

RESOLUTION NO. 828

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA, APPROVING AND ADOPTING THE DEFENSE OF PUBLIC OFFICERS POLICY ATTACHED HERETO AS EXHIBIT "A"; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Town of Sewall's Point, Florida is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission desires to create a Defense of Public Officers Policy.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA:

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

Section 2. The Town Commission hereby adopts the Defense of Public Officers Policy, attached as Exhibit "A".

Section 3. This Resolution shall take effect immediately upon adoption.

Commissioner Luger offered the Resolution and moved its adaptation. The motion was seconded by Commissioner Thurlow-Lippisch and upon being put to vote, that was:

	AYE	NAY
E. DAN MORRIS, MAYOR - <i>absent</i>		
JAMES W. CAMPO, VICE MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>
VINCENT BARILE, COMMISSIONER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PAUL LUGER, COMMISSIONER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
JACQUI THURLOW-LIPPISCH, COMMISSIONER	<input checked="" type="checkbox"/>	<input type="checkbox"/>

The Town Commission thereupon declared this Resolution No. 828 approved and adopted by the Town Commission of the Town of Sewall's Point on this 22<sup>nd</sup> day of March, 2016.

TOWN OF SEWALL'S POINT, FLORIDA

*E. Dan Morris*  
E. Dan Morris, Mayor

Approved as to form and legal sufficiency

*Glen J. Torciya*  
Glen J. Torciya, Town Attorney  
Florida Bar No. 343374

ATTEST:

*Lakisha Q. Burch*  
Lakisha Q. Burch, Town Clerk  
(TOWN SEAL)

Exhibit A



TOWN OF SEWALL'S POINT  
One S. Sewall's Point Road  
Sewall's Point, Florida 34996  
Tel 772-287-2455 Fax 772-220-4765

**DEFENSE OF PUBLIC OFFICERS**

March 2, 2016

**POLICY:**

**Section 1. Civil actions; administrative proceedings (other than ethics).**

A. *Provision of legal representation.* The Town or its insurance company shall provide an attorney to defend a mayor or commissioner against any administrative proceeding (other than one involving ethics) that arises out of the mayor or commissioner's course and scope of service in office or any civil action for any injury or damage suffered as a result of any act, event, or omission that arises out of the mayor or commissioner's course and scope of service in office, unless the mayor or commissioner acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The mere allegation that the mayor or commissioner acted outside the course and scope of service in office or acted in bad faith, malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property shall not preclude the Town, in its discretion from providing a defense. When providing a defense, the Town or its insurance company, in accordance with the terms of the insurance policy, may compromise and settle any such claim or suit and pay the amount of such settlement in its sole discretion. An administrative proceeding (other than involving an ethics claim) may include, but is not limited to any proceeding before the Florida Public Employees Relation Commission, the State of Florida Commission on Human Relations, or the Federal Equal Employment Opportunity Commission.

B. *Recovery of Reasonable attorneys' fees.* The Town shall not be liable for the acts or omissions of a mayor or commissioner committed while acting outside the course and scope of their service in office or committed in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property. If the Town's insurance policy allows the right to decline settlement and the mayor or commissioner declines to settle the administrative action as recommended by the insurance company or if the mayor or commissioner refuses to cooperate with the insurance company in its defense of the claim, he or she shall be responsible for the payment of all attorneys' fees, costs and other expenses that exceed the proposed settlement amount regardless of whether the mayor or commissioner was found to be at fault or not. In such instances where the Town has provided a defense, yet the mayor or commissioner was found to be at fault or personally liable for injury or damages, the mayor or commissioner shall reimburse the Town for any legal fees, costs, and expenses the Town has incurred or otherwise paid on their behalf in connection with the alleged conduct. Further, if the Town's insurance coverage excludes any reimbursements, fees or costs, the mayor or commissioner shall reimburse the Town for the same. Any payments owed to the Town shall become due and payable within thirty (30) days of the final judgment, including the conclusion of any appeal or within thirty (30) days of any settlement, if applicable.

## Exhibit A

### **Section 2. Civil action naming former mayor or commissioner.**

Where the mayor or commissioner has left office prior to the Town or mayor or commissioner receiving notice of the administrative proceeding (other than one involving ethics) or civil action, the Town shall provide an attorney to defend the mayor or commissioner against any administrative proceeding initiated or civil action for any injury or damage suffered as a result of any act, event, or omission that arises out of the mayor or commissioner's course and scope of their office, unless mayor or commissioner acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In this situation, section 1.A. and 1.B. above shall also apply.

### **Section 3. Ethics proceedings.**

A. *Provision of legal representation if Town has insurance coverage.* The Town may, in its discretion, provide an attorney or have its insurance company provide an attorney to defend the mayor or commissioner against complaints or charges brought before the State or local Commission on Ethics if it determines that the act, event, or omission arises out of the mayor or commissioner's course and scope of service in office, and that providing such defense serves a public purpose. Such defense may be provided regardless of whether the Town or mayor or commissioner receives notice of the charge prior to or after the mayor or commissioner's separation from office. If the Town and/or its insurance company choose not to provide the mayor or commissioner an attorney to defend against the ethics complaint or charge, the mayor or commissioner shall be responsible for his or her own defense.

B. *Limitation on reasonable attorneys' fees.* In such instances where the mayor or commissioner is found to have not violated the State or local Code of Ethics, the Town will be responsible for reasonable attorneys' fees and court costs up to the amount of coverage set forth in its applicable insurance policy. The mayor or commissioner shall be solely responsible for the balance of said costs and fees. If the mayor or commissioner paid for their own defense, the Town will reimburse the mayor or commissioner for his or her reasonable and documented attorneys' fees and court costs up to the maximum amount of coverage set forth in the insurance policy. If the Town provided a defense for the mayor or commissioner, the mayor or commissioner shall reimburse the Town for any costs and fees over the amount of insurance coverage. Such payment shall become due and payable upon written demand by the Town, or upon receipt of an invoice received from the attorney(s) handling the mayor or commissioner's defense.

C. *Recovery of attorneys' fees.* In such instances where the Town has provided a defense, yet the Mayor or Commissioner was found to have violated the State or local Code of Ethics, the Mayor or Commissioner shall reimburse the Town and/or the Town's insurance company for any and all legal fees, insurance deductibles, costs, and expenses the Town or its insurance company has incurred or otherwise paid on their behalf in connection with the alleged conduct. Further, if the Town's insurance coverage excludes any reimbursements, fees or costs, the mayor or commissioner shall reimburse the Town for the same. Any payments owed to the Town shall become due and payable upon written demand by the Town and/or the insurance company.

D. *Provision of legal representation if Town has no insurance coverage.* If the Town has no insurance coverage for defending a mayor or commissioner against complaints or charges brought before the State or local Commission on Ethics, the mayor or commissioner shall be responsible for his or her own defense. If the mayor or commissioner successfully defends against such ethics complaint or charge, the Town shall reimburse the mayor or commissioner

## Exhibit A

for his or her reasonable and documented attorneys' fees and court costs up to a maximum of \$20,000.00. However, the Town shall not reimburse the mayor or commissioner if he or she is found (1) to have acted outside the scope of his or her official duties or functions; or (2) to have acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard to human rights, safety, or property; or (3) to have violated the applicable ethics code.

### **Section 4. Request for Reimbursement.**

A. Any mayor or commissioner who believes that he or she may be entitled to payment for reasonable attorneys' fees and court costs pursuant to the provisions of this policy shall first notify the Town through its town manager in writing when the mayor or commissioner is made aware of the legal action.

B. At the conclusion of the matter, the mayor or commissioner requesting reimbursement under this policy shall file a written request for reimbursement of such reasonable attorneys' fees and court costs with the town manager. This request shall set forth the following:

1. The name and current address and telephone number of the person making the request;
2. A description of the entity that conducted the investigation or proceeding;
3. Case number or file number, if known or available;
4. A description of each count, charge, or allegation made or investigated;
5. The date(s) that the incidents are alleged to have occurred;
6. The person's office or position of employment with the Town on the dates described in paragraph 5 above;
7. The reasons why such mayor or commissioner believes that the request meets the criteria set forth in this policy and the reasons why his or her fees and costs should be reimbursed by the Town;
8. The name, address and telephone number of the attorney or attorneys who represented such person against the counts, charges or allegations described above;
9. A copy of the fee arrangement or agreement, if applicable, between the mayor or commissioner and his or her attorney, the amount of attorney's fees and court costs paid for in defense of the counts, charges or allegations described above; and
10. Such other information as the town commission or town attorney may reasonably require.

### **Section 5. Definitions.**

*Reasonable attorneys' fees* shall mean fees earned by an attorney or attorneys licensed to practice law in the State of Florida, based on the customary hourly rate charged in Martin County, Florida, for similar work performed by private attorneys within the County.

### **Section 6. Application.**

This policy shall apply to alleged violations as described above filed in any judicial or administrative tribunal on or after the date of the adoption of this policy.