

AN ORDINANCE OF THE COUNTY OF ST. JOHNS, STATE OF FLORIDA DIRECTING THAT THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA REIMBURSE REASONABLE LEGAL FEES AND COSTS INCURRED BY PRESENT AND FORMER COUNTY COMMISSIONERS AND COUNTY PUBLIC OFFICERS, AND THEIR PRESENT AND FORMER EMPLOYEES AND AGENTS, INCLUDING APPOINTEES OF SUCH OFFICERS, WHEN SUCH PERSONS SUCCESSFULLY DEFEND OR PREVAIL IN CIVIL, CRIMINAL AND/OR ETHICAL INVESTIGATIONS AND/OR ACTIONS THAT ARISE OUT OF AND IN CONNECTION WITH SUCH PERSON'S SCOPE OF COUNTY EMPLOYMENT OR COUNTY FUNCTION SERVING A PUBLIC PURPOSE; AND FURTHER AUTHORIZING THE PAYMENT OF SUCH LEGAL FEES AND COSTS DURING SUCH INVESTIGATIONS AND/OR ACTIONS UPON A PRELIMINARY DETERMINATION BY THE BOARD THAT (i) SUCH INVESTIGATION AND/OR ACTIONS AROSE OUT OF AND IN CONNECTION WITH SUCH PERSON'S SCOPE OF COUNTY EMPLOYMENT OR COUNTY FUNCTION SERVING A PUBLIC PURPOSE, (ii) SUCH PERSON CAN NOT PAY SUCH FEES AND COSTS DURING SUCH INVESTIGATION AND/OR ACTION WITHOUT INCURRING A REAL AND SUBSTANTIAL FINANCIAL HARDSHIP AND (iii) SUCH PAYMENT IS AUTHORIZED BY STATUTORY OR COMMON LAW; INDICATING INTENT; PROVIDING DEFINITIONS; MAKING FINDINGS; PROVIDING PROCEDURES; PROVIDING THAT THE ORDINANCE DOES NOT APPLY TO ELECTED OFFICIAL RECALL PROCEEDINGS OR TO EMPLOYEE DISCIPLINE OR TERMINATION PROCEEDINGS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA:

Section 1. Findings:

A. In Ellison v Reid, 397 So. 2d 352 (Fla. 1st DCA 1981) the First District Court of Appeal of the State of Florida stated:

". . . public officers are "entitled to a defense at the expense of the public in a law suit arising from the performance of the officer's official duties and while serving a public purpose."

and

"There is no doubt a valuable public purpose is served in protecting the effective operation and maintenance of the administration of a public office. If a public officer is charged with misconduct while performing his official duties and while serving a public purpose, the public has a primary interest in such a controversy and should pay the reasonable and necessary legal fees incurred by the public officer in successfully defending against unfounded allegations of official misconduct."

The Board of County Commissioners of St. Johns County, Florida concurs in the above statements of the First District Court of Appeal.

B. §111.07, Florida Statutes provides in part that

". . . any county . . . is authorized to provide an attorney to defend any civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of any of its officers, employees, or agents for an act or omission arising out of and in the scope of his employment or function, unless, in the case of a tort action, the officer, employee, or agent acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. . . any attorney's fees paid from public funds for any officer, employee, or agent who is found to be personally liable by virtue of acting outside the scope of his employment, or was acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, may be recovered by the . . . county, . . . in a civil action against such officer, employee, or agent. If any county . . . is authorized pursuant to this section to provide an attorney to defend a civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of any of its officers, employees, or agents and fails to provide such attorney, such . . . county. . . shall reimburse any such defendant who prevails in the action for court costs and reasonable attorney's fee.

C. In Lomelo v City of Sunrise, 423 So. 2d 974 (Fla. 4th DCA 1982) the Fourth District Court of Appeal of the State of Florida stated that Florida case law establishes that

". . . a municipal corporation or other public body is obligated to furnish or pay fees for counsel to defend a public official subjected to attack either in civil or criminal proceedings where the conduct complained of arises out of or in connection with the performance of his official duties. This obligation arises independent of statute, ordinance or charter. It is not subject to the discretion of the keepers of the city coffers."

D. Florida Attorney General Opinion 90-74 states that a county may

". . . reimburse a public official or a county employee for reasonable legal expenses incurred in the successful defense of an ethics charge if the county determines that the ethics charge arose from the performance of official duties and while serving a public purpose.

E. One or more citizens of St. Johns County have publicly announced that they have filed complaints and/or petitions with various

governmental entities requesting investigations and/or prosecution of present and/or former St. Johns County public officers and present and/or former employees of such officers for actions arising out of and in connection with their scope of county employment or county function.

F. A bona fide public purpose will be served by payment of or reimbursement for the reasonable attorney's fees and costs authorized to be paid pursuant to the following sections of this ordinance. Such sections are necessary and appropriate to encourage qualified persons to continue or seek participation in county government.

Section 2. Intent: As used in the balance of this ordinance, the words "successfully defend or prevail" shall apply to individual counts, charges and/or allegations. A failure to successfully defend or prevail against one or more counts, charges or allegations shall not necessarily affect the application of this ordinance to other counts, charges and/or allegations which were successfully defended or against which the officer or employee prevailed.

Section 3. Definition: "Reasonable attorney's fees" shall mean fees earned by an attorney and/or attorneys licensed to practice law in the State of Florida, based on the customary per hour rate charged in St. Johns County, Florida, for similar work performed by private nonappointed attorneys within the county.

Section 4. Subject to section 8, the Board of County Commissioners of St. Johns County shall, pursuant to the procedures set forth herein, reimburse present and former county commissioners and county public officers, and their present and former employees and agents, including appointees of such officers, for the reasonable attorney's fees and costs that such persons incur when they successfully defend or prevail in civil, criminal and/or ethical investigations and/or actions that arise out of and in connection with their scope of county employment or county function serving a public purpose.

Section 5. Subject to section 8, the Board of County Commissioners of St. Johns County may, pursuant to the procedures set forth herein, pay the reasonable attorney's fees and costs of present and former county commissioners and county public officers, and their present and former employees and agents, including appointees of such officers, during civil, criminal and/or ethical investigations and/or actions that arise out of and in connection with their scope of county employment or county function serving a public purpose but only after the Board of County Commissioners has made a preliminary determination that (i) such investigation and/or actions arose out of and in connection with such person's scope of county employment or county function serving a public purpose; (ii) such person cannot pay such fees and costs during such investigation and/or action without incurring a real and substantial financial hardship; and (iii) such payment is authorized by statutory or common law.

Section 6. Any person who believes that he or she is allowed or entitled to payment for reasonable attorney's fees and costs pursuant to the provisions of this ordinance may file a written request for such fees and costs with the secretary of the Board of County Commissioners which request shall at the minimum state:

- i) the name and current address of the person making the request;
- ii) a description of the entity conducting the investigation or proceeding;
- iii) the case number or file number of the investigation or proceeding, if known;
- iv) a description of each count, charge and/or allegation made or being investigated;
- v) the date(s) that the alleged wrongful incidents are alleged to have occurred;
- vi) the person's office or position of employment with the county on the dates described in (v) above;
- vii) a narration of the reasons why such person believes that his or her attorney's fees and costs should be paid or reimbursed by the county;

viii) the name(s), address, and telephone number of the attorney(s) representing such person against the counts, charges and/or allegations described in (iv) above;

ix) a description of the fee arrangement or agreement between the person and his or her attorney(s); the amount of attorney's fees and costs paid to the date of the written request for attorney's fees and costs for defense against the counts, charges, and/or allegations described in (iv) above; and the total anticipated attorney's fees and costs that such person believes or has been advised may be incurred in defense against the counts, charges and/or allegations described in (iv) above; and

x) such other information as the Board of County Commissioners and/or the County Attorney's Office may reasonably require.

Section 7. The Board of County Commissioners shall formally consider the written request described in Section 6 above within 15 days of receipt by the secretary of the written request and shall at such hearing either request additional relevant information from the applicant, continue the hearing to a date and time certain, or otherwise take action upon the written request. In all events the Board of County Commissioners shall make its final determination upon the request within 15 days of (i) the date of receipt by the secretary of the initial written request, or (ii) the date of receipt by the secretary of the supplemental information requested pursuant to subsection (x) of Section 6, whichever date is later.

Section 8. Upon receipt of the written request described in Section 6, the secretary of the Board of County Commissioners shall communicate with the County's insurance providers to determine and advise the Board whether such insurance providers will defend against any or all of the counts, charges or allegations described in subsection (iv) of Section 6. The Board of County Commissioners shall not pay for attorney's fees and costs incurred in defense against counts, charges or allegations defended under County insurance.

Section 9. Notwithstanding anything to the contrary stated or implied herein, this ordinance does not address or pertain to elected official recall petitions or proceedings or to employee discipline or termination proceedings. In the event such recall, discipline or termination proceedings occur concurrently with the issues and/or proceedings described above, such recall, discipline or termination proceedings shall not effect the application of this ordinance to the above described non recall, non discipline or non termination issues or proceedings.

Section 10. Severability: Should any section or provisions of this ordinance, or the application of any provision of this ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the remainder of this ordinance.

Section 11. Effective Date: This Ordinance shall take effect immediately upon receipt of official acknowledgment by the Office of the Department of State to the Clerk of the Board of County Commissioners that same has been filed.

Section 12. Notwithstanding anything to the contrary stated or implied herein, the Board of County Commissioners of St. Johns County shall not pay, or pay reimbursements for, attorneys fees and costs under sections 4 and/or 5 hereof that exceed a total of \$ 30,000.00 pertaining to the defense of any one person regardless of the number of charges and/or tribunals involved, unless and until the Board determines that the expenditure of additional funds is in the public interest and votes to exceed such cap.

PASSED BY the Board of County Commissioners of St. Johns County, State of Florida this 9th day of April, 1991.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

BY: [Signature]
Its Chairman

ATTEST: CARL "BUD" MARKEL, CLERK

BY: [Signature]
Clerk

Adopted Regular Meeting April 9, 1991
Effective April 19, 1991

The St. Augustine Record

PUBLISHED EVERY AFTERNOON MONDAY THROUGH FRIDAY, SATURDAY AND SUNDAY MORNING
ST. AUGUSTINE AND ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA,
COUNTY OF ST. JOHNS

Before the undersigned authority personally appeared _____

SHERRY L. RAUCH who on oath says that she is
ACCOUNTING CLERK of the St. Augustine Record, a

daily newspaper published at St. Augustine in St. Johns County, Florida; that
the attached copy of advertisement, being a _____

NOTICE OF INTENT

_____ in the matter of _____

CONSIDER ENACTMENT OF ORDINANCE

_____ in the _____ Court,

was published in said newspaper in the issues of _____
March 19, 1991

Affiant further says that the St. Augustine Record is a newspaper published at St. Augustine, in said St. Johns County, Florida, and that the said newspaper has heretofore been continuously published in said St. Johns County, Florida, each day and has been entered as second class mail matter at the post office in the City of St. Augustine, in said St. Johns County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing the advertisement for publication in the said newspaper.

Sherry L. Rauch
Zoe Ann Johns

Sworn to and subscribed before me _____

this 19th day of March

A.D. 19 91

Zoe Ann Johns
(SEAL) 8122193 Notary Public

COPY OF ADVERTISEMENT

NOTICE OF INTENT
TO CONSIDER
ENACTMENT OF
ORDINANCE
NOTICE IS HEREBY GIVEN
THAT THE BOARD OF COUNTY
COMMISSIONERS OF ST.
JOHNS COUNTY, FLORIDA,
AT ITS REGULAR MEETING
ON TUESDAY, APRIL 9, 1991,
AT 9:00 O'CLOCK A.M. IN THE
COUNTY AUDITORIUM,
COUNTY ADMINISTRATION
BUILDING, 4020 LEWIS
SPEEDWAY (COUNTY ROAD
16-A) AND U.S. #1 NORTH, ST.
AUGUSTINE, FLORIDA, WILL
HOLD A PUBLIC HEARING TO
CONSIDER THE PASSAGE OF
THE FOLLOWING ORDINANCE:

AN ORDINANCE OF THE
COUNTY OF ST. JOHNS,
STATE OF FLORIDA DIRECT-
ING THAT THE BOARD OF
COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA
REIMBURSE REASONABLE
LEGAL FEES AND
COSTS INCURRED BY PRE-
SENT AND FORMER COUNTY
COMMISSIONERS AND COUNTY
PUBLIC OFFICERS, AND
THEIR PRESENT AND FORMER
EMPLOYEES AND
AGENTS, INCLUDING AP-
POINTEES OF SUCH OFFICERS,
WHEN SUCH PERSONS SUCCESS-
FULLY DEFEND OR PREVAIL IN
CIVIL, CRIMINAL AND/OR
ETHICAL INVESTIGATIONS
AND/OR ACTIONS THAT ARISE
OUT OF AND IN CONNECTION
WITH SUCH PERSON'S SCOPE
OF COUNTY EMPLOYMENT OR
COUNTY FUNCTION SERVING
A PUBLIC PURPOSE, AND
FURTHER AUTHORIZING THE
PAYMENT OF SUCH LEGAL
FEES AND COSTS DURING
SUCH INVESTIGATIONS
AND/OR ACTIONS UPON A
PRELIMINARY DETERMINATION
BY THE BOARD THAT (i) SUCH
INVESTIGATION AND/OR ACTION
AROSE OUT OF AND IN CON-
NECTION WITH SUCH PERSON'S
SCOPE OF COUNTY EMPLOYMENT
OR COUNTY FUNCTION SERVING
A PUBLIC PURPOSE, (ii) SUCH
PERSON CAN NOT PAY SUCH
FEES AND COSTS DURING
SUCH INVESTIGATION AND/OR
ACTION WITHOUT INCURRING
A REAL AND SUBSTANTIAL
FINANCIAL HARDSHIP AND
(iii) SUCH PAYMENT IS
AUTHORIZED BY STATUTORY
OR COMMON LAW; INDICATING
INTENT; PROVIDING DEFINI-
TIONS; MAKING FINDINGS;
PROVIDING PROCEDURES;
PROVIDING THAT THE ORDINANCE
DOES NOT APPLY TO ELECTED
OFFICIALS; RECALL PROCEED-
INGS OR TO EMPLOYEE DIS-
CIPLINE OR TERMINATION
PROCEEDINGS; PROVIDING
FOR SEVERABILITY; AND
PROVIDING AN EFFECTIVE
DATE.

The proposed Ordinance is
on file in the office of the
Clerk of the Circuit Court,
St. Johns County, Florida,
St. Johns County Administration
Building, Lewis Speedway,
and may be examined by
parties interested prior to
said public hearing.

All parties having any inter-
est in said Ordinance will be
afforded an opportunity to be
heard at the public hearing.

If a person decides to appeal
any decision made by the Board
of County Commissioners with
respect to any matter consid-
ered at the meeting or hearing,
he will need a record of the
proceedings, and for such pur-
poses he may need to ensure that
a verbatim record of the proceed-
ings is made, which record in-
cludes the testimony and evi-
dence upon which the appeal is
to be based.

BOARD OF COUNTY
COMMISSIONERS OF ST.
JOHNS COUNTY,
FLORIDA
Carl "Bud" Merkel, Its Clerk
By Amy B. Mulligan
Deputy Clerk
16th March 19, 1991