

TOWN OF OTISCO LOCAL LAW #1 OF 2004
DEFENSE AND INDEMNIFICATION OF TOWN OFFICERS AND EMPLOYEES

Be it enacted by the Town of Otisco as follows:

1. Legislative Intent.

The purpose of this Local Law is to provide legal and financial protection for those individuals serving the Town of Otisco from losses which may result from civil 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 Local Law, the Town Board of the Town of Otisco 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 officers and employees. 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 of Otisco 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.

2. Designation of Local Law.

This Local Law shall be known as the Town of Otisco Defense and Indemnification of Town Officers and Employees Local Law of 2004.

3. Definitions.

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

ACTIONS – Any civil lawsuit or administrative or governmental proceeding initiated against, or threatened to be initiated against an Employee which arises out of, or is in connection with the Employee's employment by the Town, including any appeals related thereto.

ATTORNEY FOR THE TOWN – the attorney or law firm regularly retained by the Town of Otisco as an independent contractor to provide services to, or on behalf of the Town of Otisco pursuant to a retainer arrangement.

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, an Employee's estate or judicially appointed personal representative.

TOWN – The Town of Otisco, County of Onondaga, State of New York.

TOWN BOARD – The Town Board of the Town of Otisco, County of Onondaga, State of New York.

4. Indemnification by Town.

A. Upon compliance by an Employee with the provisions of this Local Law, the Town shall, at the Town's expense, indemnify and save harmless an Employee in the amount of any judgment obtained against such Employee, in the amount of any monetary penalty imposed against an Employee, or in the amount of any settlement (as hereinafter provided) of a claim resulting from any Action against the Employee, provided that the act or omission from which such judgment or settlement arose occurred while the Employee was acting or, in good faith, was purporting to act within the scope of the Employee's public employment or duties.

B. The Town Board, in its sole and absolute discretion, shall make the determination of whether an Employee was acting or, in good faith, was purporting to act within the scope of the Employee's employment or duties, as soon as practicable after notice of a potential or threatened Action, or the actual commencement of an Action against an Employee and notice of such threatened or pending Action is given to the Town as required by paragraph 6 (i), below. Such determination shall be made after a full investigation into the allegations by the Town Board, with the assistance of the Attorney for the Town or such other individuals or agencies as the Town may deem, in its discretion, to be reasonably necessary. If the Town determines that an Employee was not acting within the scope of the Employee's employment or duties, the Town shall so notify the Employee and the Town shall bear no legal expense on behalf of such Employee, nor shall the Town indemnify, hold harmless or defend the Employee in connection with any judgment, settlement or other monetary penalty obtained against the Employee for which the Town has otherwise obligated itself to indemnify, hold harmless or defend Employees under this Local Law.

C. The Town shall indemnify and save harmless its Employees in the amount of any judgment obtained against such Employees in any Action or in the amount of any settlement of an Action (as hereinafter provided), or for any monetary penalty levied against an Employee, provided that the act or omission from which such judgment, settlement or monetary penalty arose occurred while the Employee was acting within the scope of the Employee's public employment or duties and the terms and conditions of this Local Law have been complied with by such Employee; provided further, however, that in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon review of such proposed settlement and all documentation relating thereto as to form and content, and the Attorney for the Town's recommendation of acceptance of such settlement to the Town Board. Notwithstanding any provision of this Local Law to the contrary, the approval of the amount and terms of any settlement, and the payment of any settlement, shall be subject to the approval of the Town Board and the Town's insurance carrier, if applicable.

D. Upon entry of a final judgment against an Employee, or upon the settlement of a claim as provided herein, or upon any monetary penalty being levied against an Employee, the Employee shall serve a copy of such judgment, settlement documents or order levying a monetary penalty, either by personal service or by certified or registered mail, within fifteen (15) days of the date of entry of a judgment or order imposing a monetary penalty, or the execution of an agreement of

settlement, upon the Town Supervisor or the Attorney for the Town, and if not inconsistent with the provisions of this Local Law, the amount of such judgment, settlement or monetary penalty shall be paid by the Town within one-hundred twenty (120) days thereafter, except that a monetary penalty shall be paid within the time prescribed by a governmental order.

5. Defense by Town.

A. An Employee who is eligible for indemnification by the Town under the provisions of this Local Law shall be represented by the Attorney for the Town or by another attorney employed or retained by the Town for the defense of the Employee, as may be approved by the Town Board. The Town Board shall employ or retain such other attorney for the defense of the Employee whenever the Town Board determines, in the Town Board's sole discretion, based upon its own investigation and review of the facts and circumstances of the Action, that representation by the Attorney for the Town would be inappropriate, or if a court of competent jurisdiction determines that a conflict of interest exists and that the Employee cannot be represented by the Attorney for the Town. Reasonable attorney's fees and litigation expenses shall be paid by the Town to the Attorney for the Town or to such other attorney so employed or retained, from time to time during the pendency of the Action, subject to certification by the Town Supervisor that the Employee is entitled to continued 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.

B. The Town Board may require, as a condition to payment of the fees and expenses for such representation, that multiple Employees in the same Action, or in separate Actions involving the same subject matter or allegations, be represented by the same counsel, including, where appropriate, the Attorney for the Town. 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. Notwithstanding the provisions of paragraph 5 (A), above, where an Employee delivers process and a request for a defense to the Attorney for the Town or to the Town Supervisor as required by paragraph 6 (i) of this Local Law, below, the Attorney for the Town or the Town Supervisor, as the case may be, shall take timely, immediate, temporary steps, including the retention of the Attorney for the Town or another attorney without Town Board approval on behalf of the Employee to avoid entry of a default judgment against the Employee pending resolution of any question relating to the obligation of the Town to provide a defense for such Employee and approval of the Town Board of the retention of such attorney.

6. Conditions Precedent to Application of this Local Law.

The application of the indemnification and defense provisions of this Local Law shall be expressly conditioned upon:

(i). The delivery to the Attorney for the Town or to the Town Supervisor, by certified, registered or express mail through a nationally recognized express mail service, of the original or a copy of any summons, complaint, process, notice, demand or pleading within ten (10) days after the Employee is served with such document. Such delivery shall be deemed a request by the Employee that the Town provide for the Employee's defense pursuant to this Local Law, unless the Employee shall state, in writing, that a defense is not requested; and

(ii). The full cooperation of the Employee in the defense of such Action and in the defense of any action against the Town based upon the same act or omission and in the prosecution or defense of any appeal by the Town.

7. **Limitation of Applicability.**

A. Except as otherwise provided by law, the duty of the Town to indemnify, save harmless and defend, as prescribed by this Local Law, shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the Employee.

B. Nothing in this Local Law shall authorize or require the Town to indemnify, save harmless or defend an Employee with respect to punitive or exemplary damages, fines, penalties or other monetary obligations arising out of intentional acts or other acts occurring outside the scope of the Employee's public employment or duties, or for money recovered from an Employee pursuant to §51 of the New York General Municipal Law or other applicable laws; provided, however, that the Town shall indemnify, save harmless and defend its Employees in the amount of any costs, reasonable attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that an Employee, acting within the scope of the Employee's public employment or duties, has, without willfulness or intent, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of this State or of the United States.

C. The duty of the Town to indemnify, save harmless or to provide or pay for the defense of an Employee shall not arise where such Action is brought by, or on behalf of the Town of Otisco.

D. Notwithstanding any provision of this Local Law to the contrary, if, after an initial determination that the Employee is eligible for indemnification or defense by the Town under the provisions of this Local Law, the Town subsequently determines that the Employee was not, in fact, acting or purporting to act within the scope of the Employee's employment or duties, or that the Employee has failed to cooperate with the Town as required by paragraph 6 (ii), above, or that the Employee has misled the Town or has otherwise acted in bad faith, or that the Employee is otherwise ineligible for indemnification and/or defense under the terms of this Local Law, the Town shall have the right to discontinue the indemnification and defense of the Employee and shall bear no legal expense on behalf of such Employee, nor shall the Town indemnify the Employee for any judgment or other monetary penalty obtained against such Employee for which the Town had previously

obligated itself to indemnify such Employee under this Local Law.

E. The benefits of this Local Law shall not be extended to an Employee who is indemnified, held harmless or provided a defense under any civil service law, collective bargaining or similar agreement, under any policy of insurance or under any other provision of law which provides the same benefits provided by this Local Law in connection with an Action or liabilities that are provided for herein.

F. 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 Local Law be construed to affect, alter or repeal any provisions of the Workers' Compensation Law.

G. 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 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.

H. This Local Law shall not in any way affect the obligation of any Employee to give notice to the Town under any other provision of law.

8. **Reimbursement by Employee.** Nothing contained herein shall act to prevent the Town from seeking restitution or reimbursement from an Employee for any sums paid by the Town on behalf of such Employee pursuant to this Local Law if such Employee is subsequently determined by the Town Board to have been ineligible for indemnification and/or defense by the Town under the terms of this Local Law.

9. **Insurance.**

A. The Town is hereby authorized and empowered to purchase insurance from any insurance company created by, or under the laws of this State, or which is authorized by law to transact business in this State, against any liability which the Town undertakes pursuant to the provisions of this Local Law, or to act as a self-insurer with respect thereto.

B. 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.

10. **Public Purpose.**

All payments made pursuant to the terms of this Local Law, whether for the purchase of insurance, the payment of a judgment, settlement, monetary penalty, reasonable legal fees, court costs, expenses 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.

11. Severability.

If any section, paragraph, subdivision, or provision of this Local Law shall be adjudged by a Court of competent jurisdiction to be void, invalid or unenforceable, such adjudication shall apply only to the section, paragraph, subdivision, or provision so adjudged in such proceeding, and the remainder of this Local Law shall remain valid and in full force and effect.

12. Effective Date/Effect on Prior Local Laws:

This Local Law shall be effective immediately and shall apply to all Actions specified herein which are currently pending or have been commenced, instituted or brought on, or after the effective date hereof. This Local Law supercedes any prior ordinances, local laws, rules or regulations dealing with the subject matter hereof which have been previously adopted or enacted by the Town of Otisco.

Dated: May 10, 2004.

	<u>Aye</u>	<u>Nay</u>
<u>Roll Call Vote:</u>		
Supervisor Amato	<u>✓</u>	—
Councilman Trendowski	<u>✓</u>	—
Councilman Cook	<u>✓</u>	—
Councilman Edinger	—	—
Councilman Loetterle	<u>✓</u>	—

Dr. Wayne S. Amato
Dr. Wayne S. Amato, Town Supervisor

Dated: May 10, 2004.

**STATE OF NEW YORK, COUNTY OF ONONDAGA
TOWN OF OTISCO**

I, the undersigned, Town Clerk of the Town of Otisco, do hereby certify that the above Local Law is a true and accurate copy of the original Town of Otisco Defense and Indemnification of Town Officers and Employees Local Law of 2004 which was passed and adopted by the Town of Otisco Town Board after a Public Hearing at a meeting of the Town Board of the Town of Otisco on May 10, 2004 and same was filed in the office of the Town Clerk on May 11, 2004.

Georgette T. Waldau
Georgette T. Waldau, Town Clerk

Dated: May 10, 2004.