this chapter, and otherwise is entitled to representation under the terms and conditions of this chapter. Payment of such fees and expenses shall be made in the same manner as payment of other claims and expenses of the town.

C. Where the employee delivers copies of all paperwork served on him and a request for a defense to the Town Attorney as required by 12.16.040 of this chapter, the Town Attorney may take the necessary steps, including the retention of an attorney under the terms and conditions provided in Subsection B of this section, on behalf of the employee to avoid entry of a default judgment, pending resolution of any question relating to the obligation of the town to provide a defense.

2.16.040. Indemnification of officers and employees.

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 court 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 or purporting to act within the scope of his public duties or employment; provided, further, that in the case of a settlement, this

duty to indemnify and save harmless shall be conditioned upon the approval of the amount of the settlement by the Town Board.

B. Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employees. Additionally, if it is determined by the court or the jury that the employee or any employees that their actions were due to intentional wrongdoing or reckless acts any legal fees paid to the attorney(s) represented the employee(s) shall be reimbursed to the town by the employee(s).

C. Nothing in this section shall authorize the town to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties or money recovered from an employee pursuant to General Municipal Law, § 51; provided, however, that 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 an employee acting or purporting to act within the scope of his public employment or duties has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of this state or the United States.

D. Upon entry of a final judgment against the employee or upon the settlement of the claim, the employee shall serve a copy of such judgment or settlement upon the Supervisor, personally or by certified mail within 30 days of the date of entry or settlement, and, if not inconsistent with the provisions of this chapter, the amount of such judgment or settlement shall be paid by the Town in the same manner as other town charges.

2.16.050. Notice to town and employee cooperation required.

The duties to defend or indemnify and save harmless provided in this chapter shall be contingent upon delivery to the Town Attorney or Town Supervisor 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 ten days after the employee is served with such document(s) and the full cooperation of the employee in the defense of such action or proceeding and defense of any action or proceeding against the town based upon the same act or omission and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the town provide for his defense and indemnification pursuant to this chapter, unless the employee shall state in writing that a defense and any indemnification is not requested.

2.16.060. Construction of provisions; applicability.

A. The benefits of this chapter will 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 provisions of the Workers' Compensation Law.

B. 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.

C. 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 available to or conferred upon any unit, entity, officer or employee of the town or any right to defense by, in accordance with or by reason of any other provision of state or federal statutory or common law.

D. The provisions of this chapter shall apply to all actions and proceedings specified herein which have been commenced, instituted or brought before, on or after the effective date of this chapter.

E. The town may either 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 as alleged in any court action referred to herein, or to act as a self-insurer with respect thereto.

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

G. Except as otherwise provided in this chapter, benefits accorded to employees under this chapter shall be in lieu of and take the place of defense or indemnification protections accorded the same employees by another enactment, unless the Town Board shall have provided that these benefits shall supplement, and be available in addition to, defense or indemnification protection conferred by another enactment.

F. This chapter shall not in any way affect the obligation of any claimant to give notice to the town under section ten of the court of claims act, section 50-e or any other provision of law.

G. If any provision of this section 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 provision of this section or the application of any such provision to any other person or circumstance.

2.16.070. When effective.

This chapter shall take effect immediately upon filing in the office of the Secretary of State.

CARRIED: AYES:
NAYS:

ABSENT: