

**Village of Cayuga Heights
Local Law No. 1 of the Year 2009**

**A local law amending Village of Cayuga Heights Local Law No. 2 of 1981,
“Enactment under provisions of Chapter 277, 1981 New York Session laws relating
to the furnishing of Legal Counsel and Indemnification of Employees”, to provide
for the defense and indemnification of officers and employees.**

BE IT ENACTED by the Board of Trustees of the Village of Cayuga Heights as follows:

PURPOSE AND INTENT

The purpose of this Local Law is to amend Local Law No. 2 of 1981 (entitled “Enactment under Provisions of Chapter 277, 1981 New York Session Laws Relating to the Furnishing of Legal Counsel and Indemnification of Employees”) to provide legal and financial protection for individuals serving the Village of Cayuga Heights from claims brought against them in their individual capacity for action taken in the performance of their official duties for the Village of Cayuga Heights. In enacting this Local Law, the Board of Trustees finds that the State of New York has enacted provisions for the legal and financial security of its officers and employees. By enactment of this Local Law, the Village of Cayuga Heights does not intend to limit any existing right or responsibility of the Village or its employees with regard to indemnification or legal defense. It is 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 services.

Additionally, the intent of this legislation is to indemnify the officers and employees of the Village of Cayuga Heights for punitive damages. Punitive damages are not intended to compensate the injured party, but to punish the accused for his conduct to deter him and others like him from similar actions in the future. As such, the courts have found that it is against public policy to assess punitive damages against the State or its political subdivisions. It is the intent of the Village of Cayuga Heights that the protection afforded by this Local Law will allow highly qualified individuals to serve the Village’s government, and to carry out their day-to-day activities in such service, free from fear of personal exposure to punitive damages.

AUTHORITY

This Local Law is enacted pursuant to the grant of powers to local governments provided for in (i) § 10 of the Municipal Home Rule Law to adopt and amend local laws not inconsistent with the provisions of the New York State Constitution or not inconsistent with any general law relating to its property, affairs, government or other subjects provided for in said § 10 of the Municipal Home Rule Law; (ii) General Municipal Law § 52, Liability Insurance for Officers and Employees; (iii) General Municipal Law § 50-j,

Civil Actions Against Correction Employees; and (iv) Public Officers Law § 18, Defense and Indemnification of Officers and Employees of Public Entities.

AMENDMENT TO LOCAL LAW

Local Law No. 2 of 1981 (entitled “Enactment under Provisions of Chapter 277, 1981 New York Session Laws Relating to the Furnishing of Legal Counsel and Indemnification of Employees”) of the Village of Cayuga Heights is hereby amended by deleting said Local Law No. 2 in its entirety and replacing it with the following terms and provisions, so that said Local Law hereafter will read in its entirety as follows:

TITLE: INDEMNIFICATION OF OFFICERS AND EMPLOYEES.

SECTION 1: GENERAL DEFENSE AND INDEMNIFICATION OF OFFICERS AND EMPLOYEES

A. Definition:

The term “employee” shall mean any member of a Village of Cayuga Heights (the “Village”) board or committee, trustee, officer, employee, volunteer expressly authorized to participate in a Village sponsored volunteer program, or any other person holding a position by election, appointment or employment in the service of the Village, whether or not compensated. The term “employee” shall include any former employee, as well as his or her estate or judicially appointed personal representative.

B. Provision of Defense and Indemnification:

The Village will confer the benefits of New York State Public Officers Law § 18, Defense and Indemnification of Officers and Employees of Public Entities, upon the Village’s employees, and will be held liable for the costs incurred by said individuals under said provisions.

C. Defense:

Provided that the conditions of Section 1(D) of this Local Law have been met, the Village shall provide for the defense of the employee in any civil administration 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 or her public employment or duties. This duty to provide for a defense shall not arise where the action or proceeding is brought by or on behalf of the Village.

D. Indemnification

1. The Village shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a State or federal civil administrative action or proceeding, 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 or her 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 Village. The duty to indemnify and save harmless prescribed by this Section shall not arise where the injury or damage resulted from intentional wrongdoing, maliciousness, or recklessness on the part of the employee.

2. The Village should 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 any employee acting within the scope of his or her public employment or duties, has, without willfulness or intent on his or her part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any civil administrative action or proceeding of this State or of the United States.

SECTION II: PUNITIVE DAMAGES DEFENSE AND INDEMNIFICATION OF OFFICERS AND EMPLOYEES

A. Provision of Defense and Indemnification:

The Village shall also indemnify and save harmless its employees in the amount of any punitive damages in accordance with the procedure set forth in Section II (B) below and such additional procedures as may be established by the attorney representing the Village in such action (for the purposes of this Section, said individual will be referred to as the "Village's attorney").

B. Determination of Rights to Indemnification for Punitive Damages:

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 Village's attorney shall make findings and an initial determination whether the employees should or should not be indemnified against any punitive damages, based upon the facts and circumstances then known to the Village's attorney as follows:

1. Whether the employee's actions were or were not within the scope of his or 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 position within the Village;
3. Whether the employee's actions were or were not made in good faith and in the best interests of the Village; and/or
4. Whether the employee did or did not willfully violate a clearly established provision of law or Village policy.

C. Substitute Attorney:

In the event the Village's attorney is a named defendant in an action or proceeding or cannot provide legal services to the Village in the subject action, the mayor shall appoint and the Board of Trustees (the "Board") shall approve by majority vote, a substitute attorney to serve instead of the Village's attorney on the matter under review.

D. Determination to indemnify for Punitive Damages:

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 Village's attorney and upon the Village Clerk on behalf of the Board. The Board 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 Village's attorney (provided the employee did not formerly misrepresent or omit material facts evidenced at trial), and determine if the following criteria 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 or 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
 - (c) without gross negligence and otherwise within the standards required for employees holding comparable positions with the Village;
3. At the time of the act or omission, the employee acted in good faith and in the best interests of the Village; and
 4. At the time of the act or omission, the employee did not willfully violate a clearly established provision of law or Village policy.

Deliberations, findings and determinations of the Village's attorney and the Board shall remain confidential.

E. Additional Conditions:

The duty to defend or indemnify and save harmless prescribed by this Local Law shall be conditioned upon:

1. Delivery by the employee to the Village's attorney of a written request to provide for the employee's defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten days after the employee has been served with such document.
2. The full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the Village based upon the same act or omission, and in the prosecution of any appeal.

SECTION III: GENERAL PROVISIONS

- A. 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.
- B. This Local Law shall not in any way affect the obligation of any claimant to give notice to the Village under the Court of Claims Act § 10; General Municipal Law § 50-e, or any other provision of law.
- C. The Board 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.

- D. 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.
- E. 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.
- F. 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 Village by, in accordance with, or by reason of, any other provision of State or federal statutory or common law.
- G. The benefits accorded to employees under this Local Law shall supplement, and serve in addition to, defense or indemnification protection conferred by any other applicable State or Local law.
- H. 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.
- I. This Local Law shall apply to all actions or proceedings in which final judgment has not yet been entered.
- J. All Local Laws, resolutions, rules, regulations and other enactments of the Village 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.

EFFECTIVE DATE

This Local Law shall take effect upon its filing in the office of the Secretary of State pursuant to § 27 of the Municipal Home Rule Law.