

DEFENSE OF TOWN OFFICERS, ETC.

LOCAL LAW NO. 2 OF THE YEAR 1981

A Local Law Providing for the Defense Of Town Officers and Employees and Certain Volunteers

Adopted May 5, 1981

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

SECTION 1. As used in this local law, unless the context otherwise requires:

a. The term "employee" shall mean any Town of Kirkwood commissioner, member of a Town of Kirkwood board or commission, Town of Kirkwood officer, Town of Kirkwood employee, Town of Kirkwood volunteer expressly authorized by the Town of Kirkwood to participate in a publicly-sponsored volunteer program, or any other person holding a Town of Kirkwood position by election, appointment or employment in the service of the Town of Kirkwood, whether or not compensated, but shall not include an independent contractor. The term "employee" shall include a former employee of the Town of Kirkwood, his estate or judicially appointed personal representative.

(Amended December 29, 1981 by LL No. 6-1981)

(Amended May 4, 1982 by LL No. 1-1982)

b. The term "town" shall mean the Town of Kirkwood.

SECTION 2. (Amended October 1, 1985 by LL No. 10-1985)

(Amended April 6, 2004 by LL No. 8-2004)

a. Upon compliance by the employee with the provisions of Section 3 of this local law, the town shall provide for the defense of the employee in:

1. 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 or in good faith purporting to act within the scope of his/her public employment or duties including, without limitation, any civil action or proceeding arising out of any alleged act or omission in which it is alleged that the officer or employee has violated the civil rights of the claimant, petitioner or plaintiff under sections 1981 and 1983 of the U.S. Civil Rights Act (42 U.S.C. sections 1981 and 1983), or

2. any criminal proceeding in a state or federal court arising out of any act which occurred while the employee was acting within the scope of his public employment or duties, upon his acquittal or the dismissal of criminal charges against him, or

3. connection with an appearance before a grand jury which returns no indictment against the employee, where the appearance resulted from actions occurring while the employee was acting within the scope of his public employment.

Such defense shall not be provided where such action or proceeding is brought by or on behalf of the Town.

b. Subject to 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

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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 court.

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. Subject to the condition set forth in this local law, the town 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 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 town board. The duty to indemnify and save harmless prescribed by this subdivision shall not arise where (1) the injury or damage resulted from intentional wrong doing or recklessness on the part of the employee, or (2) with respect to punitive or exemplary damages, fines or penalties, or money recovered from an employee pursuant to section fifty-one of the general municipal law, provided, however, that the Town 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.

(Amended December 29, 1981 by LL No. 6-1981)

(Amended October 1, 1985 by LL No. 10-1985)

SECTION 3. (Amended December 29, 1981 by LL No. 6-1981)

a. The duties to defend provided in this local law shall be contingent upon (a) delivery to the town attorney or, if none, 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.

b. The duty to indemnify and save harmless prescribed by this local law shall be conditioned upon the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the town based upon the same act or omission, and in the prosecution of any appeal.

c. 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 thirty days of the date of entry or settlement, upon the town supervisor of the town; and if not inconsistent with the provisions of this section, the amount of such judgment or settlement shall be paid by the town.

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SECTION 4. 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.

SECTION 5. 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.

SECTION 6. 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 unity, 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 7. The provisions 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.

SECTION 8. This local law shall take effect immediately upon filing in the office of the Secretary of State of the State of New York as provided in Section 27 of the Municipal Home Rule Law.