

**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**

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**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.

2.10.010 Definitions.

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

A. "Claim" means a claim or lawsuit.

B. "Employee" means any person who is or has been employed in the service of the city and borough.

C. "Official" means any person who is serving or has served as an elected official of the the city and borough and any person who is serving or has served as an appointed member of any board, commission, agency, or committee of the city and borough.

D. "Official duties" includes conduct, acts, and omissions done by an official or employee in the course and scope of their service to the city and borough.

2.10.020 Defense and indemnification.

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

2.10.030 Exclusions – Determination to defend and indemnify.

- A. The obligation of the city and borough to provide defense and indemnification shall not apply to any act taken in bad faith or any act outside the scope of service or employment, or to any claim brought by or on behalf of the city and borough. The following are examples of acts which will normally be deemed to have been taken in bad faith:
1. An act committed with the willful intention of causing injury or harm, or which was reckless or malicious in nature.
 2. An act committed in willful violation of law.
 3. An act committed while under the influence of alcohol or a controlled substance.

- B. The municipal attorney shall determine whether an official or employee was performing official duties in good faith, and whether an official or employee committed any act in bad faith. The municipal administrator shall make this determination regarding a claim against the municipal attorney.
- C. If, at the time the claim is initiated, the known facts are insufficient to allow for the determination under subsection B, the city and borough may elect initially to provide defense only, reserving any final determination until such time as sufficient facts are available.
- D. The official or employee may appeal to the assembly an adverse determination under subsection B.

2.10.040 Conditions of defense and indemnification.

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

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

2.10.050 Disqualification.

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

2.10.060 Conflict with provisions of insurance policies.

Nothing contained in this chapter shall be construed to modify or amend any provision of an insurance policy or any coverage through a self-insurance or joint insurance program. If there

is a conflict between this chapter and the provisions of any such policies or coverage, the provisions of any such policies or coverage shall control.

2.10.070 Pending claims.

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

2.10.080 Union contracts.

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

2.10.090 Volunteer workers.

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

- A. Shall be provided only to volunteer workers authorized in writing by the head of a municipal department to perform a particular scope of services to the city and borough;
- B. Shall cover only conduct, acts, and omissions undertaken in the course and scope of such authorized services; and
- C. Shall be subject to all other conditions and requirements of this chapter in the same manner as they apply to officials and employees.


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5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 25th day of July, 2017.


Matthew Hunter, Mayor

ATTEST:


Sara Peterson, CMC
Municipal Clerk

1st reading 7/11/17

2nd reading 7/25/17