

(Please Use this Form for Filing your Local Law with the Secretary of State)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~County~~
~~City~~ of WESTERLO
Town
~~Village~~
Local Law No. 2 of the year 19 86

A local law for Defense and Indemnification of Town Employees and Officials
(Insert title)

Be it enacted by the Town Board of the
(Name of Legislative Body)

~~County~~
~~City~~ of WESTERLO
Town
~~Village~~ as follows:

SECTION 1. As used in this local law, unless the context otherwise requires: (a) the term "employees" shall mean any person holding a position by election, appointment or employment in the service of the town, but shall not include a volunteer, any person not compensated for his services or an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative. (b) The term "town" shall mean the town of Westerlo.

SECTION 2. (a) Upon compliance by the employee with the provisions of section 3 of this local law, the town 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 or in good faith purporting to act within the scope of his public employment or

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

(b) Subject to the conditions set forth in this local law, the employee shall be represented by the town attorney or an attorney employed or retained by the town for the defense of the employee. The town board shall employ or retain an attorney for the defense of the employee whenever (1) the town does not have a town attorney, (2) the town board determines based upon its investigation and review of the facts and circumstances of the case that representation by the town attorney would be inappropriate or (3) a court of competent jurisdiction determines that a conflict of interest exists and that the employee cannot be represented by the town attorney. Reasonable attorney's fees and litigation expenses shall be paid by the town to such attorney employed or retained, from time to time, during the pendency of the civil action or proceeding subject to certification by the town supervisor that the employee is entitled to representation under the terms and conditions of this local law. Payment of such fees and expenses shall be made in the same manner as payment of other claims and expenses of the town. Any dispute with respect to representation of multiple employees by the town 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 process and a request for a defense to the town attorney or the town supervisor as required by section 3 of this local law, the town attorney or the supervisor, as the case may be, shall take the necessary steps including the retention of an attorney under the terms and conditions provided in paragraph (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 town to provide a defense.

SECTION 3. The duties to defend provided in this local law shall be contingent upon (a) delivery to the town attorney or, if none, to the town supervisor 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 and (b) the full cooperation of the employee in the defense of such action or proceeding and defense of any action or proceeding against the town 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 town provide for his defense pursuant to this local law, unless the employee shall state in writing that a defense is not requested.

SECTION 4. The town shall indemnify and save harmless any employee whose defense was provided pursuant to this chapter, in the amount of any judgment obtained against such employee, including any fine, or in the amount of any settlement or compromise approved by the Town Board. The town shall not indemnify and save harmless the employees:

- (1) Where the injury, damage or wrongful act has been determined by a court of competent jurisdiction to have occurred while the employee was not acting within the scope of his public employment or duties; or
- (2) Where the injury or damage resulted from intentional wrong doing or recklessness on the part of the employee;
- (3) For any punitive or exemplary damages, or penalties; or
- (4) For money recovered from the employee pursuant to §51 of the General Municipal Law.

SECTION 5. The benefits of this local law 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 local law be construed to affect, alter or repeal any provisions of the Workers' Compensation Law.

SECTION 6. The benefits of this local law 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.

SECTION 7. The provisions of this local law shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

SECTION 8. As otherwise specifically provided in this local law, the provisions of this local law 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 town or any right to defense provided for any governmental officer or employee by, in accordance with, or by reason, any other provision of state or federal statutory or common law.

SECTION 9. The provisions of this local law shall apply to all actions and proceedings specified herein which have been commenced, instituted or brought on or after the effective date of this local law.

SECTION 10. This local law shall take effect immediately upon filing in the office of the Secretary of State.

(Complete the certification in the paragraph which applies to the filing of this local law and strike out the matter therein which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 1986...
~~XXXXXX~~
of the ~~XXXX~~ Town of Westerlo was duly passed by the Town Board
~~XXXXXX~~ (Name of Legislative Body)
on February 4, 1986 in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval or no disapproval by Elective Chief Executive Officer, * or repassage after disapproval.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19_____
County
of the City of _____ was duly passed by the _____
Town (Name of Legislative Body)
Village
on _____ 19_____, and was approved _____ by the _____
not disapproved _____ Elective Chief Executive Officer *
repassed after disapproval
and was deemed duly adopted on _____ 19_____, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19_____
County
of the City of _____ was duly passed by the _____
Town (Name of Legislative Body)
Village
on _____ 19_____, and was approved _____ by the _____
not disapproved _____ Elective Chief Executive Officer *
repassed after disapproval
on _____ 19_____. Such local law was submitted to the people by reason of a
mandatory referendum, and received the affirmative vote of a majority of the qualified electors voting
permissive general
thereon at the special election held on _____ 19_____, in accordance with the appli-
annual
cable provisions of law.

4. (Subject to permissive referendum, and final adoption because no valid petition filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19_____
County
of the City of _____ was duly passed by the _____ on _____
Town (Name of Legislative Body)
Village
_____ 19_____, and was approved _____ by the _____ on _____
not disapproved _____ Elective Chief Executive Officer *
repassed after disapproval
_____ 19_____. Such local law being subject to a permissive referendum and no
valid petition requesting such referendum having been filed, said local law was deemed duly adopted on
_____ 19_____, in accordance with the applicable provisions of law.

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village or the supervisor of a town, where such officer is vested with power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19..... of the City of..... having been submitted to referendum pursuant to the provisions of § 36 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the special election held on 19 became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as Local Law No. of 19..... of the County of, State of New York, having been submitted to the Electors at the General Election of November, 19, pursuant to subdivisions 5 and 7 of Section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph1..... above.

Gertrude A. Smith

Clerk of the County legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: February 6, 1986

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK

COUNTY OFALBANY.....

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

.....
Signature

.....
Town Attorney

.....
Title

Date: February 6, 1986

County
City of
Town
Village