

Local Law Filing

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
APR 13 2002
NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET, ALBANY, NY 12231

MISCELLANEOUS
& STATE RECORDS

(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~~

of MORIAH

Local Law No. 1 of the year ~~19~~ 2002

A local law Providing for the Defense of Town Officials and Employees

(Insert Title)

Be it enacted by the Town Board of the

(Name of Legislative Body)

~~County~~

~~City~~

~~Town~~

~~Village~~

of Moriah as follows:

Local Law No. 2 of the year 2002

**A LOCAL LAW PROVIDING FOR THE DEFENSE OF TOWN OFFICERS
AND EMPLOYEES**

SECTION 1: Short Title, Authority and Applicability:

(a) This law shall be known and may be cited as the "Employee Defense Law"

(b) The Town Board of the Town of Moriah has the authority to adopt this local law pursuant to Sections 10 and 11 of the Municipal Home Rule Law of the State of New York.

(c) This law shall apply to employees of the Town of Moriah, Essex County, New York as said term is defined hereinafter.

SECTION 2: Findings and Purposes:

(a) The Town Board finds that it is the best interest of the Town that its employees have conferred upon them the benefits of Public Officers Law sections 17 and 18 and to supplement said sections to clarify that said benefits be conferred upon present as well as past and former employees as said term is herein after defined.

(b) Further, to supplement and clarify section 65 (1) of the Town law to allow authorization of reimbursement under said section for expenses of legal representation incurred by former town employees subpoenaed to testify at depositions in an action pending against the town seeking to compel their testimony in said actions, provided the Town Board finds and resolves that such to be necessary for the benefit and protection of the Town and be in the best interest of the town to incur such expense..

SECTION 3: Definitions:

As used in this local law, unless the context otherwise requires:

(a) The term "employees" shall mean any person holding or having held a position by election, appointment or other employment in the service of the town, including any commissioner, member of a public board or commission, director, officer, employee, volunteer expressly authorized to participate in a publicly sponsored volunteer program, agency, committee or board acting in furtherance of town's business or interest, whether or not compensated, but shall not include: a volunteer or any person not furthering or acting in the Town's business or interest or for it's benefit or an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

(a) The term "town" shall mean the Town of Moriah, New York.

SECTION 4 : Defense of employees:

(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 or is alleged in the complaint to have 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 1981 or 1983 of title 42 of the United States Code and the act or omission underlying the action occurred or is alleged in the complaint or have occurred while the employee was acting within the scope of his/her public employment or duties. Such defense shall not be provided where such civil action, proceeding or otherwise is brought by or on behalf of the town or any town body or commission against the employee. Under no circumstances shall any defense or reimbursement be made for any expenses upon any alleged ethics violation or charges recommended by the Board of Ethics of the Town against said employee.

(b) Subject of the conditions set forth in this local 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 a town 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 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 local 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 Town Board.

(c) Where the employee delivers process and a request for a defense to the town attorney or the town supervisor as required by section 3 of this local law, the town attorney or the supervisor, as the case may be, shall take the necessary steps including the retention of an attorney under the terms and conditions provided in paragraph (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.

(d) Further, supplementing section 65 (1) of the Town law, the town board may, provided it finds that it be in the best interest of the Town and the town's benefit and protection, to authorize reimbursement for expenses of legal representation incurred by former town employees who have been subpoenaed to testify at depositions in an action pending against the town. Provided the Town Board finds and

resolves that such to be necessary for the benefit and protection of the Town and be in the best interest of the town to incur such expense..

SECTION 5. Conditions:

The duties to defend provided in this Local Law shall be contingent upon (a) delivery to the town attorney or, if none or if the town attorney is a named party then, to the town supervisor 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 (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. Such delivery shall be deemed a request by the employee that the town provide for his defense pursuant to this local law, unless the employee shall state in writing that a defense is not requested.

SECTION 6. Benefits:

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

(b) The benefits of this local law 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.

SECTION 7. Insurance Policy not effected:

(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) As otherwise specifically provided in this local law, the provision 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 provided for any governmental officer or employee by, in accordance with, or by reason, any other provision of state or federal statutory or common law.

SECTION 8: Conflict:

(a) Pursuant to the power granted by Municipal Home Rule Law this local law supercedes and suspends the following statute, regulations and ordinance in so far as they are inconsistent with this law: Public Officers Law sections 17 and 18.

(b) All ordinances, local laws and regulations of the Town of Moriah in conflict with the provisions of this local law are hereby superceded to the extent necessary to give this local law full force and effect.

SECTION 9. Application:

The provision of this local law shall apply to all actions and proceedings specified herein which have been commenced, instituted or brought on or after the effective date of this local law as to supplement section 17 & 18 of the Public Officer Law and as to application of and to supplement section 65 (1) of the Town Law this law shall apply to such depositions of present or former employees as to any pending or future actions or proceedings provided the deposition has yet to be held.

SECTION 10: 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. 1 of the year 2002. ~~XXXXXX~~
of the (County)(City)(Town)(Village) of Moriah was duly passed by the
Town Board on 4-9 192002 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 19____
of the (County)(City)(Town)(Village) of _____ was duly passed by the
_____ on _____ 19____, and was (approved)(not approved)(repassed after
(Name of Legislative Body)
disapproval) by the _____ and was deemed duly adopted on _____ 19____,
(Elective Chief Executive Officer*)
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 19____
of the (County)(City)(Town)(Village) of _____ was duly passed by the
_____ on _____ 19____, and was (approved)(not approved)(repassed after
(Name of Legislative Body)
disapproval) by the _____ on _____ 19____. Such local law was submitted
(Elective Chief Executive Officer*)
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 _____ 19____, 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 19____
of the (County)(City)(Town)(Village) of _____ was duly passed by the
_____ on _____ 19____, and was (approved)(not approved)(repassed after
(Name of Legislative Body)
disapproval) by the _____ on _____ 19____. Such local law was subject to
(Elective Chief Executive Officer*)
permissive referendum and no valid petition requesting such referendum was filed as of _____ 19____, 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 19____ 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 _____ 19____, 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 19____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 19____, 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 _____, above.

Leilani M. Sprague
Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body

(Seal)

Date: 4/10/02

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF Essex

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Carl Madonna
Signature

Special Counsel to Town of Monak
Title

County
City of Monak
Town
Village

Date: 4-11-02