

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 **OTEGO**

Local Law No. 2 of the year 2013

A local law providing for the defense of Town of Otego Officers and Employees and
Certain Volunteers

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

County City Town Village

(Select one:)

of **OTEGO**

as follows:

SEE ATTACHED PAGES.

(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. 2 of 2013 of the Town of Otego was duly passed by the Town Board on May _____, 2013, 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 _____ (Name of Legislative Body) on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*) and was deemed duly adopted on _____ 201____, 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 _____ (Name of Legislative Body) on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*) 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.

~~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 _____ (Name of Legislative Body) on _____ 20____ and was (approved)(not approved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*) 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 , 1 above.

Clerk of the county legislative body, City, Town or Village
Clerk or officer designated by local legislative body

Date: May , 2013

(Seal)

TOWN OF OTEGO
LOCAL LAW NO. 2 OF 2013
A LOCAL LAW PROVIDING FOR THE DEFENSE
OF TOWN OF OTEGO OFFICERS AND
EMPLOYEES AND CERTAIN VOLUNTEERS

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

Section 1.

As used in this Local Law, unless the context otherwise requires:

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

b. The term "Town of Otego" shall mean Town of Otego.

Section 2.

a. Upon compliance by the employee with the provisions of section 3 of this Local Law, the Town of Otego shall provide for the defense of the employee in 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 or 1983 of the U.S. Civil Rights Act (42 U.S.C. sections 1981 or 1983). Such defense shall not be provided where such action or proceeding is brought by or on behalf of the Town of Otego.

b. Subject to the conditions set forth in this Local Law, the employee shall be represented by the Town of Otego attorney or an attorney employed or retained by the Town of Otego for the defense of the employee. The Town Board of the Town of Otego shall employ or retain an attorney for the defense of the employee whenever (1) the Town of Otego does not have a Town of Otego attorney, (2) the Town Board of the Town of Otego determines based upon its investigation and review of the facts and circumstances of the case that representation by the Town of Otego attorney would be inappropriate, or (3) a court of competent jurisdiction determines that a conflict of interest exists and that the employee cannot be represented by the Town of Otego attorney. Reasonable attorney fees and litigation expenses shall be paid by the Town of Otego to such attorney employed or retained, from time to time, during the pendency of the civil action or proceeding subject to certification by the 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 of Otego. Any dispute with respect to representation of multiple employees by the Town of Otego 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 request for a defense to the Town Supervisor as required by section 3 of this Local Law, the Town Supervisor 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 of Otego to provide a defense.

d. Subject to the conditions set forth in this Local Law, the town of Otego 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/her 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 of the Town of Otego. The duty to indemnify and save harmless prescribed by this subdivision shall not arise where (1) the injury or damage resulted from intentional wrongdoing or fines or penalties, or money recovered from an employee pursuant to section 51 of the General Municipal Law, provided, however, the Town of Otego shall indemnify and save harmless its employees in the amount of any costs, attorney fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee, acting within the scope of his/her public employment or duties, has, without willfulness or intent on his/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.

Section 3.

a. The duties to defend provided in this Local Law shall be contingent upon (1) delivery to the Town Supervisor of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he/she is served with such document and (2) 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 of Otego 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 of Otego provide for his/her defense pursuant to this Local Law, unless the employee shall state in writing that a defense is not requested.

b. 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 Supervisor of the Town of Otego, and if not inconsistent with the provisions of this section, the amount of such judgment or settlement shall be paid by the Town of Otego.

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 provisions 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 unit, entity, officer or employee of the town of Otego 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.