

## TOWN OF BRUNSWICK

### LOCAL LAW NO. 2 OF THE YEAR 2017

#### A LOCAL LAW PROVIDING FOR THE DEFENSE AND INDEMNIFICATION OF OFFICERS AND EMPLOYEES OF THE TOWN OF BRUNSWICK

##### Section 1. Legislative Intent.

Public Officers Law §18 authorizes municipalities, such as the Town of Brunswick, to adopt that section and thereby provide defense and indemnification protections to its officers and employees in connection with civil actions or proceedings, state or federal, arising out of an alleged act or omission which occurred or allegedly occurred while the officer or employee was acting within the scope of his public employment or duties. The purpose of this Local law is to confer the benefits of Public Officers Law §18, and such other benefits in supplement thereto as are hereinafter set forth, and thereby provide legal and financial protection to those individuals who serve the Town of Brunswick as municipal officials, appointees, and employees from losses which might result from legal actions which may be brought against them in their individual capacities for acts or omissions undertaken while in the performance of their official duties and responsibilities. In enacting this local law, this Town Board finds that the State of New York, and other towns and municipalities in the State of New York, have enacted similar provisions for the legal and financial protection of their officers and employees, and that such security is also required for the officers and employees of the Town of Brunswick. It is the intent of this local law to provide such protections to officers and employees of the Town of Brunswick similar to that provided to state officers and employees and the officers and employees of other municipalities and public entities, so as to continue to attract qualified and committed individuals to serve the Town of Brunswick. The benefits and protections accorded to officers, appointees and employees of the Town of Brunswick pursuant to this local law are intended to be in the nature of additional compensation and remuneration for the services they provide to the Town, and to thereby attract and retain qualified individuals to the service of the Town of Brunswick.

##### Section 2. Definitions.

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

**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, but shall not include an independent contractor. The term “Employee” shall include a former employee, his/her estate or judicially appointed personal representative.

**TOWN** – The Town of Brunswick, its departments and agencies.

Section 3. Applicability.

The provisions of this local law shall apply to all actions and proceedings pending upon the effective date thereof, or thereafter instituted.

Section 4. Application of Public Officers Law.

The full benefits of Public Officers Law §18 are hereby conferred upon the Employees of the Town of Brunswick and the Town of Brunswick shall be liable for the costs incurred under the provisions of the said statute, all subject to the terms and conditions therein contained.

Section 5. Supplemental Defense and Indemnification - Civil Actions and Proceedings

For the purposes of this local law, the term “civil action or proceeding, state or federal”, as used in Public Officers Law §18.3.(a), shall be deemed to include, in addition to all civil actions and proceedings in a state or federal court, the following:

- A. Any civil action or proceeding in a state or federal administrative agency; and
- B. Any civil action or proceeding in a state or federal court alleging that the Employee violated the civil rights of any claimant, petitioner or plaintiff under the U.S. Civil Rights Act (42 U.S.C. §§1981 and 1983).

Section 6. Supplemental Indemnification - Duty to Reimburse - Criminal Proceedings.

- A. Reimbursement of Attorneys’ Fees and Litigation Expenses.
  - 1. Upon compliance by the Employee with the provisions of Section 6.B. of this local law, and subject to the provisions set forth in Section 6.A.3. below, it shall be the duty of the Town to reimburse the Employee for reasonable attorneys’ fees at rates prevailing in the local legal community and reasonable and necessary litigation expenses incurred by or on behalf of an Employee in connection with:
    - a. The Employee’s defense of a criminal proceeding in a state or federal court arising out of any act which occurred or allegedly occurred while such Employee was acting within the scope of his public employment or duties, upon the complete acquittal of the Employee of all of the criminal charges, or upon the complete, final, and unconditional

dismissal or withdrawal of all of the criminal charges against such Employee; or

- b. The Employee's appearance before a grand jury, which returns no true bill against the Employee, where such appearance was required as a result of any act which occurred while the Employee was acting within the scope of Employee's public employment or duties, unless such appearance occurs in the normal course of the public employment or duties of the Employee; or
  - c. The Employee's appearance before any criminal law enforcement or investigative agency, which investigation is concluded without criminal charges being brought against the Employee, where such appearance was required as a result of any act which occurred while the Employee was acting within the scope of Employee's public employment or duties, unless such appearance occurs in the normal course of the public employment or duties of the Employee.
- 2. The Employee shall be entitled to private counsel of his or her choosing, except that the Town Attorney may require appropriate groups of Town Employees be represented by the same private counsel in appropriate cases. Any dispute with respect to multiple Employees being represented by a single counsel shall be resolved by way of special proceeding in a court of competent jurisdiction.
  - 3. Upon application for reimbursement for reasonable attorneys' fees or reasonable and necessary litigation expenses, or both, made by or on behalf of an Employee as provided in Section 6.B. of this local law, the Town Attorney shall investigate and review the facts and circumstances of the case and make a recommendation to the Town Board as to whether such reimbursement should be paid and the proper amount thereof, if any. The Town Board shall review the facts and circumstances of the case, in an Executive Session, which shall remain confidential, and determine whether to pay such reimbursement in light of the provisions of this local law. The Town Board shall notify the Employee of such determination. In the event the Town Board determines that reimbursement should be provided, such reimbursement of attorneys' fees, litigation expenses, or both, shall be made upon the audit and warrant of the Town Board. Any dispute as to entitlement to reimbursement, or the amount and reasonableness of attorneys' fees incurred, or the amount and reasonableness of litigation expenses, shall be resolved by a special proceeding in court of competent jurisdiction.

B. Conditions of Reimbursement.

Reimbursement of reasonable and necessary attorneys' fees or litigation expenses, or both, by the Town as provided for in Section 6.A. or this local law shall be conditioned upon:

1. Delivery by the Employee to the Town Attorney and the Town Clerk at their respective offices of a written request for reimbursement of his attorneys' fees, litigation expenses, or both, together with a copy of any and all accusatory instruments, within ten (10) days after the Employee is arraigned on the said accusatory instrument(s), or in the case of an appearance before a grand jury or before a criminal law enforcement or investigative agency, written documentation or evidence of such appearance, within ten (10) days after such appearance; and
2. The complete acquittal of the Employee of all criminal charges, or the complete, final, and unconditional dismissal or withdrawal of all said criminal charges or, in the case of a grand jury appearance, the return of no true bill against the Employee or, in the case of an appearance before a criminal law enforcement or investigative agency, the conclusion of the investigation with no criminal charges being brought against the Employee; and
3. Delivery by the Employee to the Town Attorney and the Town Clerk at their offices of written documentation of all services, fees, charges, disbursements, costs, expenditures and expenses rendered or incurred by Employee's retained counsel in the defense of the criminal proceeding for which reimbursement is sought, together with certified copies of any judgment, finding, disposition or decision of Employee's acquittal of all of the criminal charges, or the complete, final, and unconditional dismissal or withdrawal of all of the criminal charges; and
4. The full cooperation of the Employee in the defense of any action or proceeding against the Town based upon the same act which gave rise to the criminal proceeding, and the prosecution of any appeal.

Section 7. Insurance.

A. The Town is authorized to purchase insurance from any insurance company created by or under the laws of the State of New York, or authorized by law to transact business in the State of New York, against any liability imposed or assumed by the provisions of this local law, or to act as a self-insurer with respect thereto.

B. The provisions of this local law shall not be construed to impair, alter, limit or

modify the rights and obligations of any insurer under any policy of insurance.

Section 8. Public Purpose.

All payments made under the terms of this local law shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

Section 9. Severability.

If any provision of this local law or the application thereof to any person or circumstance shall be held unconstitutional or invalid in whole or in part by any court of competent jurisdiction, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this local law or the application of any such provision to any other person or circumstance to the maximum extent permitted by such determination.

Section 10. Immunity.

Except as otherwise specifically provided for in this local law, the provisions of this local law 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 in accordance with, or by reason of, any other provision of state or federal statutory or common law.

Section 11. Other Enactments.

Except as otherwise provided in this local law, the defense and indemnification benefits accorded to Employees under the provisions of this local law shall supplement, and be available in addition to, those provided to Employees under any other enactment, or by common law.

Section 12. Authority and Adoption.

This local law is enacted by virtue of the authority set forth in §18 of the Public Officers Law and Municipal Home Rule Law §10 (1) (ii) (a) (1), and the provisions of the said §18 of the Public Officers Law in relation to the Town of Brunswick, are intended to be supplemented, but not diminished, by the additional defense and indemnification provisions set forth in this local law.

Section 13. Miscellaneous.

A. All references in this local law to gender are for convenience only and shall in every instance be read as including all genders.

B. Titles and headings contained in this local law are for reference only.

Section 14. Effective Date.

This local law shall take effect immediately.

Dated: