

Local Law Filing

NEW YORK STATE DEPARTMENT OF
STATE
41 STATE STREET
ALBANY, NY 12231

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

Town of Little Falls

Local Law No. 1 **of the year** 2003

A local law Providing for the Defense and Indemnification of Officers
And Employees of the Town of Little Falls
Penalties For Violation of Said Code

Be it enacted by the Town Board **of**
the

Town of Little Falls **as follows:**

1. Title.

This law shall be entitled “A Local Law Providing for the Defense and Indemnification of Officers and Employees of the Town of Little Falls.”

2. Definitions.

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

EMPLOYEE—Any commissioner, member of a town board or commission, trustees, director, officer, employee, volunteer expressly authorized to participate in a town-sponsored volunteer program or any other person holding a position by election, appointment or employment in the service of the town, whether or not compensated, but shall not include an independent contractor. The term “employee” shall include a former employee, his estate or a judicially appointed personal representative.

3. Town to Provide for Defense.

A. Upon compliance by the employee with the provision of this 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, or in good faith purporting to act, within the scope of his public employment or duties, or which is brought to enforce a provision of Section 1981 or 1983 of Title 42 of the United States Code. Such defense shall not be provided where civil action or proceeding is brought by or on behalf of the town pursuant to authorization of the Town Board.

- B. Subject to the conditions set forth in this 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 an 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 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 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 upon motion or by way of a special proceeding.

- C. Where the employee delivers process and a written request for a defense to the Town Attorney or, if none, to the Town Supervisor, as required by the section 4 of this law, the Town Attorney or the Town Supervisor, 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 town to provide a defense.

4. Conditions.

The duties to defend and indemnify and save harmless provided in this 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 ten (10) days after the employee is served with such document. Such delivery shall be deemed a request by the employee that the town provide for his defense pursuant to this law, unless the employee shall state in writing that a defense is not requested; 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.

5. Indemnification in Amount of Judgment.

- A. The town shall indemnify and save harmless any employee whose defense was provided pursuant to this law, in the amount of any judgment obtained against such employee or in the amount of any settlement or compromise approved by the Town Board. The town shall not indemnify and save harmless the employee:
- (1) Where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee;
 - (2) For any punitive or exemplary damages, fines or penalties; or
 - (3) For money recovered from the employee pursuant to ss51 of the General Municipal Law; provided however, that the town shall indemnify and save harmless the employee in the amount of any costs, attorney 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 prior order, judgment, consent decree or stipulation of settlement entered in any court of this state or of the United States.
- C. The claim or compromise settlement which may be subject to indemnification by the town shall not be paid unless it is presented to and approved by the Town Board.
- D. Upon entry of final judgment against the employee, or upon settlement or compromise of a claim as approved by the Town Board, the employee shall cause to be served upon the Town Supervisor a copy of such judgment or settlement, personally or by certified or registered mail, within ten (10) days of the date of entry or settlement. If not inconsistent with the provisions of this law, such judgment or settlement shall be processed and paid in the same manner as other judgment or settlements of claims are paid by the town.

6. Applicability.

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

7. Effect on Other Laws.

This law shall not in any way affect the obligation of any claimant to give notice to the town under section 10 of the Court of Claims Act, section 50-e of the General Municipal Law or any other provision of the law.

8. Obligations of Insurers.

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

9. Payments.

All payments made under the terms of this chapter, 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.

10. Preexisting Immunity or Right to Defense and indemnification.
The provisions of this chapter shall not be construed in any way to impair, alter, 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 and indemnification provided of state or federal statutory or common law.
11. Effect Upon other Defense and Indemnification Protections.
Except as otherwise provided herein, benefits accorded to employees under this law shall be in lieu of and take the place of defense or indemnification protections to the same employees by another enactment.
12. Applicability Determined by Date of Commencement of Action.
The provisions of this law shall apply to all actions or proceedings specified herein which have been commenced, instituted or brought on or after the effective date of this law.
13. Effective Date
This local law shall become effective upon filing with the New York State Secretary of State.

Law Adopted: April 8, 2003