

ORDINANCE NO. 367

**AN ORDINANCE TO AMEND THE OCEAN VIEW CODE, CHAPTER 199,
PROVIDING FOR THE DEFENSE AND INDEMNIFICATION
OF TOWN OFFICERS AND EMPLOYEES**

WHEREAS, the Town Council of Ocean View is desirous of providing a defense to and indemnifying its employees, appointed officials, and elected officials of the Town to the extent that they are not otherwise covered by appropriate insurance.

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE TOWN COUNCIL
OF THE TOWN OF OCEAN VIEW:**

Section 1. Amend Chapter 199, Torts Claims, Notification of, by renaming it Tort Claims Notice and Indemnification of Town Officers and Employees.

Section 2. Amend Chapter 199, Tort Claims, Notification of, by adding thereto the following:

§ 199-3. Defense and indemnification of Town Officers and Employees.

A. For purposes of this chapter, the term "town officers and employees" shall include the Mayor and Council of the Town of Ocean View, all employees, appointed officials, including all appointed members of commissions, boards, committees, and working groups established by the Town Council.

B. The Town shall defend any town officer or employee against a civil, administrative, criminal or investigative action or claim, or other proceedings, brought in any court, quasi-judicial, or administrative proceeding, arising out of or related to the performance by said town officer or employee of his public official duties; or in any criminal action arising from the performance of his duties which action does not allege official misconduct, profiteering, bribery, receiving unlawful gratuities, improper influence or other abuse of his office or employment. The Town shall not be obligated to defend a town officer or employee if the claim, action, charge, or the like, is otherwise covered by appropriate insurance or was brought by or with the concurrence of the Town against the town officer or employee.

C. A town officer or employee who is held liable for the payment of any claims arising out of a civil action or settlements, judgments, expenses, costs and awards of attorney's fees arising therefrom shall be entitled to indemnification therefor where the claim shall have been determined by the Town Solicitor, subject to the approval of the Town Council, to have resulted from activities which:

- (1) were done in good faith;
- (2) were done in the reasonable belief that such activities were in the best interest of the Town and in the furtherance of the official practices and policies of the Town;
- (3) were within the scope of authority of the person so acting;
- (4) were within the course of employment of the person so acting; and
- (5) were not willful, malicious or wanton.

D. In the event of a monetary settlement, the Town Council shall first approve the amount and terms of the settlement before the right to indemnification shall vest. Such determination shall be made:

- (1) by a majority vote of a quorum of the Town Council consisting of Council members who are not parties to such action, suit or proceeding, or
- (2) if such quorum is not obtained, by the Town Solicitor in a written opinion.

E. The Town Council may authorize by resolution the payment of legal fees incurred by a town officer or employee for representation in a criminal action, if the charge arose out of or in the course of town employment. Council shall review an application for reimbursement based upon the criteria set forth in Subsection C. No payment under this section may be authorized where the employee has been found guilty after trial and any appeal or has entered a plea of guilty or *nolo contendere* to a crime involving official misconduct, profiteering, bribery, receiving unlawful gratuities, improper influence or other abuse of his office or employment.

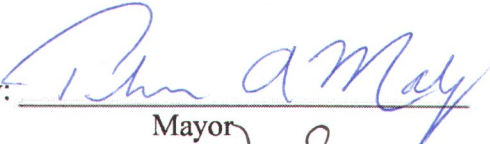
F. The expenses incurred by a town officer or employee in defending an action, suit, or proceeding, may be paid by the Town in advance of the final disposition of such action, suit or proceeding, subject to repayment by the town officer or employee unless it

shall be determined that he is entitled to be indemnified by the Town as set forth in Subsection C.

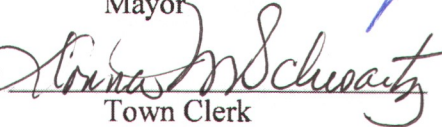
G. By the adoption of this ordinance, the defense of governmental or sovereign immunity shall not be considered waived by the town, its agencies, boards, commissions, departments or any employee or officer of the Town as provided for in the Delaware County and Municipal Tort Claim Act or at common law.

Section 3. This ordinance shall become effective upon its adoption by a majority of all members elected to the Town Council.

TOWN OF OCEAN VIEW

By: 

Mayor

Attest: 

Town Clerk

3.10.2020

Adopted: _____

Synopsis

This ordinance provides for the Town to defend and indemnify town officers and employees in civil, criminal, or administrative suits or proceedings where the town officer or employee has acted in good faith and the defense and indemnification are not otherwise insured.

[DLS Draft 01-02-20]
[DLS Rev. 01-03-20]