

Local Law Filing

(Use this form to file a 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 Cohocton
- Town
- Village

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
DEC 04 2006

Local Law No. 4 of the year 20 06

MISCELLANEOUS
& STATE RECORDS

A local law Repealing Local Law #1 of the year 1985, and providing for the defense and
(insert Title)
indemnification of Town officers and employees.

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

- County
- City of Cohocton as follows:
- Town
- Village

SECTION 1. PURPOSE.

The Town Board hereby adopts section 18 of the Public Officers Law of the State of New York and confers the benefits thereof upon all Town officers and employees.

SECTION 2. DEFINITIONS.

- (a) The term "employee" shall mean any commissioner, member of a public board or commission, trustee, director, officer, employee, volunteer expressly authorized to participate in a publicly sponsored volunteer program, or any other person holding a position by election, appointment or employment in the service of a public entity, whether or not compensated, but shall not include the sheriff of any county 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 Cohocton, a municipal corporation.
- (c) The term "Town Attorney" shall mean the attorney appointed as counsel to the Town pursuant to section 20 of the Town Law.
- (d) The term "Town Board" shall mean the Town Board of the Town of Cohocton.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

- (e) The term "Town Clerk" shall mean the Town Clerk of the Town of Cohocton as designated pursuant to section 20 of the Town Law.

SECTION 3. DEFENSE OF EMPLOYEES:

- (a) Upon compliance by the employee with the provisions of section five of this local law, the Town shall provide for the defense of the employee in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly 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 at the behest of the Town.
- (b) Subject to the conditions set forth in paragraph (a) of this section, the employee shall be entitled to be represented by private counsel of his choice in any civil action or proceeding whenever the Town Attorney or other counsel designated by the Town Board determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by counsel of his choice, provided, however, that the Town Attorney or other counsel designated by the Town Board 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. Reasonable attorneys' fees and litigation expenses shall be paid by the Town to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of the governing body of the public entity.
- (c) 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.
- (d) Where the employee delivers process and a written request for a defense to the Town under subdivision five of this local law, the public entity shall take the necessary steps 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.

Section 4. INDEMNIFICATION OF EMPLOYEES:

- (a) The Town 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 or 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 Town Board.

- (b) Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this local law shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.
- (c) Nothing in this local law 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 section fifty-one of the General Municipal 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 the State of New York 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 serve a copy of such judgment or settlement, personally or by certified or registered mail within thirty days of the date of entry or settlement, upon the Town Supervisor; and if not inconsistent with the provisions of this local law, the amount of such judgment or settlement shall be paid by the Town.

SECTION 5: NOTICE AND COOPERATION.

The duty to defend or indemnify and save harmless prescribed by this local law shall be conditioned upon: (i) delivery by the employee to the Town Supervisor or Town Attorney, a written request to provide for his defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading, within ten days after he is served with such document, and (ii) 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.

SECTION 6: MISCELLANEOUS.

- (a) The benefits of this local law 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 local law be construed to affect, alter or repeal any provision of the workers' compensation law.
- (b) This local law shall not in any way affect the obligation of any claimant to give notice to the public entity under section ten of the Court of Claims Act, section fifty-e of the General Municipal Law, or any other provision of law.
- (c) The Town is hereby authorized and empowered to purchase insurance from any insurance company created by or under the laws of the State of New York, or

authorized by law to transact business in the state, against any liability imposed by the provisions of this local law, or to act as a self-insurer with respect thereto.

- (d) All payments made under the terms of this local law, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.
- (e) 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 held by the Town.
- (f) Except 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 to liability available to or conferred upon any unit, entity, officer or employee of the Town by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.
- (g) The benefits accorded to employees under this local law shall supplement, and be available in addition to, defense or indemnification protection conferred by other enactments and insurance policies, held or obtained by the Town.

SECTION 7. SEVERABILITY.

If any provision of this local law or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this local law or the application of any such provision to any other person or circumstance.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that 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. 4 of 20 06 of the (County)(City)(Town)(Village) of Cohocton was duly passed by the Town Board on November 21 20 06, in accordance with the applicable provisions of law
(Name of Legislative Body)

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

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ and was deemed duly adopted (Elective Chief Executive Officer*) on _____ 20 _____, 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 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ on _____ 20 _____ (Elective Chief Executive Officer*)~~

~~Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on _____ 20 _____, in accordance with the applicable provisions of law.~~

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

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ on _____ 20 _____ Such local (Elective Chief Executive Officer*) law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20 _____, 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 chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the 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 20 _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) 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)(general) election held on _____ 20 _____, 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 20 _____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20 _____, 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 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 1. _____, above

Sandra J. Kelly
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 11-30-06

(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 STEWART

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.

Patrick F. Mallon
Signature
Cohocton Town Attorney
Title

County
City of Cohocton
Town
Village

Date: November 30, 2006