

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.

FILED
STATE RECORDS
NOV 23 2018

County City Town Village
(Select one.)

of Nunda

DEPARTMENT OF STATE

Local Law No. 2 of the year 2016

A local law RELATING TO THE DEFENSE AND INDEMNIFICATION OF TOWN OFFICERS AND
(Insert Title)
EMPLOYEES WITHIN THE TOWN OF NUNDA, COUNTY OF LIVINGSTON, STATE OF
NEW YORK.

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

County City Town Village
(Select one.)

of Nunda

as follows:

SEE LOCAL LAW TEXT ANNEXED HERETO.

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

(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. 2 of 2016 of the (County)(City)(Town)(Village) of Nunda was duly passed by the Town Board on September 13, 2016, 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) (repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____, in accordance with the applicable provisions of law.
(Elective Chief Executive Officer)*~~

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) (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) (repassed after disapproval) by the _____ 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.)~~

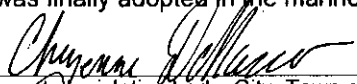
~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 ____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified 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.



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

Date: September 15, 2016

(Seal)

A LOCAL LAW RELATING TO THE DEFENSE AND INDEMNIFICATION OF TOWN OFFICERS AND EMPLOYEES WITHIN THE TOWN OF NUNDA, COUNTY OF LIVINGSTON, STATE OF NEW YORK.

Section 1. Purpose and Intent. The purpose of this local law is to provide legal and financial protection for those individuals serving the Town of Nunda from losses 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 local law, the Town Board finds that the State of New York has enacted similar provisions for the legal and financial security of its officers and employees and further finds that such security is also required for local personnel. By enactment of this local law, the Town Board does not intend to limit or otherwise abrogate any existing right or responsibility of the Town or its employees with regard to indemnification or legal defense. It is solely the intent of this local law to provide similar coverage for local employees as is presently provided for state employees, so as to continue to attract qualified individuals to local government service.

Section 2. Definitions. As used in this local law, unless otherwise provided herein, the term "employee" shall mean any person holding a position by election, appointment or employment in the service of the Town of Nunda, whether or not compensated, or a volunteer expressly authorized to participate in a municipally-sponsored volunteer program, but shall not include an independent contractor. The term shall include a former employee, his estate or judicially appointed personal representative only to the extent that any alleged acts or omissions occurred while the employee was performing his public duties or acting within the scope of his public employment or duties.

Section 3. Provision and Payment for Defense.

A. Upon compliance by the employee with the provisions of Section 5 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 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. This duty to provide for a defense shall not arise or apply where such civil action or proceeding is brought by or on behalf of the Town of Nunda. Also, this duty to provide for defense shall not arise or apply where such action or proceeding is brought by an agency of the State or Federal government charged with oversight and supervision of such employee or official, nor for defense of criminal proceedings.

B. Subject to the conditions set forth in Paragraph A of this Section the employee shall be entitled to be represented by the Town Attorney; provided, however, that the employee shall be entitled to representation by private counsel of his choice in any civil 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 of his choice. 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 section, the Town Attorney shall so certify to the Town Board. Reasonable attorneys fees and litigation expenses shall be paid by the Town to such private counsel or 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 head of the department, commission, division, office or agency in which such employee is employed and upon the audit and warrant of the Town Clerk. 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 Section five of this law, the attorney shall take the necessary steps including the retention of private counsel under the terms and conditions provided in Paragraph B of Section three 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.

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 any court of competent jurisdiction, or in the amount of any settlement of a claim, 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, and further provided that the duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee, and further provided that the duty to indemnify and save harmless prescribed by this section shall not arise when the action in which such judgment or settlement arose involved an action brought by or on behalf of the Town of Nunda, or by an agency of the State or Federal government charged with oversight and supervision of such employee or official, nor as a result of criminal conduct or proceedings.

B. An employee represented by private counsel shall cause to be submitted to the Town Board any proposed settlement which may be subject to indemnification by the Town and if not inconsistent with the provisions of this section, the Supervisor shall certify such settlement and submit such settlement and certification to the Town Attorney. The Attorney shall review such proposed settlement as to form and amount, and shall give his approval if in his judgment the settlement is in the best interest of the Town. Nothing in this section shall be construed to

authorize the Town to indemnify or save harmless an employee with respect to a settlement not so reviewed and approved by the Town Attorney.

C. 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, personally or by certified or registered mail within thirty days of the date of entry or settlement, upon the Supervisor, and if not inconsistent with the provisions of this section, such warrant of the Town Clerk.

Section 5. Duty of Employees. The duty to defend or indemnify and save harmless provided by this local law shall be conditioned upon (1) delivery to the Town Attorney or his assistant, at his office, by the employee 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 (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 local law.

Section 6. Limitation. 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 section be construed to affect, alter or repeal any provision of the Workers' Compensation Law.

Section 7. Construction.

A. 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.

B. 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 available to or conferred upon any unit, entity, officer or employee of the Town, or any right to defense and/or indemnification 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.

Section 8. Validity. If any provision of this local law or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or 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 local law or the application of any such provision to any other person or circumstance.

Section 9. Effective Date. This local law shall take effect immediately upon filing with the Secretary of State, and shall apply to all actions and proceedings pending on such effective date or those actions and proceedings thereafter instituted.