

Chapter 28

OFFICERS AND EMPLOYEES

ARTICLE I

Defense and Indemnification

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[HISTORY: Adopted by the Board of Trustees of the Village of Windsor: Art. I, 9-9-80 as L.L. No. 3-1980. Amendments noted where applicable.]

GENERAL REFERENCES

Code of Ethics - See Ch. 15.

ARTICLE I
Defense and Indemnification
[Adopted 9-9-80 as L.L. No. 3-1980]

§ 28-1. Purpose and intent.

The purpose of this Article is to provide legal and financial protection for those individuals serving the Village of Windsor 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 Article, 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 village personnel. By enacting this Article, the Board of Trustees does not intend to limit or otherwise abrogate any existing right or responsibility of the Village of Windsor or its employees with regard to indemnification or legal defense. It is solely the intent of this Article 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.

§ 28-2. Definitions.

As used in this Article, unless the context otherwise requires, the following terms shall have the meanings indicated:

EMPLOYEE - Any person holding a position by election, appointment or employment in a service of the Village of Windsor, whether or not compensated, or a volunteer, expressly authorized to participate in a municipally sponsored volunteer program, but shall not include an independent contractor. The term "employee" shall also include a former employee, his estate or judicially appointed personal representative.

§ 28-3. Defense to be provided.

- A. Upon compliance by the employee with the provisions of § 28-5 of this Article, 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. 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 Windsor.

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- B. Subject to the conditions set forth in Subsection A of this section, the employee shall be entitled to be represented by the Village Attorney or an attorney employed or retained by the Village of Windsor for the defense of the employee; provided, however, that the employee shall be entitled to be represented by an attorney of his choice 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 determines that a conflict of interest exists and that the employee is entitled to be represented by an attorney of his choice. Reasonable attorney's fees and litigation expenses shall be paid by the village to such attorney employed or retained, from time to time, during the pendency of the civil action or proceeding, subject to certification by the Mayor of the Village of Windsor that the employee is entitled to representation under the terms and conditions of this Article. Payment of such fees and expenses shall be made in the same manner as payment of other claims and expenses of the village. Any dispute with respect to representation of multiple employees by the Village Attorney, or by an attorney employed or retained for such purposes, or with respect to the amount of the fees or expenses shall be resolved by the court, upon motion or by way of a special proceeding.
- A. Where the employee delivers process and a request for a defense to the Village Attorney, as required by § 28-5 of this Article, the Village Attorney shall take the necessary steps, including the retention of private counsel under the terms and conditions provided in Subsection B 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.

§ 28-4. Indemnification to be provided.

- A. The Village of Windsor 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 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 employee.

- B. An employee represented by a personal attorney shall cause to be submitted to the Village 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 Village Attorney shall review the 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 any employee with respect to a settlement not so reviewed and approved by the Village Attorney.

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- C. Upon entry of a final judgment against the employee or upon the settlement of the claim, the employee shall cause a copy of the judgment or settlement to be served, personally or by certified or registered mail, upon the Mayor within thirty (30) days of the date of entry or settlement, and if not inconsistent with the provisions of this section, such judgment or settlement shall be certified for payment by the Mayor. If the Village Attorney concurs in the certification, the judgment or settlement shall be paid upon the audit and warrant of the Village Treasurer.

§ 28-5. Requirements for provision of defense and indemnification.

The duties to defend or indemnify and save harmless as provided in this Article shall be contingent upon delivery to the Village Attorney of a copy of any summons, complaint, process, notice, demand or pleading within five (5) days

after the employee is served with such document and upon the full cooperation of the employee in the defense of such action or proceeding and defense of any action or proceeding against the village based upon the same act or omission and the prosecution of any appeal. Such delivery shall be deemed to be a request by the employee that the village provide for his defense pursuant to this Article, unless the employee shall state in writing that a defense is not requested.

§ 28-6. Applicability of benefits.

The benefit of this Article 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 Article be construed to affect, alter or repeal any provisions of the Workers Compensation Law.

§ 28-7. Extension to members of negotiating unit.

The provisions of this Article shall be extended to an employee of a negotiating unit for which an agreement has been negotiated pursuant to Civil Service Law Article 14 only if such agreement expressly so provides.

§ 28-8. Effect on insurance policies.

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.

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§ 28-9. Construal of provisions.

Unless otherwise specified in this Article, the provisions of this Article shall not be construed to in pair, 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 provided for any governmental officer or employee by reason of any other provision of state or federal statutory or common law.

§ 28-10. Applicability of provisions.

The provisions of this Article shall apply to all actions and proceedings specified herein which are commenced, instituted or brought on after the effective date of this Article.

ARTICLE II Duties

§ 28-11. Appearance Tickets*

The following Village officials shall be permitted to issue appearance tickets for any violation of any parking regulation:

1. Village Highway Superintendent;
2. Village Water Superintendent;
3. Village Trustees; and/or
4. Village Mayor

*Amended 9/9/2004; Local Law #3-2004