

LL 1986-001

PROVIDE DEFENSE AND
INDEMINIFICATION OF OFFICERS AND
EMPLOYEES

(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 AMITY, COUNTY OF ALLEGANY, STATE OF NEW YORK
Town
Village

Local Law No. One of the year 19 86

A local law To Provide For The Defense And Indemnification Of The
(insert title)

Town Officers And Employees.

Be it enacted by the TOWN BOARD of the
(Name of Legislative Body)

County
City of AMITY, COUNTY OF ALLEGANY, STATE OF NEW YORK as follows:
Town
Village

DEFENSE AND INDEMNIFICATION OF TOWN OFFICERS AND EMPLOYEES

1. As used in this article, unless the context otherwise requires, the term "employee" shall mean any person holding a position by election, appointment or employment in the service of the Town, whether or not compensated, or a volunteer expressly authorized to participate in Town sponsored volunteer program, but shall not include an independent contractor.

2. (a) Upon compliance by the employee with the provisions of subdivision four of this Article, 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 within the scope of his public employment or duties; or which is brought to enforce a provision of section nineteen hundred eighty-one or nineteen hundred eighty-three of title forty-two of the United States code and the act or omission underlying the action 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 Town.

Judicial proceeding whenever the Town Attorney determines based upon his investigation and review of the facts and circumstances of the case that representation by the Town Attorney 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 employee is entitled to be represented by private counsel of his choice. The Town Attorney shall notify the employee in writing of such determination that the employee is entitled to be represented by private counsel. The Town Attorney may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. If the employee or group of employees is entitled to representation by private counsel under the provisions of this Article, the Town Attorney shall so certify to the Town Board. Reasonable Attorney's fees and litigation shall be paid by the Town to such private counsel from time to time during the pendency of the civil action or proceeding, subject to certification that the employee is entitled to representation under the terms and conditions of this section by the Town and upon the audit by the Town Board. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(c) Where the employee delivers process and a request for a defense to the Town Attorney as required by subdivision four of this section, the Town shall take the necessary steps including the retention of private counsel under the terms and conditions provided in paragraph (b) of subdivision two of this section 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.

3. (a) The Town 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, or shall pay such judgment or settlement; 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 or pay prescribed by this subdivision 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 the Town Attorney or by private counsel pursuant to this action shall cause to be submitted to Supervisor, any proposed settlement which may be subject to indemnification or payment by the Town and if not inconsistent with the provisions of this section, such Supervisor shall certify such settlement, and submit such settlement and certification to the Town Attorney. The Town Attorney shall review such proposed settlements to form amount and shall give his approval if the settlement is in the interest of the Town.

(c) Nothing in this article shall authorize the Town to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties, or money recovered from an employee pursuant to any law; provided, however, that the Town shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee, acting within the scope of his public employment or duties, has, without willfulness or intent on his part, violated a prior order, judgment consent decree or stipulation of settlement entered in any court of this state or of the United States.

(d) Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall cause to be served, a copy of such judgment or settlement, upon the Supervisor. If not inconsistent with the provisions of this section such judgment or settlement shall be certified for payment of such Supervisor, if the Town Attorney concurs in such certification. The judgment or settlement shall be paid upon the audit and warrant of the Town Board, in consultation with the Town Attorney and Supervisor as may be appropriate.

4. The duty to defend or indemnify and save harmless prescribed by this section shall be conditioned upon (1) delivery to the Town Attorney a copy of any summons, complaint, process, notice, demand or pleading within five days after he is served with such document, and (2) the full cooperation of the employee in the defense of such action or proceeding and in 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 article.

5. The benefits of this section shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party.

6. This section shall not in anyway affect the obligation of any claimant to give notice to the Town under the General Municipal Law, and any other provision of Law.

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

8. The provision of this article shall not apply to any actions and proceedings pending upon the effective date hereof.

9. Except as otherwise specifically provided in this Article, the provisions of this Article shall not be construed in anyway to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer of the Town or any other level of

10. If any provision of this section 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 section or the application of any such provision to any other person or circumstance.

(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. ONE of 1986,
~~COUNTY~~ AMITY was duly passed by the TOWN BOARD
of the Town of AMITY ~~XXNAGA~~
(Name of Legislative Body)
on SEPTEMBER 1 19 86 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 _____
City of _____ was duly passed by the _____
Town of _____ (Name of Legislative Body)
Village _____
on _____ 19 _____ not disapproved
and was approved _____ by the _____
repassed after disapproval _____ Elective Chief Executive Officer *
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 _____
City of _____ was duly passed by the _____
Town of _____ (Name of Legislative Body)
Village _____
on _____ 19 _____ not disapproved
and was approved _____ by the _____
repassed after disapproval _____ Elective Chief Executive Officer *
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
thereon at the special election held on _____ 19 _____, in accordance with the appli-
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 _____
City of _____ was duly passed by the _____
Town of _____ (Name of Legislative Body)
Village _____
on _____ 19 _____ not disapproved
and was approved _____ by the _____
repassed after disapproval _____ Elective Chief Executive Officer *
On _____ 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

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 paragraph above.



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

Date: SEPTEMBER 1, 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 OF Allegany.....

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.

