

## **POSSIBLE MOTION**

**I MOVE TO** approve Ordinance 2017-25 on  
second and final reading.

Note: The purpose of this ordinance is to create within the Sitka General Code a specific section to provide defense and indemnification for officers and employees of the City and Borough of Sitka against claims and lawsuits resulting from good faith efforts to perform their official duties and responsibilities.

CITY AND BOROUGH OF SITKA  
ORDINANCE NO. 2017-25

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING SITKA GENERAL CODE  
TITLE 2 "ADMINISTRATION" BY ADDING A NEW CHAPTER 2.10 ENTITLED "DEFENSE AND  
INDEMNIFICATION OF OFFICERS AND EMPLOYEES"

- 1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to be a part of the Sitka General Code of the City and Borough of Sitka, Alaska.
- 2. **SEVERABILITY.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person and circumstances shall not be affected thereby.
- 3. **PURPOSE.** The purpose of this ordinance is to create within the Sitka General Code a specific section to provide defense and indemnification for officers and employees of the city and borough against claims and lawsuits resulting from good faith efforts to perform their official duties and responsibilities.
- 4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that the Sitka General Code Title 2 is amended by adding new chapter 2.10 "Defense and Indemnification of Officers and Employees" (new language underlined; deleted language stricken):

**Title 2  
ADMINISTRATION**

**Chapters:**

- 2.04 City and Borough Assembly**
- 2.08 City and Borough Departments**
- 2.10 Defense and Indemnification of Officers and Employees**

\* \* \*

**Chapter 2.10**  
**DEFENSE AND INDEMNIFICATION OF OFFICERS AND EMPLOYEES**

**Sections:**

- 2.10.010 Definitions.**
- 2.10.020 Defense and indemnification.**
- 2.10.030 Exclusions – Determination to defend and indemnify.**
- 2.10.040 Conditions of defense and indemnification.**
- 2.10.050 Disqualification.**
- 2.10.060 Conflict with provisions of insurance policies.**
- 2.10.070 Pending claims.**
- 2.10.080 Union contracts.**
- 2.10.090 Volunteer workers.**

52 **2.10.010 Definitions.**

53 For the purpose of this chapter, the following words shall have the following meanings unless  
54 the context indicates otherwise:

- 55
- 56 A. "Claim" means a claim or lawsuit.
- 57
- 58 B. "Employee" means any person who is or has been employed in the service of the city  
59 and borough.
- 60
- 61 C. "Official" means any person who is serving or has served as an elected official of the  
62 the city and borough and any person who is serving or has served as an appointed  
63 member of any board, commission, agency, or committee of the city and borough.
- 64
- 65 D. "Official duties" includes conduct, acts, and omissions done by an official or employee  
66 in the course and scope of their service to the city and borough.
- 67

68 **2.10.020 Defense and indemnification.**

69 Subject to the conditions and requirements of this chapter, the city and borough shall provide to  
70 an official or employee legal defense and indemnification, including protection from any  
71 expenses connected with the defense, settlement, or payment of monetary damages, related to  
72 any claim filed against the official or employee, arising out of the good faith performance,  
73 purported performance, or failure of performance of official duties. This defense and  
74 indemnification shall be a condition of employment with the city and borough and shall be  
75 provided by the municipal attorney or the municipal attorney's designee or through such  
76 insurance policy or self-insurance or similar program as the city and borough may establish.

77

78 **2.10.030 Exclusions – Determination to defend and indemnify.**

- 79
- 80 A. The obligation of the city and borough to provide defense and indemnification shall  
81 not apply to any act taken in bad faith or any act outside the scope of service or  
82 employment, or to any claim brought by or on behalf of the city and borough. The  
83 following are examples of acts which will normally be deemed to have been taken in  
84 bad faith:
- 85
- 86 1. An act committed with the willful intention of causing injury or harm, or which  
87 was reckless or malicious in nature.
- 88 2. An act committed in willful violation of law.
- 89 3. An act committed while under the influence of alcohol or a controlled  
90 substance.
- 91
- 92 B. The municipal attorney shall determine whether an official or employee was  
93 performing official duties in good faith, and whether an official or employee committed  
94 any act in bad faith. The municipal administrator shall make this determination  
95 regarding a claim against the municipal attorney.
- 96
- 97 C. If, at the time the claim is initiated, the known facts are insufficient to allow for the  
98 determination under subsection B, the city and borough may elect initially to provide

99 defense only, reserving any final determination until such time as sufficient facts are  
100 available.

- 101  
102 D. The official or employee may appeal to the assembly an adverse determination under  
103 subsection B.

104  
105 **2.10.040 Conditions of defense and indemnification.**

106 The continued obligation of the city and borough to provided defense and indemnification shall  
107 be subject to the following conditions:

- 108  
109 A. The official or employee shall cooperate fully with the city and borough and its counsel  
110 in handling or resisting the claim, including:
- 111 1. Providing the municipal attorney, as soon as practicable after receiving notice  
112 of a claim: written notice of the claim, specifying the names of the officials or  
113 employees involved, the date, time, place and circumstances surrounding the  
114 incident or conduct giving rise to the claim, the names and addresses of all  
115 persons allegedly injured, the names and addresses of owners of allegedly  
116 damaged property, and the names and addresses of all witnesses;
  - 117 2. Cooperating with the city and borough and its counsel in making settlements of  
118 any lawsuits, and in enforcing any claim for subrogation against any persons or  
119 organizations that may be liable to the city and borough because of any  
120 damages or losses arising from the incident or conduct; and
  - 121 3. Attending interviews, depositions, hearings, and trials as requested, and  
122 assisting in securing and giving evidence and obtaining the attendance of  
123 witnesses.
- 124  
125 B. The city and borough reserves the sole right to control the defense of the claim and to  
126 compromise, settle, or defend the matter.

127  
128 **2.10.050 Disqualification.**

129 If any official or employee fails or refuses to meet the requirements of this chapter or elects to  
130 provide his or her own representation on any claim, this chapter shall be inapplicable and of no  
131 force and effect with respect to that claim.

132  
133 **2.10.060 Conflict with provisions of insurance policies.**

134 Nothing contained in this chapter shall be construed to modify or amend any provision of an  
135 insurance policy or any coverage through a self-insurance or joint insurance program. If there is  
136 a conflict between this chapter and the provisions of any such policies or coverage, the  
137 provisions of any such policies or coverage shall control.

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139 **2.10.070 Pending claims.**

140 This chapter shall apply to any pending claim against an official or employee and to any claim  
141 hereafter filed irrespective of the date of the events or circumstances giving rise to the claim.

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143 **2.10.080 Union contracts.**

144 If a collective bargaining unit contract covers any of the terms and conditions of this chapter, all  
145 employees under the contract shall be governed by the provisions of the contract. If there is a

146 conflict between the provisions of such contract and this chapter, the provisions of the contract  
147 shall control.

148  
149 **2.10.090 Volunteer workers.**

150 The city and borough shall provide defense and indemnification to volunteer workers performing  
151 services on its behalf, *provided* that such defense and indemnification:

- 152
- 153 A. Shall be provided only to volunteer workers authorized in writing by the head of a  
154 municipal department to perform a particular scope of services to the city and  
155 borough;
  - 156
  - 157 B. Shall cover only conduct, acts, and omissions undertaken in the course and scope of  
158 such authorized services; and
  - 159
  - 160 C. Shall be subject to all other conditions and requirements of this chapter in the same  
161 manner as they apply to officials and employees.
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164 5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its  
165 passage.

166  
167 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska this  
168 25<sup>th</sup> day of July, 2017.

171  
172 \_\_\_\_\_  
173 Matthew Hunter, Mayor

174 ATTEST:

175 \_\_\_\_\_  
176 Sara Peterson, CMC  
177 Municipal Clerk

178  
179 1<sup>st</sup> reading 7/11/17

180 2<sup>nd</sup> reading 7/25/17