

TOWN OF HENDERSON

Local Law No. 18 of the year 2025 Defense and Indemnification

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

**REPEAL CHAPTER 18 in its entirety and
REPLACE with the following**

Section 1. Authority.

This local law is enacted pursuant to the authority of the New York State Municipal Home Rule Law and the New York Public Officers Law and shall repeal Chapter 18 of the Town Code and replace that Chapter with this Law.

Section 2. Title.

This chapter shall be known and may be cited as the Town of Henderson “Defense and Indemnification Law”.

Section 3. Legislative Intent.

The Town of Henderson enacts this Local Law for the purpose of formally adopting the benefits of New York Public Officers Law § 18, as the same may be amended from time to time and conferring the same upon “employees’ of the Town of Henderson, as defined herein.

Section 4. Definitions.

EMPLOYEE: Any member of a public board, employee or volunteer 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 the Town of Henderson, whether or not compensated, but shall not include any independent contractor. The term “employee” shall explicitly include a former employee, his or her estate, or judicially appointed personal representative.

GOVERNING BODY: The Town of Henderson Town Board.

TOWN: The political subdivision of the State of New York comprising the Town of Henderson.

Section 5. Benefits.

The Town Board of the Town of Henderson, in accordance with New York Public Officers Law § 18, does hereby confer the benefits of defense and indemnification, as described in the Public Officers Law § 18, upon its employees and agrees to be held liable for the costs incurred under the provisions of the Public Officers Law § 18.

Section 6. Defense.

- A. Upon compliance by the employee with the provisions of Section 8 of this Local Law, the Town shall provide for the defense of the employee in any civil action or proceeding arising out of any alleged act or omission, or allegedly occurred while the employee was acting within the scope of his or her public employment and/or duties. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or brought at the request of the Town.
- B. Subject to the conditions set forth in Subsection "A" of this Section 6, the employee shall be entitled to be represented by private attorney of his or her choice in any civil action or proceeding whenever the Town Attorney, 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 an attorney of his or her choice, provided, however, that the Town Attorney may require, as condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same attorney. Reasonable attorneys' fees charged at the same hourly rate as the currently retained Town Attorney and litigation expenses shall be paid by the Town to such private attorney, from time to time, during the pendency of the civil action or proceeding, with the approval of the governing body. Such reasonableness shall be determined in the sound discretion of the Town Board in relation to the amount of hours expended and total fees incurred on any matter to which the defense applies.
- C. Except as otherwise provided by law, the duty to defend prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.
- D. Any dispute with respect to representation of multiple employees by a single attorney or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by a court of competent jurisdiction upon motion or by way of a special proceeding.
- E. Where the employee delivers all papers served and a written request for a defense to the Town under Section 8 of this Local Law, the Town shall take the necessary steps on behalf of the employee to avoid entry of a default judgment, pending resolution of the question pertaining to the obligation to provide for a defense.

Section 7 Indemnification.

- A. The Town shall indemnify and save harmless its employee in the amount of any judgment obtained against such employee 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 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 Town Board.

- B. Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.
- C. Nothing in this section shall authorize 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 pursuant to §51 of the General Municipal Law -Prosecution of Officers for Illegal Acts; provided, however, that the Town shall indemnify and save harmless its employee 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 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 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 ordinary mail, within thirty (30) days of the date of entry or settlement, upon the Supervisor of the Town of Henderson, and if not inconsistent with the provisions of this Section 7, the amount of such judgment or settlement shall be paid by the Town.

Section 8. Employee Cooperation Required.

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

- A. Delivery by the employee to the Town Attorney and to the Supervisor of a written request to provide for his or her defense, together with the original or a copy of any summons, complaint, notice, demand or pleading, within five (5) business days after he or she is served with such document.
- B. 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.

Section 9. Effect on Other Provisions.

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.

Section 10. Notice Required.

This Local Law shall not in any way affect the obligation of any claimant to give notice to the Town under applicable provisions of the Court of Claims Act, New York General Municipal Law § 50-e, or any other provision of law.

Section 11. Purchase of Insurance.

The Town, upon direction by the governing body, 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.

Section 12. Payments for Public Purpose.

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.

Section 13. Effect on Insurance.

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 14. Effect on Immunity.

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 Town by or in accordance with or by reason of any other provision of State or Federal statutory or common law.

Section 15. Effective Date.

This Local Law shall be effective upon filing with the New York State Department of State.