

ORDINANCE NO. 387

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF JUPITER ISLAND, MARTIN COUNTY, FLORIDA, AMENDING CHAPTER 2, ADMINISTRATION, TO INCLUDE A NEW ARTICLE VII ENTITLED "RIGHT TO INDEMNIFICATION"; CREATING A NEW SECTION 2-146 ENTITLED "INDEMNIFICATION"; CREATING A NEW SECTION 2-147 ENTITLED "PROVIDING INDEMNIFICATION NOT EXCLUSIVE RIGHT"; CREATING A NEW SECTION 2-148 ENTITLED "CRIMINAL CASES"; CREATING A NEW SECTION 2-149 ENTITLED "ETHICS VIOLATIONS, SUNSHINE LAW, PUBLIC RECORDS ACT" LAWS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Commission of the Town of Jupiter Island, Martin County, Florida (Town Commission) recognizes its responsibility to the elected and appointed officials serving the Town; and

WHEREAS, pursuant to Section 768.28, Florida Statutes, to afford the Town's elected and appointed officials, employees and those individuals appointed to the Town's committees and boards, sovereign immunity from injury or damage suffered as a result of any act, event or omission arising out of and in the scope of their respective offices authority and functions; and

WHEREAS, the Town Commission recognizes its responsibility to assure elected and appointed officials, employees and those individuals appointed to the Town's committees and boards of the Town of their rights to indemnification by the Town for acts taken by said officials while serving the Town and to provide a legal defense to said elected or appointed officials for such actions.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF JUPITER ISLAND, MARTIN COUNTY, FLORIDA, AS FOLLOWS:

Section 1: The whereas clauses are incorporated herein as the legislative findings of the Town Commission.

Section 2. Chapter 2, Article VII, Sections 2-146-2-150 of the Code, entitled "Indemnification" is hereby created and shall read as follows:

"ARTICLE VII. RIGHT TO INDEMNIFICATION

Sec. 2-146. Indemnification.

(a) To the fullest extent permitted by law, the town shall indemnify any town elected or appointed official, any appointed member of a board or committee, or employee (hereinafter "Public Official") who has been made, or is threatened to be made, a party to any threatened, pending or completed civil action, lawsuit, administrative law action, or investigative proceeding (hereinafter "Proceeding"), provided the Public Official was or is acting in the Public Official's official capacity, or where a Proceeding was brought against the Public Official individually provided the Proceeding involves some action or activity within the scope of the Public Official's performance of his or her official public duties.

(b) A Public Official who is threatened with a Proceeding, or where a Proceeding has been brought against the Public Official, shall, as soon as practicable under the circumstances provide written notice of the Proceeding to the town manager and town attorney, whether the Proceeding is threatened or brought against the Public Official in an individual or official capacity. Upon receipt of the notice from the Public Official, and following the confirmation or denial of coverage, from the town's insurance provider, the town manager shall notify the Public Official whether or not the town, or its insurance provider, will assume the costs of the defense of the Proceeding, or whether the town's attorneys will represent the Public Official in the Proceeding. Upon the assumption of the defense of the Public Official by the town's attorneys, at the town's expense, and the Public Official's acceptance of the same, or by an attorney assigned by the town's insurance provider, the town shall not be responsible for the reimbursement or payment of the attorney fees incurred by such Public Official for an attorney that he or she has independently retained in connection with the Proceeding. The terms of this provision may apply to any Proceeding brought against more than one Public Official.

(c) Other than a Proceeding where an attorney has been assigned by the town's insurance provider to provide a defense for the Public Official, a Public Official may retain an attorney of his or her choice to defend himself or herself in a Proceeding in lieu of the town's attorneys providing representation for the individual Public Official. Subject to the approval of the Town Commission, the Public Official shall be entitled to the reimbursement of his or her expenses, attorneys' fees, judgments, and amounts paid in a settlement in connection with the Proceeding, provided the Town Commission approves the

reimbursement of the Public Official. The Town Commission must approve any settlement of a Proceeding. Where the Public Official elects to retain an attorney of his or her choice, but the town's insurance provider has made an attorney available to defend the Public Official, the town shall have no obligation to reimburse the Public Official's chosen attorney.

(d) A Public Official shall not be entitled to the reimbursement of the costs and attorney fees incurred in the defense of any Proceeding, where it is determined by the final decision maker in a Proceeding that the Public Official has (i) derived an improper personal benefit, either directly or indirectly; (ii) is liable for failure to exercise reasonable care, skill, diligence, caution, and/or prudence, whether under the prudent investor or prudent man standard or otherwise; (iii) acted outside the scope of the Public Official's authority or function; or (iv) acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(e) The termination of any Proceeding by judgment, order, or settlement, shall not, of itself, create a presumption that the Public Official acted contrary to the standards in subsection (d), above unless in connection therewith the final decision maker shall have made a specific finding in a final order that such Public Official acted contrary to any of the standards in subsection (d), above.

(f) The Town shall have the right to recover any costs, expenses or attorneys' fees paid on behalf of any Public Official who is found to have acted contrary to any of the standards set forth in subsection (d), above.

(g) The Town's liability for expenses, including court costs, attorneys' fees, judgments and amounts paid in settlement of a claim by one person shall not exceed \$200,000, or \$300,000 for any claim or a judgment when totaled with all other claims or judgements arising out of the same incident or occurrence.

Sec. 2-147. Indemnification Not Exclusive Right.

The right of indemnification provided in this ordinance shall not be exclusive of any other rights to which an Indemnitee may otherwise be entitled, and the provisions of this ordinance shall inure to the benefit of the heirs and personal representatives of any Public Official under this ordinance and shall be applicable to Proceedings commenced or continuing after the adoption of this ordinance, whether arising from acts, events, or omissions occurring before or after such adoption.

Sec. 2-148. Criminal Cases.

If any Public Official is threatened with or named in any criminal action based upon or arising out of the performance of his/her duties for or on behalf of the Town, such person shall be responsible for his/her own defense; provided, however, if such person is found not guilty in such criminal action, all reasonable expenses (including court costs and

attorneys' fees) incurred by or on behalf of such person in such criminal action shall thereupon be reimbursed by the Town.

Sec. 2-149. Ethics Violations/Sunshine Law/Public Records Act

The right to indemnification and legal representation described herein shall apply to or be made available to Public Officials in regard to alleged ethics violations under the laws of the state of Florida, or to alleged violations of the Sunshine Law; or Public Records Act provided, however, if a Public Official who is alleged to be in violation of the statutes governing ethics, Sunshine Law or the Public Records Act is found to be in violation of said law, then the Public Official shall reimburse to the town all costs and attorneys' fees incurred by the town on behalf of the defense of such Public Official.

Section 3. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 4. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Jupiter Island, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 5. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Jupiter Island.

Section 6. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED UPON FIRST READING ON THE 13th DAY OF JUNE 2023. PASSED AND ADOPTED UPON SECOND READING ON THE 21st DAY OF AUGUST 2023.

(SEAL)

TOWN OF JUPITER ISLAND, FLORIDA

Mayor

Vice Mayor

Commissioner

Commissioner

Commissioner

ATTEST:

Town Clerk