

INCORPORATED VILLAGE OF VALLEY STREAM

LOCAL LAW 3-2022

A LOCAL LAW TO AMEND CHAPTER 22 OF THE VILLAGE CODE OF THE VILLAGE OF VALLEY STREAM BY MODIFYING THE DEFENSE AND INDEMNIFICATION IT PROVIDES TO COVERED PERSONS.

Be it enacted by the Board of Trustees of the Incorporated Village of Valley Stream as follows:

CHAPTER 22

**DEFENSE AND INDEMNIFICATION OF
VILLAGE OFFICERS AND COVERED PERSONS**

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| §22-1. Purpose. | §22-7. Judgments and settlements. |
| §22-2. Definitions. | §22-8. Liability for costs. |
| §22-3. Defense of Covered Persons by Village; exception. | §22-9. Construal of provisions. |
| §22-4. Representation by Village Attorney or private counsel. | §22-10. Applicability. |
| §22-5. Fees and expenses. | §22-11. Severability. |
| §22-6. Duty of Village Attorney and/or General Counsel to avoid entry of default judgment. | §22-12. When effective. |

§22-1. Purpose.

The purpose of this chapter is to confer the benefits of §18 of Article 2 of the Public Officers Law of New York State upon covered persons, as defined in §22-2 of Chapter 22 of the Code of the Village of Valley Stream. The intent of this legislation is to defend and indemnify covered persons, who have been named in administrative, arbitration, or judicial proceedings. The further intent is to provide supplemental defense and indemnification for punitive and exemplary damages, as well as compensatory damages. The duty shall not arise where the injury or damage resulted from the intentional wrongdoing or maliciousness on the part of a covered person.

§22-2. Definitions.

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

ADMINISTRATIVE PROCEEDING - A proceeding before a governmental or quasi-governmental agency charged with administering and implementing legislation.

ARBITRATION PROCEEDING - A proceeding before an arbiter.

CIVIL ACTION - An action brought to enforce, redress or protect private rights, including suits at equity and at law.

COVERED PERSON – The Board of Trustees of the Incorporated Village of Valley Stream. Unless the context otherwise requires, any person holding a position by election, appointment or employment in the service of the Incorporated Village of Valley Stream, whether or not compensated; a volunteer expressly authorized to participate in a Village-sponsored volunteer program. Except as to Village Prosecutors and/or Deputy Village Prosecutors, an independent contractor is not included. The term “covered person” shall include members of all boards and commissions of the village, a former covered person, his estate or judicially appointed personal representative. The benefits of this chapter shall inure only to Board and/or Commission member, and/or Covered Person as defined herein and shall not enlarge or diminish the rights of any other party.

JUDICIAL PROCEEDING - Any proceeding in which judicial action is invoked and taken in a legally constituted court.

VILLAGE – The Incorporated Village of Valley Stream.

VILLAGE ATTORNEY - The Village Attorney of the Incorporated Village of Valley Stream, or if no Village Attorney has been appointed, to General Counsel for the Village of Valley Stream.

VILLAGE COMPTROLLER - A person or persons performing the functions of comptroller or auditor for the Incorporated Village of Valley Stream.

§22-3. Defense of Covered Persons by Village; exception.

- A. The village shall provide for the defense of any Covered Person in any judicial proceeding or administrative proceeding or Arbitration proceeding arising out of any alleged act or omission which occurred or is alleged to have occurred while the Covered Person was acting within the scope of his/her title in the discharge of his/her public employment or duties; provided, however that the duty of the Village to defend or save harmless shall be conditioned upon:
 - (1) Delivery to the Village Attorney, or if no Village Attorney has been appointed to General Counsel, at his offices by the Covered Person of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he is served with such document. Such delivery shall be deemed a request by the Covered Person that the Village provide for his defense and indemnification pursuant to this chapter.

- (2) The full cooperation of the Covered Person in the defense of such action, arbitration and/or proceeding in the defense of any action, arbitration 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 administrative or judicial proceeding is brought by or on behalf of the Village, but shall arise where such civil action or administrative, or arbitration or judicial proceeding arise as a cross-claim or counterclaim in response to a civil action or administrative or judicial proceeding brought by or on behalf of the Village.

§22-4. Representation by Village Attorney or private counsel.

Subject to the conditions set forth in § 22-3 of this chapter, the Covered Person shall be entitled to be represented by the Village Attorney, or if no Village Attorney has been appointed General Counsel, provided, however, that the Covered Person shall be entitled to representation by private counsel of his choice in any judicial proceeding and/or administrative proceeding, whenever the Village Attorney, or General Counsel determines, based upon his investigation and review of the facts and circumstances of the case, that representation by the Village Attorney or General Counsel, 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 Covered Person is entitled to be represented by private counsel of his choice. The Village Attorney or General Counsel shall notify the Covered Person, in writing, of such determination that the Covered Person is entitled to be represented by private counsel.

§22-5. Fees and expenses.

The Village Attorney or General Counsel may require, as a condition to payment of the fees and expenses of such representation by private counsel, that appropriate groups of such Covered Persons be represented by the same counsel. If the Covered Person or group of Covered Persons is entitled to representation by private counsel under the provisions of §22-4 of this chapter, the Village Attorney or General Counsel 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, administrative and/or arbitration proceeding, subject to certification that the Covered Person is entitled to representation under the terms and conditions of §22-3 of this chapter by the head of the department, commission, division, office or agency in which such Covered Person is employed and upon the audit of the Board of Trustees. Any dispute with respect to representation of multiple Covered Persons 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.

§22-6. Duty of Village Attorney and/or General Counsel to avoid entry of default judgment.

Where the Covered Person delivers process and a request for a defense to the Village Attorney or General Counsel, as required by §22-3 of this chapter, the Village Attorney or General Counsel shall take the necessary steps, including the retention of a private counsel, under the terms and conditions therein provided, on behalf of the Covered Person to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

§22-7. Judgments and settlements.

- A. The village shall indemnify and save harmless its Covered Persons in the amount of any judgment obtained against such Covered Persons in any state or federal court or in the amount of any settlement of a claim, including punitive or exemplary damages, provided that the act or omission from which such judgment or settlement arose occurred while the Covered Person was acting within the scope of his public employment or 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 Covered Person.
- B. Such proper discharge of duty and scope of employment shall be determined by a majority vote of a panel consisting of the Village Clerk, Treasurer, and Superintendent of Public Works. In the absence of or unavailability of any of the three individuals, the Village Attorney, or if no Village Attorney has been appointed General Counsel, and the Chairs of the Board of Zoning Appeals and/or Planning Board, shall sit as the third member of the panel.
- C. A Covered Person represented by private counsel shall cause to be submitted to the Village Attorney, or if no Village Attorney has been appointed to General Counsel, head of the department, commission, division, office or agency in which he is a Covered Person 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 shall 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 a Covered Person with respect to a settlement not so reviewed and approved by the Village Attorney.
- D. Upon entry of a final judgment against the Covered Person or upon the settlement of the claim, the Covered Person shall cause to be served a copy of such judgment or settlement, personally or by certified or registered mail within 20 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. If the Village Attorney concurs in such certification the judgment or settlement shall be paid upon the audit of the Board of Trustees.

§22-8. Liability for costs.

The Board of Trustees of the Incorporated Village of Valley Stream hereby accepts the applicability of §18 of the Public Officers Law for the Incorporated Village of Valley Stream and agrees that the Village shall be liable for costs incurred under the provisions of §18 of the Public Officers Law and confers upon the officers and Covered Persons of the Village the benefits of §18 of such law. Such benefits shall supplement and be available in addition to defense and indemnification protection conferred by the other provisions of this chapter.

§22-9. Construal of provisions.

- A. The provisions of this chapter shall not be construed to affect alter or repeal any provision of the Workers' Compensation Law.
- B. This chapter shall not in any way affect the obligation of any claimant or Covered Person to give notice to the village under §50-e of the General Municipal Law or any other provision of law.
- C. 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 Covered Person of the Village or any right to defense and/or indemnification provided for any governmental officer or Covered Person by, in accordance with, or by reason of any other provision of state or federal statutory or common law.

§22-10. Applicability.

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

§22-11. Severability.

If any provisions of this chapter or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court of competent jurisdiction, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this chapter or the application of any such provision to any other person or circumstance.

§22-12. When effective.

This chapter shall take effect immediately upon filing with the Secretary of State.