

ARTICLE II  
Legislation Enacted During Codification

[During the process of codification, certain substantive revisions, changes and/or additions to various existing ordinances and local laws, and certain complete new local laws, were approved by the Board of Trustees for inclusion in the Code of the Village of Port Dickinson. Such amendments and new enactments are noted in the histories of individual chapters as "... amended (adopted) during codification; see Ch. 1, General Provisions, Article II." In accordance with required statutory provisions, these amendments and new enactments will be adopted separately and are presently proposed before the Board of Trustees for that purpose. Upon final enactment, a complete enumeration of all chapters and sections in the Code involved in such enactments will be included in this Article along with specific dates of adoption. Until inclusion of this enumeration, consult municipal records for the possible adoption of such legislation.]

Chapter 3

DEFENSE AND INDEMNIFICATION

- § 3-1. Definitions.
- § 3-2. Provisions for defense and indemnification.
- § 3-3. Responsibilities of employee.
- § 3-4. Limitation of benefits; effect on Workers' Compensation Law.
- § 3-5. Effect on insurers.
- § 3-6. Effect on other laws.
- § 3-7. Applicability.
- § 3-8. When effective.

[HISTORY: Adopted by the Board of Trustees of the Village of Port Dickinson ?11-20-84 as Local Law No. 2-1984.<sup>1</sup> Amendments noted where applicable.]

GENERAL REFERENCES

Code of Ethics — See Ch. 5.

- § 3-1. Definitions.

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

EMPLOYEE — Any Village of Port Dickinson commissioner, member of a Village of Port Dickinson board or commission, Village of Port Dickinson officer, Village of Port Dickinson employee, Village of Port Dickinson volunteer expressly authorized by the Village of Port Dickinson to participate in a publicly sponsored volunteer program or any other person holding a Village of Port Dickinson position by election, appointment or employment in the service of the Village of Port Dickinson, whether or not compensated, but shall not include an independent

contractor. The term “employee” shall include a former employee of the Village of Port Dickinson, his estate or judicially appointed personal representative.

VILLAGE — The Village of Port Dickinson.

§ 3-2. Provisions for defense and indemnification.

A. Upon compliance by the employee with the provisions of §3-3 of this Chapter, the Village shall provide for the defense of the employee in:

1. 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 or in good faith purporting to act within the scope of his/her public employment or duties including, without limitation, any civil action or proceeding arising out of any alleged act or omission in which it is alleged that the officer or employee has violated the civil rights of the claimant, petitioner or plaintiff under sections 1981 and 1983 of the U.S. Civil Rights Act (42 U.S.C. sections 1981 and 1983), or
2. any criminal proceeding in a state or federal court arising out of any act which occurred while the employee was acting within the scope of his public employment or duties, upon his acquittal or the dismissal of criminal charges against him, or
3. connection with an appearance before a grand jury which returns no indictment against the employee, where the appearance resulted from actions occurring while the employee was acting within the scope of his public employment.

Such defense shall not be provided where such action or proceeding is brought by or on behalf of the Village.

[Amended May 11, 2004 by LL No. 3-2004]

- B. Subject to the conditions set forth in this chapter, the employee shall be present by the Village Attorney or an attorney employed or retained by the village for the defense of the employee. The Village Board shall employ or retain an attorney for the defense of the employee whenever the village does not have a Village Attorney; the Village Board determines based upon its investigation and review of the facts and circumstances of the case that representation by the Village Attorney would be inappropriate; or a court of competent jurisdiction determines that a conflict of interest exists and that the employee cannot be represented by the Village Attorney. 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 Village Mayor that the employee is entitled to representation under the terms and conditions of this chapter. 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.
- C. Where the employee delivers and processes a request for a defense to the Village Attorney or the Village Mayor, as required by § 30-3 of this chapter, the Village Attorney or the Mayor, as the case may be, shall take the necessary steps, including the retention of an attorney under the terms and conditions provided in Subsection B of this section on behalf of the employee to avoid entry of a

default judgment, pending resolution of any question relating to the obligation of the village to provide a defense.

- D. Subject to the condition set forth in this chapter, the village shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a 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 claim arose occurred while the employee was acting within the scope of his public employment duties; provided, further, that in the case of a settlement the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by the Village Board. 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 or with respect to punitive or exemplary damages, fines or penalties or money recovered from an employee pursuant to § 51 of the General Municipal Law.

§ 3-3. Responsibilities of employee.

- A. The duties to defend provided in this chapter shall be contingent upon delivery to the Village Attorney or, if none, to the Village Mayor of the original or a copy of any summons, complaint, process, notice, demand or pleading within five (5) days after he is served with such document and 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 in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the village provide for his defense pursuant to this chapter, unless the employee shall state in writing that a defense is not requested.
- B. The duty to indemnify and save harmless prescribed by this chapter shall be conditioned upon 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.
- C. Upon entry of a final judgment against the employee or upon the settlement of the claim, the employee shall serve a copy of such judgment or settlement, personally or by certified or registered mail within thirty (30) days of the date of entry or settlement, upon the Village Mayor of the village: and if not inconsistent with tile provisions of this section, the amount of such judgment or settlement shall be paid by the village.

§ 3-4. Limitation of benefits; effect on Workers' Compensation Law.

The benefits of this chapter will 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 provisions of the Workers' Compensation Law.

§ 3-5. Effect on insurers.

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.

§ 3-6. Effect on other laws.

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 unity, entity, officer or employee of the village or any right to defense 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.

§ 3-7. Applicability.

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

§ 3-8. When effective.

This chapter shall take effect immediately.

## Chapter 4

### RULES OF PROCEDURE

- § 4-1. Regular Meetings.
- § 4-2. Special Meetings.
- § 4-3. Quorum.
- § 4-4. Executive Sessions.
- § 4-5. Agendas.
- § 4-6. Voting.
- § 4-7. Minutes.
- § 4-8. Order of Business.
- § 4-9. General Rules of Procedure.
- § 4-10. Guidelines for Public Comment.
- § 4-11. Use of Recording Equipment.
- § 4-12. Adjournment.
- § 4-13. Amendments to the Rules of Procedure.

[HISTORY: Adopted by the Board of Trustees of the Village of Port Dickinson October 14, 1997.]

§ 4-1. Regular Meetings.

The Board of Trustees shall hold regular meetings on the 2nd Tuesday of each month. Such regular meetings shall commence at 7:30 P.M. and be conducted in the library at the Port Dickinson Elementary School, 770 Chenango Street in the Village. Any deviation of the foregoing paragraph shall be determined by the Board of Trustees.