



**ORDINANCE NO. 2020-02**

**AN ORDINANCE TO AMEND THE BRIDGEVILLE CODE  
TO PROVIDE FOR NOTICE OF TORT CLAIMS AND FOR  
THE DEFENSE AND INDEMNIFICATION  
OF TOWN OFFICERS AND EMPLOYEES**

**WHEREAS, the Commissioners of Bridgeville are desirous of requiring plaintiffs seeking damages from the Town for tort claims to give notice of the claim within one year of the date of occurrence giving rise to the claim; and**

**WHEREAS, the Commissioners of Bridgeville are desirous of providing a defense to and indemnifying its employees, appointed officials, and elected officials of the Town to the extent that they are not otherwise covered by appropriate insurance.**

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COMMISSIONERS OF THE TOWN OF BRIDGEVILLE:**

**Section 1. Amend Chapter 1, General Provisions, by adding thereto the following:**

**ARTICLE III**

**Notice of Tort Claims**

**§ 1-19. Time limit for providing notice to Town.**

**No person, joint venture, association, partnership, corporation, limited liability company, trust, guardian or other legal entity, acting on its own behalf or on behalf of any other legal entity, shall institute or file any lawsuit, legal action or claim seeking recovery of damages grounded in tort, in any court of law or equity, in this or any other state, against the**

Commissioners of Bridgeville or any of its employees, as defined in 10 Del. C. § 4010(1), unless notice of the occurrence forming the basis of the claim or action is given to the Town within one year of the date of occurrence.

**§ 1-20. Contents of notice; failure to provide notice.**

A. Such notice shall be in writing and shall be delivered to the Town Manager at the Town Hall in Bridgeville, Delaware. The notice shall particularly describe the occurrence and the nature of the claim, shall state the date and place of the occurrence, and the name address of each claimant for whom the notice is being given.

B. Such notice shall be deemed to be a condition precedent to the filing of suit, and failure to provide such notice within one year of the date of the occurrence shall be an absolute defense against any such claim, action, or suit.

**ARTICLE IV**

**Defense and Indemnification of Employees and Officers**

**§ 1-21. Defense and indemnification of Town Officers and Employees.**

A. For purposes of this chapter, the term "town officers and employees" shall include the President and Commissioners of the Town of Bridgeville, all employees, appointed officials, including all appointed members of commissions, boards, committees, and working groups established by the Commissioners.

B. The Town shall defend any town officer or employee against a civil, administrative, criminal or investigative action or claim, or other proceedings, brought in any court, quasi-judicial, or administrative proceeding, arising out of or related to the performance by said town officer or employee of his public official duties; or in any criminal action arising from the performance of his duties which action does not allege official misconduct, profiteering, bribery, receiving unlawful gratuities, improper influence or other abuse of his office or employment. The Town shall not be obligated to defend a town officer or employee if the claim, action, charge, or the like, is otherwise covered by appropriate insurance or was brought by or with the concurrence of the Town against the town officer or employee.

C. A town officer or employee who is held liable for the payment of any claims arising out of a civil action or settlements, judgments, expenses, costs and awards of attorney's fees arising therefrom shall be entitled to indemnification therefor where the claim shall have been

determined by the Town Solicitor, subject to the approval of the Commissioners, to have resulted from activities which:

- (1) were done in good faith;
- (2) were done in the reasonable belief that such activities were in the best interest of the Town and in the furtherance of the official practices and policies of the Town;
- (3) were within the scope of authority of the person so acting;
- (4) were within the course of employment of the person so acting; and
- (5) were not willful, malicious or wanton.

D. In the event of a monetary settlement, the Commissioners shall first approve the amount and terms of the settlement before the right to indemnification shall vest. Such determination shall be made:

- (1) by a majority vote of a quorum of the Commissioners consisting of Commissioners members who are not parties to such action, suit or proceeding, or
- (2) if such quorum is not obtained, by the Town Solicitor in a written opinion.

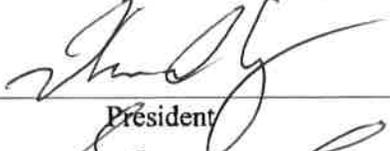
E. The Commissioners may authorize by resolution the payment of legal fees incurred by a town officer or employee for representation in a criminal action, if the charge arose out of or in the course of town employment. Commissioners shall review an application for reimbursement based upon the criteria set forth in Subsection C. No payment under this section may be authorized where the employee has been found guilty after trial and any appeal or has entered a plea of guilty or *nolo contendere* to a crime involving official misconduct, profiteering, bribery, receiving unlawful gratuities, improper influence or other abuse of his office or employment.

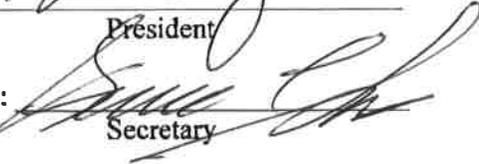
F. The expenses incurred by a town officer or employee in defending an action, suit, or proceeding, may be paid by the Town in advance of the final disposition of such action, suit or proceeding, subject to repayment by the town officer or employee unless it shall be determined that he is entitled to be indemnified by the Town as set forth in Subsection C.

G. By the adoption of this ordinance, the defense of governmental or sovereign immunity shall not be considered waived by the town, its agencies, boards, commissions, departments or any employee or officer of the Town as provided for in the Delaware County and Municipal Tort Claim Act or at common law.

Section 3. This ordinance shall become effective upon its adoption by a majority of all members elected to the Commissioners.

**COMMISSIONERS OF BRIDGEVILLE**

By:   
President

Attest:   
Secretary

Adopted: February 10, 2020

**Synopsis**

This ordinance requires plaintiffs seeking damages from the Town for tort claims to give notice of the claim within one year of the date of occurrence.

This ordinance additionally provides for the Town to defend and indemnify town officers and employees in civil, criminal, or administrative suits or proceedings, where the town officer or employee has acted in good faith and the defense and indemnification are not otherwise insured.

[DLS Draft 01-06-20]