

Local Law Filing

(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

(Select one:)

of East Fishkill

Local Law No. 1 of the year 20²⁴

A local law " A Local Law Adding A Chapter To The Town Code Titled "Defense And Indemnification
(Insert Title)
Of Public Officials And Employees"

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

County City Town Village

(Select one:)

of East Fishkill as follows:

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

(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 2024 of the (County)(City)(Town)(Village) of Town of East Fishkill was duly passed by the Town Board on February 8 2024, 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 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ and was deemed duly adopted *(Elective Chief Executive Officer*)* on _____ 20 , 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 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. *(Elective Chief Executive Officer*)*

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.

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) *(Name of Legislative Body)* (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.

* 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 _____ above.

Pats J. Corrado
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 2/12/24

(Seal)



Local Law No. 1 of 2024

(A LOCAL LAW ADDING A CHAPTER TO THE TOWN CODE TITLED "DEFENSE AND INDEMNIFICATION OF PUBLIC OFFICIALS AND EMPLOYEES")

Section 1. Legislative intent.

The Town Board of the Town of East Fishkill has determined that in order to ensure the continued and future service of responsible and capable individuals as officials, employees, and appointees of the Town of East Fishkill, it is necessary and proper to ensure that they are afforded protection against individual liability for actions taken in good faith within the scope of their duties and employment.

Section 2. Addition to the Town Code

The following provisions shall be added as a new chapter to the Town Code:

1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

EMPLOYEE

Unless the context otherwise requires, any person holding a position by election, appointment or employment in either a full-time or part-time capacity in the service of the Town of East Fishkill, whether or not compensated, but shall not include an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative. The benefits of this chapter shall inure only to "employees" as defined herein and shall not enlarge or diminish the rights of any other party.

TOWN

The Town of East Fishkill.

2. Defense of Employees by the Town; exception.

- A. The Town shall provide for the defense of an employee in any civil action or proceeding in any state or federal court or administrative action arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting in good faith within the scope of his or her public employment or duties or which is brought to enforce a provision of §§ 1981 through 1988 of Title 42 of the United States Code. Provided, however, that the duty of the Town to defend, indemnify or save harmless shall be conditioned upon actual notice of the lawsuit by the Town Supervisor and Town Board or the Town Attorney, and the full cooperation of the employee in the defense of such action or proceeding and in the defense of any action or proceeding against the Town based upon the same act or omission and in the prosecution of any appeal.
- B. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the Town of East Fishkill against an Employee.

3. Representation by Town Attorney or private counsel.

Subject to the conditions set forth in the preceding section of this chapter, the employee shall be entitled to be represented by the Town Attorney, his or her designee, or such attorney as provided by the Town's insurance carrier if insurance coverage exists for the allegations complained of; provided, however, that the employee shall be entitled to representation by private counsel of his choice in any civil judicial proceeding whenever the Town Board determines, based upon its investigation and review of the facts and circumstances of the case and upon the recommendations of the Town Attorney, that representation by the Town Attorney would be inappropriate, or whenever the court of competent jurisdiction, upon appropriate motion or by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of his choice. The Town Attorney shall notify the employee, in writing, of such determination that the employee is entitled to be represented by private counsel.

4. Fees and expenses.

The Town Attorney may require, as a condition to payment of the fees and expenses of such representation by private counsel, that appropriate groups of such employees be represented by the same counsel. If the employee or group of employees is entitled to representation by private counsel under the provisions of this chapter, the Town Attorney shall so certify to the Comptroller of the Town of East Fishkill. Reasonable attorneys' fees and litigation expenses shall be paid by the Town to such private counsel from time to time during the pendency of the civil action or proceeding, subject to certification that the employee is entitled to representation under the terms and conditions of this chapter by the head of the department, commission, division, office or agency in which such employee is employed and upon the audit and warrant of the Town Board. 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.

5. Town Attorney to avoid entry of default judgment.

Where the Supervisor and Town Board or Town Attorney has actual knowledge of the lawsuit, the Town Attorney shall take the necessary steps, including the retention of private counsel, under the terms and conditions therein provided, on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

6. Judgments and settlements.

- A. The Town shall indemnify and save harmless an employee in the amount of any judgment obtained against such employee in any state or federal court or in any administrative action, or in the amount of any settlement of any claim brought against such employee, provided that the act or omission from which such judgment or settlement arose incurred while the employee was acting in good faith within the scope of his public employment or duties. The duty to indemnify and save harmless prescribed by this subsection shall be conditioned upon the employee's compliance with the requirements set forth in this chapter, as well as any other applicable provisions of this section; provided, however, that the duty to indemnify and save harmless prescribed by this subsection shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

- B. An employee represented by private counsel shall cause to be submitted to the head of the department, commission, division, office or agency in which he is employed any proposed settlement which may be subject to indemnification by the Town and, if not inconsistent with the provisions of this section, such head of the department, commission, division, office or agency in which he is employed shall certify such settlement and shall submit such settlement and certification to the Town Attorney. The Town Attorney shall review such proposed settlement as to form and amount and shall give his recommendation to the Town Board. If the Town Board believes it is in the best interest of the Town to accept such settlement, it shall give its approval thereto. Nothing in this section shall be construed to authorize the Town to indemnify or save harmless an employee with respect to a settlement not so reviewed and approved by the Town Board.
- C. When an employee is represented by the Town Attorney and the Town Attorney has before him any proposed settlement which may be subject to indemnification by the Town, the Town Attorney shall, after reviewing such proposal as to form and content, and after consultation with and certification of such proposed settlement by the head of the department, commission, division, office or agency wherein the employee is employed, give his recommendation to the Town Board. If the Town Board believes it is in the best interest of the Town to accept such settlement, it shall give its approval thereto. Nothing in this section shall be construed to authorize the Town to indemnify or save harmless an employee with respect to a settlement not so reviewed and approved by the Town Board.

7. Exceptions.

Nothing in this chapter shall require the Town to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties or money recovered from an employee, unless approved by an affirmative vote of the Town Board.

8. Construal of provisions.

- A. The provisions of this chapter 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 chapter be construed to affect, alter or repeal any provision of the Workers' Compensation Law.
- B. This chapter shall not in any way affect the obligation of any claimant to give notice to the Town under any provision of law.
- C. The provisions of this chapter shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.
- D. Except as otherwise specifically provided in this chapter, the provisions of this chapter 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 and/or indemnification 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.

9. Applicability to pending and ongoing actions.

The provisions of this chapter shall apply to all actions and proceedings pending and ongoing upon the effective date thereof or thereafter instituted.

Section 3. Severability

If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this Local Law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 4. Effective date

This local law shall take effect immediately upon filing with the Secretary of State.

**BY ORDER OF THE TOWN BOARD
OF THE TOWN OF EAST FISHKILL
PETER CASSIDY, TOWN CLERK**

**Adopted February 8, 2024
At a Regular Meeting
Held at Town Hall**

The question of the adoption of the foregoing order was duly put to a vote on roll, which resulted as follows:

COUNCILPERSON TOM FRANCO	VOTING ABSENT
COUNCILPERSON EMANUELE MARINARO	VOTING AYE
COUNCILPERSON CRAIG ARCO	VOTING AYE
COUNCILPERSON MARIANNE FLORES	VOTING ABSENT
SUPERVISOR NICHOLAS D'ALESSANDRO	VOTING AYE

The Order was thereupon declared duly adopted.

* * * * *

I, Peter J. Cassidy, the duly qualified and acting Clerk for the Town of East Fishkill, Dutchess County, State of New York, do hereby certify that attached herein is a true and correct copy of Local Law #1 Adding a Chapter to the Town Code Titled "Defense and Indemnification of Public Officials and Employees" in the Town of East Fishkill, Dutchess County, New York as adopted at the Town Board meeting on February 8, 2024.

In witness whereof, I have hereunto set my hand and affixed the seal of the Issuer this 9 day of February, 2024.



Peter J. Cassidy
East Fishkill Town Clerk

