

STATE OF NORTH CAROLINA)
)
TOWN OF INDIAN TRAIL)

RESOLUTION #

**RESOLUTION OF THE TOWN OF INDIAN TRAIL RELATING TO THE
DEFENSE OF TOWN OFFICERS AND EMPLOYEES**

WHEREAS, N.C. Gen. Stat. § 160A-167 authorizes the adoption of uniform standards under which claims or civil judgments sought or entered against Town officers and employees may be defended and paid; and

WHEREAS, the Town Council desires to defend the Town's officers and employees and to satisfy any claims or judgments against such officers or employees, if the facts and circumstances giving rise to the claim or suit establish that the officer or employee was engaged in the good-faith performance of his duties on behalf of the Town when the events giving rise to the claim occurred.

NOW, THEREFORE, BE IT RESOLVED by the Indian Trail Town Council as follows:

1. It shall be the policy of the Town of Indian Trail to defend the Town's officers and employees in both their individual and official capacities against civil actions, claims or proceedings arising from any act done or omission made, or any act allegedly done or omission allegedly made, in the course of his employment or duty as an officer or employee of the Town. Adoption of this resolution shall not be deemed an assumption of liability for payment of claims or judgments in excess of any funds established and budgeted by the Council for payment of claims or judgments. Further, the Town will not defend a claim or lawsuit or pay any claim or judgment when the officer or employee:

a. Acts or fails to act because of actual fraud, corruption or actual malice;

b. Acts or fails to act as a result of or at a time when his self-indulgence has substantially impaired his judgment (as, for example, an officer or employee who causes damage or injury while intoxicated or under the influence of drugs while on the job.;

c. Acts or fails to act, except for emergencies or the existence of extenuating circumstances, directly contrary to instructions from his superior, directly contrary to the advice of the Town Attorney, or directly contrary to Town of Indian Trail regulations and/or policy;

d. Acts or fails to act in such manner as to constitute a criminal act (as, for example, misappropriation of Town property or funds).

2. It shall be the policy of the Town of Indian Trail to defend its officers and employees in both their official and individual capacities from criminal prosecution for any act done or omission made, or any act allegedly done or omission allegedly made, when it is determined by the Town Council that the facts and circumstances giving rise to the charge show that the officer or employee was acting within the course and scope of his employment and that he was engaged in the good-faith performance of his duties on behalf of the Town when the incident giving rise to the charge occurred. If the officer or employee pleads guilty (even to lesser charges), pleads no contest, or is found guilty, he must reimburse the Town for any amounts already spent by the Town for the defense and he shall be solely responsible for any additional amounts owed for the defense. The Town will not provide a criminal defense when the officer or employee:

a.. Acts or fails to act as a result of or at a time when his self-indulgence has substantially impaired his judgment (as, for example, an officer or employee who causes damage r injury while intoxicated or under the influence of drugs while on the job.;

b. Acts or fails to act, except for emergencies or the existence of extenuating circumstances, directly contrary to instructions from his superior, directly contrary to the advice of the Town Attorney, or directly contrary to Town of Indian Trail regulations and/or policy;

c. Has been charged with a motor vehicle violation.

3. With respect to civil representation for officers and employees other than the Town Council, the Town Manager or his designee and the Town Attorney shall determine whether or not a claim or suit filed against an officer or employee appears to meet the requirements specified herein for providing a defense for such officer or employee. If the Town Manager and Town Attorney determine that a claim or suit does not meet the requirements specified herein, the affected officer or employee may appeal such determination to the Town Council who shall afford the officer or employee a hearing on the matter. Upon determining that a defense should be provided regarding a claim or suit, the Town Manager shall report such event to the Town Council as soon as reasonably practical. Regarding civil representation for Town Council members and notwithstanding any other provision herein to the contrary, the Town shall automatically provide defense unless and until there is substantial evidence tending to show that the Council member has acted, or failed to act, in such a manner that would disqualify any other officer or employee from being provided a defense. In the event such evidence is produced, the matter shall be referred to the Town Council, and the Town Council shall make the final determination as to whether to withdraw defense by the Town. Regarding criminal representation, the Town Manager or his designee and the Town Attorney shall make an initial determination as to whether or not a criminal investigation of an officer or employee appears to meet the requirements herein for providing a defense for such officer or employee. Upon an initial determination that a criminal defense should be

provide, the Town Manager and Town Attorney shall present such recommendation to the Town Council, along with the name and fee schedule of proposed defense counsel. After consideration, the Town Council shall make a final determination as to whether criminal defense shall be provided and whether the defense counsel proposed is satisfactory.

4. The terms “officer” and “employee” as used herein shall mean present or past Town Council members including the Mayor, present or past officers or employees of the Town, and present or past appointed members of Town boards, agencies, and committees who might have claims made or judgments entered against them. The term “defend” shall include negotiating the settlement of a claim or lawsuit in those instances where settlement is appropriate. Reference to the masculine gender shall include the feminine.

5. The policies specified herein as to payment of claims or judgments shall not be applicable unless the officer or employee provides notice of the claim or suit to the Town Manager or Town Attorney as soon as reasonably practical following receipt by the officer or employee of notice that a claim or suit has been filed. The Town shall not pay all or part of a claim made or civil judgment entered unless notice of the claim or litigation is given to the Town Council prior to the time that the claim is settled or civil judgment is entered.

6. The fact that a defense has been furnished to officers and employees under this resolution shall not require that the Town pay all or any part of an award made or judgment rendered. However, the Town Council may, in its sole discretion, appropriate funds for the purpose of paying all or part of a claim made or judgment entered, as provided in this resolution and to the extent authorized by N.C. Gen. Stat. § 160A-167 or other applicable laws. The Town Council’s decision shall be final. The Town will not pay punitive or treble damages or claims, awards or judgments based upon evidence of gross negligence or willful indifference to the rights of another person, or a claim, an award or judgment based upon evidence which would have disqualified the officer or employee from being provided a defense had those facts been known to the Town Manager or Town Attorney prior to the time defense of the action was authorized. Defense by the Town may be withdrawn at any time upon the discovery of such facts. In the event the Town elects to withdraw defense pursuant to this section the officer or employee shall be required to reimburse legal fees paid to date.

7. This resolution shall not be interpreted in any way to relieve any insurance company of its obligation under any insurance policy to protect the interests of any insured under said policy, or to reduce or eliminate the rights of any officer or employee of the Town against any other party. Further, except as expressly stated herein, this resolution is not to be interpreted as a waiver of any rights or defenses the Town has against anyone.

8. The attorney selected to provide defense of an officer or employee shall be in the Town’s discretion and generally shall be the Town Attorney or defense counsel assigned by the Town’s insurance carrier(s), unless the Town Attorney and Town Manager deem

that special expertise is required. Any decision to settle a claim or lawsuit on behalf of the officer or employee shall be made by the Town. If the officer or employee disagrees with the Town's decision to settle, then any obligation of the Town to defend said action or pay any judgment in connection herewith shall terminate.

9. Internal procedures for handling liability claims and lawsuits against the Town and its officers and employees shall be established by the Town Manager or his respective designee.

10. Adoption of this resolution shall not be construed to waive the defense of governmental immunity or any other defense available to the Town of Indian Trail or any officer or employee. A copy of this resolution shall be maintained in the office of the Town Clerk for public inspection during normal business hours, as provided by law.

SO RESOLVED THIS THE 11TH DAY OF JANUARY, 2011

THE TOWN COUNCIL OF INDIAN TRAIL

By _____
John J. Quinn, Mayor

Attest:

Peggy Piontek, Town Clerk