

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 Town Village
(Select one.)

of _____ Liberty

FILED
STATE RECORDS

DEC 30 2016

Local Law No. 5 of the year 2016

DEPARTMENT OF STATE

A local law adding a new Chapter 8, entitled "Defense and Indemnification", to the Code of the
(Insert Title)
Town of Liberty.

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

County City Town Village
(Select one.)

of _____ Liberty _____ as follows:

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

SECTION I
Addition of Chapter 8 of the Code of the Town of Liberty

A new Chapter 8, entitled "Defense and Indemnification," is hereby added to the Code of the Town of Liberty, to read as follows:

"Chapter 8

DEFENSE AND INDEMNIFICATION

§ 8-1. Legislative intent.

The purpose of this chapter is to confer the benefits of §18 of the Public Officers Law and provide legal and financial protection for those individuals serving the Town of Liberty from losses which may result from legal actions which may be brought against them in their individual capacity for actions taken while in the performance of their official duties and responsibilities. In enacting this chapter, the Town Board finds that other towns in the State of New York have enacted similar provisions for the legal and financial security of their officers and employees and further finds that such security is also required for Town of Liberty personnel. By enactment of this chapter, the Town Board does not intend to limit or otherwise abrogate any existing right or responsibility of the Town of Liberty or its employees with regard to indemnification or legal defense. It is solely the intent of this chapter to provide similar coverage for local employees as is presently provided for employees of other towns, so as to continue to attract qualified individuals to local government service.

§ 8-2. Definitions.

As used herein, the following words shall have the meanings below set forth:

EMPLOYEE - Any person holding a position by election, appointment or employment in the service of the Town, but shall not include an independent contractor. The term "employee" shall include a former employee, his or her estate or judicially appointed personal representative.

TOWN - The Town of Liberty.

§ 8-3. Provisions for defense and indemnification by the Town.

- A. Upon compliance by the employee with the provisions of §8-8 of this chapter, 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 or her 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. The Town shall indemnify and save harmless its employees in the amount of any judgment obtained against such employee, 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 or, in good faith, purporting to act within the scope of his or her 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.

1. The Town shall make a determination of whether the employee was acting or, in good faith, purporting to act within the scope of his or her employment or duties, as soon as practicable after presentation of suit. Such determination shall be made after a full investigation into the allegations of the complaint by the Town's attorney, with the assistance of such other individuals as may be reasonably necessary. If the Town determines that the employee was not acting within the scope of his or her employment or duties, the Town shall bear no legal expense on behalf of such employee, nor shall it indemnify the employee for any judgment obtained against him or her; further, if, after an initial determination that the employee was acting within the scope of his or her employment, the Town determines that the employee has misled the Town or has otherwise acted in bad faith during the pendency of the action or proceeding and the Town determines that the employee was not, in fact, acting or purporting to act within the scope of his or her employment or duties, the Town shall bear no legal expense on behalf of such employee, nor shall it indemnify the employee for any judgment obtained against him or her.
 2. In accordance with the provisions of § 50-j, Subdivision 6, of the General Municipal Law, the Town shall provide for the defense of any civil action or proceeding brought against a duly appointed police officer of the Town and shall indemnify and save harmless such police officer from any judgment of a court of competent jurisdiction whenever such action, proceeding or judgment is for punitive or exemplary damages arising out of a negligent act or other tort of such police officer committed while in the proper discharge of his duties and within the scope of his or her employment. The determination of whether any such police officer properly discharged his or her duties within the scope of his or her employment shall be made in accordance with the provisions of subsection A(1) of this section.
- B. Subject to the conditions set forth in this chapter, the employee shall be represented by the Town's 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 the Town does not have an attorney or the Town Board determines, based upon its investigation and review of the facts and circumstances of the case, that representation by the Town's attorney would be inappropriate or a court of competent jurisdiction determines that a conflict of interest exists and that the employee cannot be represented by the Town's 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 chapter. 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's 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 Supervisor as required by §8-8 of this chapter, the Supervisor shall take the necessary steps, including the retention of an attorney under the terms and conditions provided in §8-3B of this chapter, 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.

§ 8-4. Limitation of applicability.

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

§ 8-5. Extension of benefits to certain employees limited.

The benefits of this chapter 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.

§ 8-6. Effect on insurers.

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

§ 8-7. Construal of provisions.

As otherwise specifically provided in this chapter, the provisions of this chapter 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 of any other provision of state or federal statutory or common law.

§ 8-8. Conditions.

Restrictions shall be as follows:

- A. Delivery to the Town Supervisor of the original or a copy of any summons, complaint, process, notice, demand or pleading within five 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 chapter, unless the employee shall state, in writing, that a defense is not requested.

- 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.

§ 8-9. Applicability.

The provisions of this chapter shall apply to all actions and proceedings which are pending on the effective date of this chapter or are commenced, instituted or brought on or after the effective date of this chapter.”

SECTION II
Effect of Invalidity

If any clause, sentence, phrase, paragraph or any part of this local law shall for any reason be adjudged finally by a Court of competent jurisdiction to be invalid, such judgment shall not effect, impair or invalidate the remainder of this local law, but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or any part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby stated to be the legislative intent that the remainder of this local law would have been adopted had any such provisions not been included.

SECTION III
Effective Date

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

(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. 5 of 2016 of the ~~(County)(City)~~(Town)(Village) of Liberty was duly passed by the Town Board on 12/19 2016, in accordance with the applicable provisions of law.

~~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 _____ (Name of Legislative Body) on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*) and was deemed duly adopted 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 _____ (Name of Legislative Body) on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*) on _____ 20____.

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 _____ (Name of Legislative Body) on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*) on _____ 20____. Such local 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.

Laurie DeLuther

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

Date: 12/21/16

(Seal)

