

## Model Indemnification Ordinance

An Ordinance Authorizing the (local unit name) to Provide Legal Counsel and Indemnification for Officials, Employees and Appointees of the (local unit type) in Certain Actions Brought Against Said Officials, Employees and Appointees.

BE IT ORDAINED by the (governing body name) that:

Section 1. Except as hereinafter provided, the (local unit name), hereinafter known as the (local unit type) shall, upon the request of any present or former official, employee or appointee of the (local unit type) provide for indemnification and legal defense of any civil action brought against said person or persons arising from an act or omission falling within the scope of their public duties.

Section 2. The (local unit type) 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 (local unit type) may refuse to provide for the defense and indemnification of any civil action referred to herein if the (governing body name) 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 (local unit type) would create a conflict of interest between the (local unit type) and the person or persons involved.

Optional wording for Section 2:

Section 2. Pursuant to 59:10-4, the indemnification and defense provided for in this ordinance shall include exemplary or punitive damages resulting from the employee's civil violation of State or federal law if, in the opinion of the (governing body name) the acts committed upon which the damages are based did not constitute actual fraud, actual malice, willful misconduct or an intentional wrong.

Section 3. 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 (local unit type) except an employment contract; c) any person while providing legal or engineering services for compensation unless said person is a full-time employee of the (local unit type); and d) any person who as a condition of his or her appointment or contract is required to indemnify and defend the (local unit type) and/or secure insurance.

Section 4. The (local unit type) shall provide for defense of and indemnify any present or former official, employee or appointee of the (local unit type) 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 (local unit type) 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 (local unit type) to defend and indemnify shall extend to a cross-claim or counterclaim against said person.

Section 5. In any other action or proceeding, including criminal proceedings, the (local unit type) may provide for the defense of a present or former official, employee or appointee, if the (governing body name) concludes that such representation is in the best interest of the (local unit type) and that the person to be defended acted or failed to act in accord with the standards set forth in this ordinance.

Section 6. Whenever the (local unit type) provides for the defense of any action set forth herein and as a condition of such defense, the (local unit type) may assume exclusive control over the representation of such persons defended and such person shall cooperate fully with the (local unit type).

Section 7. The (local unit type) 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 (local unit type) under any appropriate insurance policy that requires the insurer to provide defense.

Section 8. This ordinance shall take effect immediately upon passage and publication as required by law.

Drafting Note: Title 59 permits local units to adopt an ordinance defending and indemnifying its officials, employees and appointees in certain lawsuits. However, in drafting the ordinance, care must be taken to avoid including certain non-employees, vendors, and firms providing goods and services that are not typically covered under local unit insurance policies (see section 2). In a few cases, local units have been required by their ordinances to indemnify certain persons even though their insurance policies provided no coverage. Local units that have already adopted indemnification ordinances should review these ordinances with their General Counsel and insurance advisor. If necessary, the ordinance should be amended to minimize the local unit's exposure.