

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET, 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.

~~COUNTY~~

City

PLATTSBURGH

of

~~TOWN~~

~~VILLAGE~~

Local Law No. 4 of the year 2000

A local law DEFENSE AND INDEMNIFICATION OF CITY OF PLATTSBURGH EMPLOYEES
(Insert Title)

(Amending and Superseding Chapter 34 of the City Code)

Be it enacted by the COMMON COUNCIL of the
(Name of Legislative Body)

~~County~~

City

PLATTSBURGH

of

~~Town~~

~~Village~~

as follows:

1. Definitions. As used in this section, unless the context otherwise requires:

- A. The term "City of Plattsburgh" shall mean the City of Plattsburgh its departments and agencies, and : (i) a public improvement or special district created or established by the City of Plattsburgh, (ii) a public authority, committee, commission, agency or public benefit corporation established by the City of Plattsburgh (iii) a public benefit corporation, or a not for profit corporation, established by or at the request of, the City of Plattsburgh that provides services to the City of Plattsburgh such as the administration of government loans, grants, and other benefits.
- B. 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 a City of Plattsburgh, whether or not compensated, but shall not include an independent contractor. The

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

Corporation Counsel is an officer of the City of Plattsburgh and not an independent contractor when providing legal services to or on behalf of the "City of Plattsburgh" regardless of the method of compensation. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

2. Defense of Claims.

A. Upon compliance by the employee with the provisions of Subdivision Five of this section, the City of Plattsburgh 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 City of Plattsburgh employing such employee.

B. Subject to the conditions set forth in paragraph (a) of this subdivision, the employee shall be entitled to be represented by private counsel of his choice in any civil action or proceeding whenever the Corporation Counsel of the City of Plattsburgh or other counsel designated by the City of Plattsburgh determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by a 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 chief legal officer or other counsel designated by the City of Plattsburgh may require, as a condition to payment of fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the City of Plattsburgh to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of the governing body of the Common Council of the City of Plattsburgh.

C. 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.

D. Where the employee delivers process and a written request for a defense to the City of Plattsburgh under Subdivision Five of this section, the City of Plattsburgh shall take the necessary steps on behalf of the employee to avoid entry of a default judgement pending resolution of any question pertaining to the obligation to provide for a defense.

3. Indemnification.

A. The City of Plattsburgh 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 a settlement the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by the governing body of the City of Plattsburgh.

- B. Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.
- C. The City of Plattsburgh shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee, acting within the scope of his public employment or duties, has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of this state or of the United States.
- 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 30 days of the date of entry or settlement, upon the chief administrative officer of the City of Plattsburgh; and the amount of such judgment or settlement shall be paid by the City of Plattsburgh.

4. Punitive Damages. The City of Plattsburgh shall also indemnify and save harmless its employees in the amount of any punitive damages in accordance with the following procedure and such additional procedures as may be established by the Corporation Counsel:

A. Within twenty (20) days of employee's delivery of a summons or complaint, process, notice, demand or pleading containing a demand for punitive damages, the Corporation Counsel shall make findings and an initial determination whether the employee should or should not be indemnified against any punitive damages, based upon the facts and circumstances then known to the Corporation Counsel as follows:

(1) Whether the employee's actions were or were not within the scope of his/her employment;

(2) Whether the employee's actions were or were not reckless, malicious, grossly negligent or otherwise outside of the standards required for employees holding comparable positions with the City of Plattsburgh.

(3) Whether the employee's actions were or were not made in good faith and in the best interests of the City of Plattsburgh.

(4) Whether the employee did or did not willfully violate a clearly established provision of law or municipal policy.

B. In the event the Corporation Counsel is a named defendant in an action or proceeding or cannot serve for any other reason the Mayor, pursuant to the authority given him under the City Charter, or the Common Council by resolution, shall appoint or retain counsel to serve in stead of the Corporation Counsel on the matter under review.

C. In the event of a final judgment of punitive damages against the employee, the employee shall serve copies of such judgment personally or by certified or registered mail within ten (10) days of the date of entry upon the Corporation Counsel and upon the municipal clerk on behalf of the municipal governing body. The municipal governing body shall meet as soon as practicable in executive session to review. make findings taking into consideration and giving weight to the initial and any additional findings made by the Corporation Counsel (provided the employee did not formerly misrepresent or omit material facts evidenced at trial), and determine if the following have been met, and if so met, shall appropriate the funds necessary to pay such punitive damages:

(1) The judgment of punitive damages is based on an act or omission of an employee acting within the scope of his/her employment,

(2) At the time of the action or omission giving rise to the liability, the employee acted:

(a) without recklessness;

(b) without maliciousness; and

(b) without gross negligence and otherwise within the standards required for employees holding comparable positions with the City of Plattsburgh:

(3) At the time of the act or omission, the employee acted in good faith and in the best interests of the City of Plattsburgh; and

(4) At the time of the act or omission, the employee did not willfully violate a clearly established provision of law or municipal policy.

D. Deliberations, findings and determinations of the Corporation Counsel and The Common Council shall remain confidential.

5. Conditions on Duty to Defend or Indemnify. The duty to defend or indemnify and save harmless prescribed by this local law shall be conditioned upon:

A. Delivery by the employee to the Corporation Counsel of a written request to provide for his/her defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten days after he/she is served with such document.

B. The full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the City of Plattsburgh based upon the same act or omission, and in the prosecution of any appeal.

6. 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 provision of the Workers' Compensation Law.

7. This local law shall not in any way affect the obligation of any claimant to give notice to the City of Plattsburgh under the Court of Claims Act, §10; General Municipal Law §50-e, or any other provision of law.

8. The Mayor is hereby authorized and empowered to purchase insurance from any insurance company created by or under the laws of this state, 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.

9. 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. 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. 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 to liability available to or conferred upon any unit, entity, officer or employee of the City of Plattsburgh by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

11. Benefits accorded to employees under this local law shall be in supplement to defense or indemnification protection accorded the same employees by other enactment.

12. The provisions of this section shall also be applicable to any public library supported in whole or in part by a City of Plattsburgh whose governing body has determined by adoption of a local law, ordinance, bylaw, resolution, rule or regulation to confer the benefits of this section upon the employees of such public library and to be held liable for the cost incurred under these provisions.

13. 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.

14. If any clause, sentence, paragraph, section or part of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect, impair or invalidate any other clause, sentence, paragraph, or part of this Local Law.

15. This local law shall apply to all actions or proceedings in which final judgment has not yet been entered.

(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. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, 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. _____⁴ of 20⁰⁰ of the ~~(County)~~(City)~~(Town)~~(Village) of _____ PLATTSBURGH was duly passed by the _____ COMMON COUNCIL on 30 NOV 2000, and was (approved)(~~not approved~~)(~~repassed~~ after ~~disapproval~~) by the _____ MAYOR and was deemed duly adopted on 1 DEC 2000, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(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____. 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.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

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.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

* 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-----2-----, above.

Keith A. Herkalo

Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body Keith A. Herkalo,
City Clerk

Date: 18 DECEMBER 2000

(Seal)

(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 CLINTON

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.

John E. Clute

Signature John E. Clute

Corporation Counsel
Title

XXXXXX
City of PLATTSBURGH
XXXXXX
XXXXXX
XXXXXX

Date: 18 DECEMBER 2000