

ORDINANCE 2023-02

**AN ORDINANCE TO ADD SECTIONS NUMBERED 2-97, 2-98, AND 2-99 TO THE TOWN CODE TO
PROVIDE FOR INDEMNIFICATION OF TOWN STAFF**

WHEREAS, Section 15.2-1520 of the Code of Virginia allows the locality to authorize the Employment of counsel to defend localities and political subdivisions, governing bodies, officers or employees in certain proceedings; costs and expenses of such proceeding; and

WHEREAS, the Town Council has determined that it is appropriate and in the public interest to provide for the indemnification of Town Elected Officials, Officers and Employees; and

NOW, THEREFORE, BE IT ORDAINED by the Warrenton Town Council this ____ day of _____, 2023, that the Warrenton Town Code be, and is hereby, amended to add sections numbered 2-97, 2-98, and 2-99 as follows:

Sec. 2-97. - Defense and indemnification generally.

(a) Upon compliance by town officers and employees with the provisions of subsection (d) of this section, the town council may employ the town attorney or other counsel to provide for the defense of the town, the council, or any member thereof, or any officer or employee of the town, or of any trustee or member of any board or commission appointed by the town council, in any legal proceeding to which the council, or any member thereof, the town or any of such persons may be a defendant, when such proceeding is initiated against it, or them, by virtue of any actions in the furtherance of their duties in serving the town as its governing body or as members thereof or the duties or service of any officer or employee of the town or any trustee or any member of any board or commission appointed by the town council.

(b) To the extent that such liability is not covered by insurance, the town shall indemnify and save harmless its officers and employees in the amount of any judgment obtained against such officers and employees in any state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which judgment or settlement arose occurred while the officer or employee was acting within the scope of his or her public employment or duties. The duty to indemnify and save harmless prescribed by this subsection shall not arise where the injury or damage resulted from deliberate wrongdoing or recklessness on the part of the officer or employee.

(c) To the extent that such costs and expenses are not covered by insurance, all costs and expenses of such proceedings so defended shall be charged against the treasury of the town and shall be paid out of funds provided by the town council. Further, if any settlement is agreed upon or judgment is rendered against any of such named persons or the council, the town council shall pay such settlement or judgment from public funds or other funds or in connection therewith may expend public or other funds for insurance or to establish and maintain a self-insurance program to cover such risk or liability.

(d) The duty to defend or indemnify and save harmless provided by this section shall be conditioned upon:

(1)Delivery, to the town attorney or an assistant town attorney, at the attorney's office, by the officer or employee, the original or a copy of any summons, complaint, process, notice, demand or pleading within three calendar days after service with such document; and

(2)The full cooperation of the officer or employee in the defense of such action or proceeding and in defense of any action or proceeding against the town based upon the same act or omission, and in the prosecution of any appeal thereof.

Sec. 2-98. - Reimbursement of legal fees and expenses for criminal investigation and prosecution.

If any elected official, officer or employee of the town shall be investigated, arrested or indicted or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of official duties, and no charges are brought, or the charge is subsequently dismissed, or upon trial the elected official, officer or employee is found not guilty, the town council may reimburse the elected official, officer or employee for reasonable legal fees and expenses incurred in the defense of the investigation or charge. The reimbursement shall be paid from the treasury of the town.

Sec. 2-99. - Limitations on defense and indemnification.

The benefits of sections 2-97 and 2-98 shall inure only to elected officials, officers and employees and shall not enlarge or diminish the rights of any other party. The provisions of sections 2-97 and 2-98 shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance. The provisions of sections 2-97 and 2-98 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the town, the town or the town council or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with, or by reason of any other provision of Commonwealth or federal statutory or common law.

ATTACHMENT:

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

For Information:

Town Manager

Town Attorney

ATTEST: _____
Town Recorder