

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
162 WASHINGTON AVENUE, ALBANY, NY 12231

(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.

~~XXXXXX~~

~~CHX~~

Town

~~XXXXXX~~

of Jackson

Local Law No. One of the year 1997..

A local law providing for the Defense and Indemnification of certain
(Insert Title)
employees

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

~~XXXXXX~~

~~CHX~~

Town

~~XXXXXX~~

of Jackson as follows:

SECTION 1. TITLE.

This local law shall be a entitled " Defense & Indemnification of Town Employees"

SECTION 2. Legislative Intent.

The New York State Legislature has enacted legislation permitting public entities, including counties, to provide for the defense and indemnification of officers and employees. The Town of Jackson Board by this Local Law, hereby agrees to confer the benefits of Section 18 of the Public Officers Law upon its employees and to be held liable for the costs incurred under these provisions.

SECTION 3. Definition of "employee".

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 the Town of Jackson, whether or not compensated, but shall not include an

independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

SECTION 4. Defense.

(A) Upon compliance by the employee with the provisions of Section 6 of this Local Law, The Town of Jackson 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 of Jackson.

(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 attorney designated by the Town determines that a conflict of interest exists or whenever a Court, upon appropriate motion or otherwise by 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 Attorney designated by the Town 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 attorney's fees and litigation expenses shall be paid by The Town of Jackson to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of the Town of Jackson Board.

(C) Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorney's 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 of Jackson under Section 6 of this Local Law, The Town of Jackson 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 5. Indemnification.

(A) The Town of Jackson 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 settlement, the duty to indemnify and save harmless shall be

conditional upon the approval of the amount of settlement by the Town of Jackson.

(B) Except as otherwise provided by law, 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.

(C) Nothing in this section shall authorize The Town of Jackson 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.

(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 Supervisor of the Town of Jackson, and if not inconsistent with the provisions of this Local Law, the amount of such judgment or settlement shall be paid by the Town of Jackson.

SECTION 6. Duty to Notify.

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 Attorney or The Attorney for the town, or to the Supervisor of the Town of Jackson of a written request to provide for his or her defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten days after he or she 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 of Jackson based upon the same act or omission, and in the prosecution of any appeal.

SECTION 7. Other Rights.

The benefits of this Local Law shall insure 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.

SECTION 8. Notice.

This Local Law shall not in any way affect the obligation of any claimant to give notice to The Town of Jackson under section ten of the Court of Claims Act, section fifty-e of the General Municipal Law, or any other provision of law.

SECTION 9. Insurance.

The Town of Jackson 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 this state, against any liability imposed by the provisions of this Local Law, or to act, as a self-insurer with respect thereto.

SECTION 10. Payments.

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.

SECTION 11. Insurer Rights.

The provision 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.

SECTION 12. Immunity.

Except as otherwise 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 of Jackson by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

SECTION 13. Other Enactments.

Except as otherwise provided in this Local Law, benefits accorded to employees under this Local Law shall supplement, and be available in addition to, defense or indemnification protection conferred by any other enactment of the Town of Jackson.

SECTION 14. 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.

SECTION 15. Effective Date.

This Local Law shall take effect upon filing with the Secretary of State of New York.