

CHAPTER 7

LOCAL LAW NO. 1 OF 2013

**A LOCAL LAW ENTITLED
DEFENSE AND INDEMNIFICATION**

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF SHOREHAM, AS FOLLOWS:

SECTION 1. PURPOSE.

The purpose of this local law is to enact a defense and indemnification law as part of the Village Code.

SECTION 2. ENACTMENT.

A Chapter 7 of the Village Code entitled Defense and Indemnification is enacted, as follows:

§ 7-1. Legislative Intent.

The purpose of this Chapter 7, entitled a Defense and Indemnification Law, is to confer the benefits of § 18 of New York State Public Officers Law upon Village Employees, by providing legal and financial protection against civil claims that may be brought against any such employee when acting within the scope of such employee's employment and duties. In enacting this Chapter 7, the Village Board finds that New York State has passed similar provisions for the legal and financial protection of State officers and employees, and further finds that such security is required for proper management of Village governmental matters. By passage of this Chapter 7, the Village Board does not intend to limit or otherwise abrogate any existing right or responsibility of the Village, or of any Village Employee, as related to the provision of legal defense or indemnification. The intent of this Chapter 7 is to provide protection for such employees similar to that presently provided State officers and employees, so as to enable the Village to attract and retain qualified individuals for service in local government.

§ 7-2. Definition of Village Employee.

A "Village Employee" shall be any person holding a Village position by election or appointment, including the appointed Village

Attorney, or by employment in the service of the Village, whether or not such person is compensated, or is a volunteer expressly authorized by the Village to participate in any Village sponsored volunteer program, with the understanding that the term Village Employee shall include any person having been a former Village Employee, or such person's estate or judicially appointed personal representative, but shall not include any person serving, or having served, the Village as an independent contractor, but only as related to such person's service in such capacity, and not as related to such person's service otherwise qualifying such person as a Village Employee under this § 7-2.

§ 7-3. Word Usage.

For purposes of this Chapter 7:

1. "Including" shall be deemed to embody the concept of including something by way of illustration and not limitation.
2. "Civil action" shall be deemed to be any such action or proceeding whether brought in any state or federal court.

§ 7-4. Village Employee Representation.

A. Delivery of Complaint. Upon delivery to the Village Clerk of any complaint, demand, notice, pleading, process, or summons served in any civil action, as required under § 7-6A(1), and otherwise subject to § 7-6, the Village shall provide for the defense of any Village Employee being served with such papers, including any such action to enforce any provision of § 1981 or 1983 of Title 42 of the United States Code, in either case, arising out of any alleged act of, or omission by, any such employee when acting within the scope of such employee's employment or duties.

B. Appointment of Counsel. If any Village Employee is to be defended in any civil action, as required under § 7-4A of this § 7-4, such employee shall be entitled to be represented in such action, without cost to such employee, by the Village Attorney, or an attorney selected by the Village Attorney or the Village Board, except that such employee shall otherwise be entitled to be so represented by private counsel of such employee's choice, but only if the Village Attorney determines that representation by the Village Attorney would be inappropriate given relevant facts, or if a court of competent jurisdiction determines that such employee is entitled to be represented by private counsel. The Village Attorney shall inform such employee, in writing, of any such determination, and if such employee is to be represented by private counsel, and more than one (1) Village Employee is joined in the subject action, the Village Attorney may, subject to approval by the Village Board, require that such employees be represented as a group by the same counsel.

C. Payment of Legal Fees and Expenses. Upon certification by the Village Attorney to the Village Board that any Village Employee, or group of such employees, is entitled to be represented by private counsel under § 7-4B of this § 7-4, and upon the audit and warrant of the Village Treasurer, the Village shall pay reasonable legal fees and expenses to such private counsel from time-to-time related to such representation during the pendency of the subject action.

D. Handling of Representation Disputes. Any dispute respecting representation of any Village Employee by private counsel, as permitted under this § 7-4, or the reasonableness of legal fees or expenses related to any such representation, whether involving one (1) such employee or a group of such employees, shall be resolved by the court upon motion or by way of special proceeding.

E. Avoidance of Default. If any Village Employee having been served with any complaint, demand, notice, pleading, process or summons related to any civil action delivers a copy of same to the Village Clerk, as required under § 7-6A(1) of this Chapter 7, and along therewith delivers written request for a defense by the Village related thereto, the Village Clerk shall, subject to the remaining provisions of § 7-6 of this Chapter 7, take the necessary steps on behalf of such employee to avoid entry of a default judgment related thereto, pending resolution of any question pertaining to the obligation to provide for a defense under this Chapter 7.

§ 7-5. Indemnification/Submission of Settlement Terms/and Final Judgment and Settlement.

A. Indemnification by Village. Subject to § 7-6, the Village shall indemnify and save harmless Village Employees in the amount of any judgment obtained against any such employee arising out of any civil action, or in the amount of any settlement in lieu thereof, but only if such judgment or need for settlement is a result of any act of, or omission by, such employee when acting within the scope of such employee's employment or duties, with the understanding that:

(1) The obligation of the Village to so indemnify such employee shall apply to all judgments, including those for punitive or exemplary damages arising out of any negligent act or other tort of any such employee committed within the scope of said employee's duties.

(2) In accordance with the provisions of § 10, Subdivision 1(ii)e(3), and § 22, Subdivision 2, of the Municipal Home Rule Law, the provisions of this Chapter § 7 shall supersede the provisions of § 18, Subdivision 4, of the New York State Public Officers Law that are in conflict or inconsistent with the provisions of this § 7-5.

B. Submission of Settlement Terms. Any Village Employee represented by private counsel, as permitted under § 7-4 of this Chapter 7, shall cause to be submitted to the Village Clerk, in writing, the terms of any proposed settlement being subject to indemnification under this § 7-5, which writing shall be so submitted on or before the date thirty (30) days following the date of any such settlement, and if the terms of such settlement are not in conflict or inconsistent with the provisions of this § 7-5, the Village Board shall certify such settlement terms and submit same to the Village Attorney, and the Village Attorney shall approve such proposed settlement terms if same are in the best interest of the Village, with the understanding that nothing in this § 7-5 shall be construed to authorize the Village to indemnify or save harmless any Village Employee respecting any settlement terms not so certified and approved by the Village Board and Village Attorney.

C. Judgment and Settlement. Upon entry of a judgment obtained against any Village Employee represented by private counsel, as permitted under § 7-4 of this Chapter 7, arising out of any civil action, or upon any settlement in lieu thereof as established under § 6-5B of this § 7-5, such employee shall cause to be delivered to the Village Clerk a copy of such judgment, or written summary of settlement terms, which delivery shall be made on or before the date thirty (30) days following the date of any such judgment or settlement, and if the terms of such judgment or settlement are not in conflict or inconsistent with the provisions of this § 7-5, the amount of such judgment or settlement shall be certified for payment by the Village Board and paid upon the audit and warrant of the Village Treasurer.

§ 7-6. Conditions for, Prohibitions Against, Village Defense/Indemnification.

A. Conditions for Defense/Indemnification. The obligation of the Village to defend, or indemnify and save harmless, Village Employees, as required under this Chapter § 7, shall be conditioned upon:

(1) Delivery to the Village Clerk of the original copy of any complaint, demand, notice, pleading, process or summons served upon such employee in any civil action, which delivery shall be made on or before the date five (5) days following the date of such service in a manner as set forth in § 7-7 of this Chapter 7, accompanied by written request by such employee that the Village provide for a defense in accordance with this Chapter 7.

(2) The full cooperation of such employee in the defense of any civil action brought against such employee, or against the Village as related thereto, or in the prosecution of any related appeal.

B. Prohibitions Against Defense/Indemnification. The Village shall have no obligation to provide for a defense of, or indemnify and hold harmless, any Village Employee, as required under this Chapter 7, if:

(1) Any judgment or need for any settlement arises out of any:

(a) Intentional wrongdoing or recklessness on the part of such employee.

(b) Act by such employee not falling within the scope of such employee's employment or duties.

(2) The subject civil action is brought by or on behalf of the Village.

§ 7-7. Transmittal of Required Papers.

Any papers required to be transmitted by a Village Employee to the Village Clerk under this Chapter 7, be such transmittal in the form of a delivery or submittal, shall be required to be transmitted by hand-delivery, evidenced by receipt acknowledging the date of such transmittal, or by certified or registered mail, which shall be deemed transmitted on the date of such mailing.

§ 7-8. Rights of Other Parties/Workers' Compensation Law.

The benefits of this Chapter 7 shall inure only to Village Employees and shall not enlarge or diminish the rights of any other party, nor shall any provision of this Chapter 7 be construed to affect any provision of the Workers' Compensation Law.

§ 7-9. Rights and Obligations Under Insurance Policies.

The provisions of this Chapter 7 shall not be construed to affect the rights and obligations of any insurer under any policy of insurance.

§ 7-10. Applicability.

The provisions of this Chapter 7 shall apply to any civil action pending as of the date of this Chapter 7 or initiated on any date thereafter.

§ 7-11. Effect on Other Immunities and Rights.

Except as otherwise expressly provided in this Chapter 7, the provisions of said chapter shall not be construed to abrogate or otherwise affect any immunity available to or conferred upon any Village Employee, or any right to defense or indemnification provided any Village Employee, by reason of any other provision of state or federal statutory or common law.

§ 7-12. **Severability.**

If any provision of this Chapter 7 is ruled unconstitutional or invalid, any such ruling shall not affect the validity of other provisions of said chapter or said chapter as a whole.

SECTION 3. EFFECTIVE DATE. This local law shall take effect immediately upon filing with the Secretary of State as provided by law.

Dated: April 17, 2013

BY ORDER OF THE BOARD OF TRUSTEES
OF THE VILLAGE OF SHOREHAM

BY: Cathy Donahue-Spier,
Village Clerk

Effective Date: May 7, 2013