

**TOWN OF LAFAYETTE
LOCAL LAW NO. 3 OF 1981**

**A LOCAL LAW PROVIDING FOR LEGAL DEFENSE
AND INDEMNIFICATION FROM FINANCIAL LOSS
FOR OFFICERS AND EMPLOYEES OF THE TOWN
OF LAFAYETTE WHO MUST DEFEND CIVIL
ACTIONS OR PROCEEDINGS BROUGHT AGAINST
THEM IN THEIR INDIVIDUAL CAPACITIES FOR
ALLEGED ACTIONS OR OMISSIONS IN THE PER-
FORMANCE OF THEIR OFFICIAL DUTIES AND
RESPONSIBILITIES.**

Be it enacted by the Town Board of the Town of LaFayette as follows:

SECTION 1. Legislative Intent.

The purpose of this Local Law is to provide legal defense and indemnification from financial loss for officers and employees of the Town of LaFayette, who must defend civil actions or proceedings brought against them in their individual capacities for alleged actions or omissions in the performance of their official duties and responsibilities. In enacting this Local Law, the Town Board of the Town of LaFayette finds that the State of New York has enacted similar legislation providing for legal defense and indemnification from financial loss for State officers and employees, and that it is necessary and desirable that legal defense and indemnification from financial loss also be provided for local personnel. By enacting this Local Law, the Town Board does not intend to limit or abrogate any existing responsibility the Town may have to provide legal defense and/or indemnification from financial loss for its officers and employees. It is the sole intent of this Local Law that local officers and employees be provided legal defense and indemnification from financial loss, in order that the Town of LaFayette may continue to attract qualified individuals to local government service.

SECTION 2. Definitions.

As used in this Local Law, unless the context otherwise requires, the term "employee" shall mean any person holding a position in the service of the Town of LaFayette whether by election, appointment, or employment and whether or not compensated, and shall include, but not be limited to, any Town officer and any volunteer expressly authorized to participate in a municipally-sponsored volunteer program, but shall not include any independent contractor. The term "employee" shall include a former employee or officer, his estate or judicially appointed personal representative.

SECTION 3. General Conditions.

The duty of the Town of LaFayette to provide legal defense under Section 4 of this Local Law, and the Town's duty to provide indemnification from financial loss under Section 5 of this Local Law, shall arise only upon the following conditions:

- (1) the employee must deliver the original or a copy of any summons, complaint, notice, demand, pleading, or other legal process to the attorneys for the Town within five (5) days after the employee is served with the same.

- (2) the employee must fully cooperate in the defense of the civil action or proceeding commenced against the employee, including the prosecution of any appeal, and
- (3) the civil action or proceeding commenced against the employee must be concerned with alleged actions or omissions in the performance of the employee's official duties and responsibilities. Delivery of legal process by the employee to the Town attorneys shall be deemed a request by the employee that the Town provide him with legal defense and indemnification from financial loss pursuant to this Local Law. Within sixty (60) days after the employee has delivered legal process to the Town attorneys, the employee is entitled to legal defense, and potentially entitled to indemnification from financial loss. If the determination by the Town attorneys is in the negative, they shall promptly notify the employee in writing to that effect.

SECTION 4. Legal Defense.

- (a) Subject to the conditions of Section 3 of this Local Law, and subject to the provisions of Section 4(b) of this Local Law, the Town of LaFayette shall provide for the legal defense of any employee who must defend a civil action or proceeding brought against him in his individual capacity in any state or federal court which arises out of alleged actions or omissions which occurred or which are alleged to have occurred while the employee was performing his official duties and responsibilities, and provided further that (1) the employee performed his official duties or responsibilities in good faith and (2) the employee's actions or omissions are covered by any currently effective policy of insurance purchased by the Town. This duty of the Town of LaFayette to provide legal defense shall not arise where a civil action or proceeding is brought by or on behalf of the Town of LaFayette.
- (b) Where an employee must defend a civil action or proceeding described in Section 4(a) of this Local Law, the employee shall be entitled to be represented by the attorneys for the Town of LaFayette, subject to the conditions of Section 3 of this Local Law and provided, however, that the employee shall be entitled to representation by private counsel of his choice whenever the Town attorneys determine, based upon their investigation and review of the facts and circumstances of the case, that representation by the Town attorneys would be inappropriate or whenever a court of competent jurisdiction, upon 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 attorneys may require, as a condition to payment of the fees and expenses of representation by private counsel, that appropriate groups of employees be represented by the same private counsel. If an employee or group of employees is entitled to representation by private counsel under this section, the Town attorneys shall so certify to the Town Board. Reasonable attorney's fees and litigation expenses shall be paid by the Town to private counsel for an employee or group of employees from time to time during the pendency of the civil action or proceeding,

subject to certification by the Town attorneys that the employee or group of employees is entitled to representation by private counsel and subject to an audit by the Town Board and warrant to the Town Supervisor. Any dispute with respect to the representation of a group of employees by a single private counsel, or the amount of litigation expenses or the reasonableness of the attorney's fees charged by private counsel, shall be resolved by the court upon motion or by a special proceeding.

- © After an employee delivers the original or a copy of any summons, complaint, notice, demand, pleading or other legal process to the Town attorneys as required by Section 3 of this Local Law, the Town attorneys shall take the necessary steps, including where appropriate the retention of private counsel under the terms and conditions of Section 4(b) of this Local Law, to avoid the entry of a default judgment against the employee pending the resolution of any question pertaining to the Town's obligation to provide legal defense and/or indemnification from financial loss.

SECTION 5. Indemnification from Financial Loss.

- a. The Town of LaFayette shall indemnify an employee for the amount of any final judgment obtained against him in any civil action or proceeding in any state or federal court, and for the amount of any final settlement of any civil action or proceeding brought against him in any state or federal court, provided that the civil action or proceeding arises out of alleged actions or omissions which occurred while the employee was performing his official duties or responsibilities, and provided further, that (1) the employee performed his official duties or responsibilities in good faith and (2) the employee's actions or omissions are covered by any currently effective policy of insurance purchased by the Town. This duty of the Town of LaFayette to indemnify an employee from financial loss all not arise where a civil action or proceeding is brought by or on behalf of the Town of LaFayette. The Town also shall have no obligation to indemnify an employee represented by private counsel with respect to a settlement which has not been reviewed and approved pursuant to the provisions of Section 5(b) of this Local Law.
- b. An employee represented by private counsel shall submit or cause to be submitted to the Town Board any proposed settlement which may be subject to indemnification by the Town. The Town Supervisor shall submit the proposed settlement to the Town attorneys. The Town attorneys shall review the proposed settlement as to form and amount, and shall give their approval if in their judgment the settlement is in the best interest of the Town.
- c. In addition to the approval of the Town attorneys, any compromise or settlement shall be presented and approved pursuant to Section 68 of the Town Law, to the extent it is applicable.
- d. Upon entry of a final judgment against an employee, or upon a final settlement, the employee shall serve or cause to be served upon the Town Supervisor a copy of such final judgment or final settlement, either by personal services or by certified or registered mail within thirty (30)

days after the date of entry of the judgment or the date of the settlement. If the employee is entitled to indemnification for the amount of the final judgment or final settlement, under the provisions of Sections 5(a), 5(b) and 5(c) of this Local Law, it shall be certified for payment by the Town Supervisor and shall be paid upon an audit by the Town Board.

SECTION 6. Scope of Benefits; No Effect on Workers' Compensation Law.

The benefits of this Local Law shall inure only to employees as defined in Section 2. No provision of this Local Law shall be construed so as to enlarge or diminish the rights of any other person, or be construed so as to affect, alter or repeal any provision of the Workers' Compensation Law.

SECTION 7. No Effect on Insurance.

No provision of this Local Law shall be construed so as to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

SECTION 8. No Effect on Immunity or Other Rights.

No provision of this Local Law shall be construed so as to impair, alter, limit, modify, abrogate or restrict in any manner either (1) any immunity available to or conferred upon any unit, entity, officer or employee of the Town, or (2) any right to legal defense and/or indemnification from financial loss provided to any unit, entity, officer or employee of the Town, by reason of or in accordance with any provision of state or federal statutory or common law.

SECTION 9. Applicability.

The provisions of this Local Law shall apply to all civil actions and proceedings pending as of the effective date of this Local Law, and to all civil actions and proceedings commenced thereafter.

SECTION 10. Savings Clause.

If any provision of this Local Law, or the application of any provision of this Local Law to any person or circumstance, is held to be unconstitutional or invalid in whole or in part by any court of competent jurisdiction, the court's holding of unconstitutionality or invalidity shall in no way affect, invalidate or impair any other provision of this Local Law, or the application of any provision of this Local Law to any other person or circumstance.

SECTION 11. Effective Date.

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