

**PROPOSED LOCAL LAW 2 OF THE YEAR 2018 AMENDING
CHAPTER 46 OF THE VILLAGE CODE OF THE INCORPORATED
VILLAGE OF MUTTONTOWN**

BE IT ENACTED, by the Board of Trustees of the Incorporated Village of Muttontown, County of Nassau, State of New York, as follows:

The Board of Trustees of the Incorporated Village of Muttontown does hereby make the following findings relative to the matters set forth in this Local Law:

Article I. General Provisions

- A. The purpose of this Local Law is to provide for revisions to Chapter 46 of the Village Code of the Incorporated Village of Muttontown so as to adopt § 18 of the Public Officers Law. The Board of Trustees of the Village of Muttontown has heretofore recognized the increasing litigation exposure faced by public employees and officers and conferred the defense and indemnification benefits contained in § 18 of the Public Officers Law on the village's public officials and employees by this Local Law. The Board of Trustees wishes to codify § 18 of the Public Officers Law to provide additional indemnification and defense protection pursuant to law.
- B. The Board of Trustees of the Incorporated Village of Muttontown find that this Local Law advances the governmental purposes of the Incorporated Village of Muttontown and provide for the health, safety and welfare of persons and property within the Incorporated Village of Muttontown.
- C. This Local Law is adopted pursuant to the Village Law of the State of New York and Article 2 of the Municipal Home Rule Law of the State of New York.
- D. All other laws and ordinances of the Incorporated Village of Muttontown that are inconsistent with the provisions of this local law are hereby repealed provided, however, that such repeal shall only be to the extent of such inconsistency. In all other respects, this Local Law shall be in addition to such other local laws or ordinances regulating and governing the subject matter covered herein.
- E. If any clause, sentence, paragraph, word, section or part of this Local Law shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, word, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.
- F. This Local Law will take effect upon filing in the office of the New York State Secretary of State.

Article II. Amendment to Chapter 46 of the Village Code of the Incorporated Village of Muttontown

Chapter 46, sections 46-1 through 46-4 of the Village Code of the Incorporated Village of Muttontown shall be amended with the following text:

§ 46-1. Definitions.

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

EMPLOYEE

Unless the context otherwise requires, any person holding a position by election, appointment or employment in the service of the Village of Muttontown, whether or not compensated, but shall not include an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative. The benefits of this article shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party.

§ 46.2. Duty to provide for defense; exception.

A. 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 public employment or duties or which is brought to enforce a provision of Section 1981 or 1983 of Title 42 of the United States Code; provided, however, that the duty of the Village to defend or save harmless shall be conditioned upon:

(1) The delivery to the Village Attorney at his office by the employee of the original or a copy of any summons, complaint, process, notice, demand or pleading within 10 days after he is served with such document. Such delivery shall be deemed a request by the employee that the Village provide for his defense pursuant to this article.

(2) The full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the Village based upon the same act or omission and in the prosecution of any appeal.

B. 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 Muttontown.

§ 46.3. Representation by Village Attorney or private counsel.

Subject to the conditions set forth in § 46.2 of this article, the employee shall be entitled to be represented by the Village Attorney; provided, however, that the employee shall be entitled to representation by private counsel of his choice in any civil judicial proceeding whenever the Village Attorney determines, based upon his investigation 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 choice. The Village Attorney shall notify the employee, in writing, of such determination that the employee is entitled to be represented by private counsel.

§ 46.4. Representation of groups by same counsel; fees and expenses.

The Village Attorney may require, as a condition to payment of the fees and expenses of such representation by private counsel, 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 § 46.3 of this article, the Village Attorney shall so certify to the Village Treasurer. Reasonable attorneys' 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 § 46.3 of this article 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 attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

§ 46.5. Responsibility of Village Attorney.

Where the employee delivers process and a request for a defense to the Village Attorney, as required by § 46.2 of this article, the Village Attorney shall take the necessary steps, including the retention of private counsel, under the terms and conditions therein provided 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.

§ 46.6. Village to indemnify employees; judgments and settlements.

A. 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 for compensatory and/or punitive damages, 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 public employment or duties.

B. An employee represented by private counsel shall cause to be submitted to the head of the department, commission, division, office or agency in which he is employed any proposed settlement which may be subject to indemnification by the Village, and, if not inconsistent with the provisions of this section, such head of the department, commission, division, office or agency in which he is employed shall certify such settlement and submit such settlement and certification to the Village Attorney. The Village Attorney shall review such proposed settlement as to form and amount and shall give his approval if, in his judgment, the settlement is in the best

interest of the Village. Nothing in this section 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 head of the department, commission, division, office or agency in which he is employed, and, if not inconsistent with the provisions of this section, such judgment or settlement shall be certified for payment by such head of the department, commission, division, office or agency.

§ 46.7. Exceptions.

A. Except as provided in Subsection **B** of this section, nothing in this article shall authorize the Village to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties or money recovered from an employee pursuant to General Municipal Law § 51.

§ 46.8. Construal.

A. The provisions of this article shall not be construed to affect, alter or repeal any provision of the Workers' Compensation Law.

B. This article shall not in any way affect the obligation of any claimant to give notice to the Village under any provision of law.

C. The provisions of this article shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

D. Except as otherwise specifically provided in this article, the provisions of this article 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.

§ 46.9. Liability insurance.

The Board of Trustees may, by resolution, undertake to purchase liability insurance for its officers and employees for acts within the purview of this article.

§ 46.10. Applicability; when effective.

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

B. This article shall become effective immediately upon filing with the Secretary of State.

§ 46.11 Village liable for costs; additional benefits.

Pursuant to the provisions of § 18 of the Public Officers Law, the Incorporated Village of Muttontown hereby agrees to be held liable for costs incurred under the provisions of said section, by conferring upon the officers and employees of the Incorporated Village of Muttontown the benefits of § 18 of the Public Officers Law. Such benefits shall supplement and shall be available in addition to the defense or indemnification protection conferred by Chapter **46**, Article I, §§ **46-1** through **46-11** of the Code of the Incorporated Village of Muttontown.