

A Public Hearing was held Monday, March 8, 2010, at 6:30pm at Town Hall, 18 Russell Avenue, Ravena, New York

PRESENT: Henry C. Traver, Supervisor
Dawn Rogers, Councilwoman
Thomas A. Boehm, Councilman
James C. Youmans, Councilman
Richard N. Touchette, Councilman

ALSO PRESENT: Diane L. Millious, Town Clerk
Nelson Perry, Parks & Recreation Maintenance Supervisor
Greg Darlington, Chief of Police

Supervisor Traver opened the Public Hearing and led the Pledge of Allegiance.

OPENING COMMENT

Supervisor Traver stated that the Public Hearing is to hear comments from the public regarding Proposed Local Law #1-2010, a Local Law providing for the defense and indemnification for town employees sued for actions taken in performance of their official duties. He then asked that Town Clerk Millious read the Notice of Public Hearing.

NOTICE OF PUBLIC HEARING ON PROPOSED LOCAL LAW #1 OF 2010

A Local Law providing for the defense and indemnification for town employees sued for actions taken in performance of their official duties.

NOTICE IS HEREBY GIVEN, that the Town Board of the Town of Coeymans will hold a Public Hearing on March 8, 2010 beginning at 6:30pm at Coeymans Town Hall, 18 Russell Avenue, Ravena, NY concerning Proposed Local Law #1 of 2010 as described above.

A copy of the Proposed Local Law is on file in the Town Clerk's Office.

PLEASE TAKE FURTHER NOTICE that all interested parties will be heard at this time and place.

**By Order of the Town Board
of the Town of Coeymans
Diane L. Millious
Town Clerk**

PROPOSED LOCAL LAW #1-2010 TOWN OF COEYMANS

A LOCAL LAW PROVIDING DEFENSE AND INDEMNIFICATION FOR TOWN EMPLOYEES SUED FOR ACTIONS TAKEN IN PERFORMANCE OF THEIR OFFICIAL DUTIES

Section 1. Legislative Intent

The purpose of this chapter is to provide legal and financial protection for those individuals serving the Town of Coeymans from losses which may be brought against them in their individual capacity for actions taken while in the performance of their official duties and responsibilities. In enacting this chapter, the Town Board finds that the State of New York has enacted similar provisions for the legal and financial security of

its officers and employees and further finds that such security is also required for local personnel. By enactment of this chapter, the Town Board does not intend to limit or otherwise abrogate any existing right or responsibility of the Town of Coeymans or its employees with regard to indemnification or legal defense. It is solely the intent of this chapter to provide maximum coverage for local employees, such as is presently provided for state employees, so as to continue to attract qualified individuals to local government service.

Section 2. Definitions

As used in this chapter, unless the context otherwise requires, the following terms shall have the meanings indicated:

EMPLOYEE – Any person holding a position by elections, appointment or employment in the service of the Town of Coeymans, whether or not compensated, or a volunteer expressly authorized to participate in a municipally sponsored volunteer program, but shall include a former employee, his or her estate or judicially appointed personal representatives.

Section 3. Town to Provide Defense

A. Conditions

Upon completion by the employee with the provisions of Section 5 of this chapter, the Town of Coeymans shall provide for the defense of the employee in any civil and criminal action or proceeding in any State or Federal Court arising out of any alleged act or omission of a Federal, State or local rule or regulation which occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of his or her public employment or duties, or which is brought to enforce a provision of the laws of the United States, including but not limited to 42 United States Code, Section 1981 or 1983.

B. Representation by Town Attorney; Private Counsel

(1) Subject to the conditions set forth in Subsection A of this section, the employee shall be entitled to be represented by the Town Attorney; provided, however, that the employee shall be entitled to representation by private counsel of his or her choice in any civil judicial proceeding whenever the Town Attorney determines, based upon his or her investigation and review of the facts and circumstances of the case, that representation by the Town Attorney would be inappropriate or whenever a court of competent jurisdiction,, upon appropriate motion or by special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of his or her choice. The Town Attorney shall notify the employee, in writing, of such determination that the employee is entitled to be represented by private counsel of his or her choice.

(2) The Town Attorney may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. If the employee or group of employees is entitled to representation by private counsel under the provisions of this section, the Town Attorney shall so certify to the Town Board. Reasonable attorney's fees and litigation expenses shall be paid by the Town to such private counsel from time to time during the pendency of the civil action or proceeding, subject to the certification that the employee is entitled to representation under the terms and conditions of this section by the head of the department, commission, division or agency in which such employee is employed. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorney's fees shall be resolved by the court upon motion or by way of a special proceeding.

C. Duty of Town Attorney

Where the employee delivers process and a request for a defense to the Town Attorney as required by Section 5 of this chapter, the Attorney shall take the necessary steps, including the retention of private counsel under the terms and conditions provided in Subsection B of this section, on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

Section 4. Responsibilities of Town

A. Indemnification of Employees

The Town shall indemnify and save harmless its employees in the amount of any judgment obtained against such 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 such judgment or settlement occurred while the 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 intentional wrongdoing or recklessness on the part of the employee.

B. Settlement

An employee represented by private counsel shall cause to be submitted to the Town Board any proposed settlement which may be subject to indemnification by the Town and, if not inconsistent with the provision of this section, the Town Board shall certify such settlement, and submit such settlement and certification to the Town Attorney, the Attorney shall review such proposed settlement as to form and amount and shall give his or her approval if, in his or her judgment, the settlement is in the best interest of the Town. Nothing in this subsection shall be construed to authorize the Town to indemnify or save harmless an employee with respect to a settlement not so reviewed and approved by the Town Attorney.

C. Payment of Final Judgment and Settlement

Upon entry of a final judgment against the employee or upon the settlement of the claim, the employee shall cause to be served a copy of such judgment or settlement, personally or by certified or registered mail within 30 days of the date of entry or settlement, upon the Supervisor; and, if not inconsistent with the provisions of this section, such judgment or settlement shall be certified for payment by the Supervisor. If the Attorney concurs in such certification, the judgment or settlement shall be paid upon the audit and warrant of the Town Treasurer.

Section 5. Cooperation of Employee

The duty to defend or indemnify and save harmless provided by this chapter shall be conditioned upon delivery to the Town Attorney or his or her assistant, at his office, by the employee of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he or she is served with such document; and the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the state based upon the same act or omission, and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the Town provide for his or her defense pursuant to this chapter.

Section 6. Rights of Other Parties

The benefits of this chapter shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party, nor shall any provision of this chapter be construed to affect, alter or repeal any provision of the Workmen's Compensation Law.

Section 7. Insurance Policies

The provisions of this chapter shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

Section 8. Pending Litigation

The provisions of this chapter shall apply to all actions and proceedings pending upon the effective date thereof or thereafter instituted, whether or not the actions or commissions complained of occurred prior to or subsequent to the effective date of this chapter.

Section 9. Immunity

Except as otherwise specifically provided in this chapter, the provisions of this chapter 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, or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with or by reason of any provision of state or federal statutory or common law.

Section 10. Effective Date

This Local Law shall take effect immediately upon filing in the Office of the New York Secretary of State.

PUBLIC COMMENT

Supervisor Traver invited the public to comment at this time.

In the absence of comment Councilman Boehm suggested that they take down the audio until someone wished to speak or wait 20 minutes that they have prescribed to for Public Hearings.

Supervisor Traver asked if there were any comments, hearing none he asked for a motion to adjourn the Public Hearing.

ADJOURNMENT

MOTION

On motion of Councilman Boehm, seconded by Councilwoman Rogers, the Public Hearing was adjourned.

VOTE – AYES 5 – NAYS 0 – SO MOVED

Time: 6:50pm

Respectfully Submitted,

APPROVED:

Diane L. Millious, Town Clerk