

**BOROUGH OF HOPATCONG**

**ORDINANCE #21-2016**

**AN ORDINANCE TO REPLACE SECTIONS 33-27 THROUGH 33-32  
OF THE CODE OF THE BOROUGH OF HOPATCONG,  
SUSSEX COUNTY, NEW JERSEY  
REGARDING INDEMNIFICATION**

**BE IT ORDAINED**, by the Mayor and Council of the Borough of Hopatcong in the County of Sussex, State of New Jersey, that Chapter 33 of the Code of the Borough is hereby amended as follows:

**Section 1.** Chapter 33 is hereby amended to replace Sections 33-27 through 33-32 as follows:

**Article IV: Defense and Indemnification**

**33-27. Applicability.** Except as hereinafter provided, the Borough of Hopatcong, hereinafter known as the Borough shall, upon the request of any present or former official, employee or appointee of the Borough, 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.

**33-28. Limitations.** The Borough 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 Borough may refuse to provide for the defense and indemnification of any civil action referred to herein if the Hopatcong Borough Municipal Council 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 Borough would create a conflict of interest between the Borough and the person or persons involved.

**33-29. Definitions.** 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 Borough 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 Borough; and d) any person who as a condition of his or her appointment or contract is required to indemnify and defend the Borough and/or secure insurance.

**33-30. Civil Actions.** The Borough shall provide for defense of and indemnify any present or former official, employee or appointee of the Borough 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 Borough 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 Borough to defend and indemnify shall extend to a cross-claim or counterclaim against said person.

**33-31. Other Actions.** In any other action or proceeding, including criminal proceedings, the Borough may provide for the defense of a present or former official, employee or appointee, if the Hopatcong Municipal Council concludes that such representation is in the best interest of the Borough and that the person to be defended acted or failed to act in accord with the standards set forth in this ordinance.

**33-32. Control of Defense; Choice of Counsel.**

- A. Whenever the Borough provides for the defense of any action set forth herein and as a condition of such defense, the Borough may assume exclusive control over the representation of such persons defended and such person shall cooperate fully with the Borough.
- B. The Borough 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 Borough under any appropriate insurance policy that requires the insurer to provide defense.

**Section 2.** All ordinances of the Borough of Hopatcong which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

Section 3. If any provision of this ordinance is declared to be invalid by a court of competent jurisdiction, this declaration shall not affect the remainder of the ordinance.

Section 4. This ordinance shall take effect upon final passage and publication as provided by law.

**NOTICE**

**NOTICE** is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Council of the Borough of Hopatcong held on August 3, 2016, at 7:30p.m. and ordered published in accordance with the law. Said Ordinance will be considered for final reading and adoption at a regular meeting of the Borough Council to be held on September 7, at 7:30 p.m., or as soon thereafter as the Borough Council may hear this Ordinance at the Municipal Building, 111 River Styx Road, Hopatcong, New Jersey 07843, at which time all persons interested may appear for or against the passage of said Ordinance.

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Catherine Schultz, RMC

**CERTIFICATION**

I, Catherine Schultz, Clerk of the Borough of Hopatcong, do hereby certify that the Borough of Hopatcong Council duly adopted the foregoing Ordinance on the        day of        , 2016.

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Catherine Schultz, RMC

Introduced:  
Adopted: