

PUBLIC NOTICE

PLEASE TAKE NOTICE that the Board of Trustees of the Village of Head-of-the-Harbor will hold a public hearing on the 18th day of May, 2016, at 7:00 P.M., at the Village Hall, 500 North Country Road, St. James, New York, to consider the adoption of a local law as follows:

**LOCAL LAW (Intro.) NO. 1 OF 2016
A LOCAL LAW ENTITLED DEFENSE AND INDEMNIFICATION**

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF HEAD-OF-THE-HARBOR AS FOLLOWS:

§ 1. Legislative intent.

The purpose of this chapter is to confer the benefits of New York Public Officers Law § 18 upon the officers and employees of the Village by providing legal and financial protection for those individuals serving the Village of Head-of-the-Harbor 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 Board of Trustees 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 Board of Trustees does not intend to limit or otherwise abrogate any existing right or responsibility of the Village or its employees with regard to indemnification or legal defense. The intent of this chapter is to provide similar coverage for local employees as is presently provided for state employees so as to continue to attract qualified individuals to local government service.

§ 2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

EMPLOYEE

Any person holding a position by election, appointment, or employment in the service of the Village of Head-of-the-Harbor, whether or not compensated, or a volunteer expressly authorized to participate in a municipally sponsored volunteer program. The term "employee" shall include all employees, a former employee, his estate or judicially appointed personal representative, all members of the Village Police Department and Highway Department, the Village Engineer, the Village Attorney, any planning consultant, the Village Prosecutor and persons holding any similar position.

§ 3. Defense against legal actions; payment of private counsel.

- A. Upon the delivery of any summons, complaint, notice, process, demand or pleading to the Village Clerk within five (5) days of its service on an employee, the Village shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission 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 § 1981 or 1983 of Title 42 of the United States Code. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the Village of Head-of-the-Harbor.

- B. Subject to the conditions set forth in Subsection A above, the employee shall be entitled to be represented by the Village Attorney (or an attorney selected by him or her or the Board of Trustees), 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 Village Attorney determines, based upon his or her investigating and review of the facts and circumstances of the case, that representation by the Village Attorney would be inappropriate or whenever a court of competent jurisdiction, upon appropriate motion or by a 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 Village 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. The Village 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 Village Attorney shall so certify to the Board of Trustees. Reasonable attorney's fees and litigation expenses shall be paid by the Village to such private counsel from time to time during the pendency of the civil action or proceeding, subject to certification that the employee is entitled to representation under the terms and conditions of this section by the head of the department, commission, division, office or agency in which such employee is employed and upon the audit and warrant of the Village Treasurer. 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. Where the employee delivers process and a request for a defense to the Village Clerk, the Clerk shall take the necessary steps 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.

§ 4. Settlement and claims payment procedure.

- A. Indemnification by Village.

- (1) The Village 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 arose occurred while the employee was acting within the scope of his or her public employment 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.

(2) The Village shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court whenever such action, proceeding or judgment is for punitive damages or exemplary damages arising out of a negligent act or other tort of such employee committed within the scope of said employee's duties.

(3) It is the intention of the Board of Trustees, pursuant to the provisions of § 10, Subdivision 1(ii)e(3) and § 22, Subdivision 2, of the Municipal Home Rule Law, to supersede the provisions of § 18, Subdivision 4, of the Public Officers Law that are in conflict or inconsistent with this section.

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

C. 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 Mayor, and, if not inconsistent with the provisions of this section, such judgment or settlement shall be certified for payment by such Mayor. If the Attorney concurs in such certification, the judgment or settlement shall be paid upon the audit and warrant of the Village Treasurer.

§ 5. Conditions for Village to defend or indemnify.

The duty to defend or indemnify and save harmless provided by this chapter shall be conditioned upon delivery to the Village Clerk by the employee of the original copy of any summons, complaint, process, notice, demand or pleading within five days after it is served and upon the full cooperation of the employee in the defense of such action or proceeding as well as in defense of any action or proceeding against the Village 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 Village provide for a defense pursuant to this chapter.

§ 6. Rights of other parties; Workers' Compensation Law.

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 Workers' Compensation Law.

§ 7. Rights and obligations under 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.

§ 8. Applicability.

The provisions of this chapter shall apply to all actions and proceedings pending upon the effective date thereof or thereafter instituted.

§ 9. Effect on other immunities and rights.

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 Village 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 state or federal statutory or common law.

§ 10. Severability.

Should any part or provision of this local law be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the local law as a whole nor any part

thereof other than the part so decided to be unconstitutional or invalid.

§ 11. Effective date.

This local law shall take effect immediately upon filing with the Secretary of State as provided by law.

§ 12. Repeal.

Village Code Chapter 16 is upon the enactment and effective of this local law repealed.

All persons in interest will be heard by the Board of Trustees at the public hearing to be held as aforesaid and may appear in person or by representative. The Village Hall is accessible to handicapped persons.

Dated: _____, 2016

BY ORDER OF THE BOARD OF TRUSTEES OF
THE VILLAGE OF HEAD-OF-THE-HARBOR

BY: Margaret O'Keefe, Village Clerk