

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 CAMBRIDGE

Local Law No. 1 (One) of the year 20 14

A local law to provide legal and financial protection for those individuals serving the Village of
(Insert Title)
Cambridge from losses which may be brought against them in their individual capacities
for actions taken while in the performance of their official duties and responsibilities.

Be it enacted by the Cambridge Village Board of Trustees of the
(Name of Legislative Body)

County City Town Village
(Select one.)

of CAMBRIDGE 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 (One) of 2014 of the (County)(City)(Town)(Village) of CAMBRIDGE was duly passed by the Cambridge Village Board of Trustees on December 3 2014, 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) (repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

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) (repassed after disapproval) by the _____ on _____ 20____.
(Name of Legislative Body)
(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) (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.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

* 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.

[Signature] **VILLAGE CLERK**
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: December 3, 2014

(Seal)

Local Law #1 of the Laws of 2014
SCHEDULE A

Section 1. Purpose.

The purpose of this Local Law shall be to provide legal and financial protection for those individuals serving the Village of Cambridge from losses which may be brought against them in their individual capacities for actions taken while in the performance of their official duties and responsibilities. In enacting this chapter, the Board of Trustees finds that the State of New York has enacted similar provisions for the legal and financial security of its officers and employees and further finds that such security is also required for local personnel. By enactment of this chapter, the Board of Trustees does not intend to limit or otherwise abrogate any existing right or responsibility of the village or its employees with regard to indemnification or legal defense. It is solely the intent of this chapter 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 service.

Section 2. Definitions.

For the purposes of this Local Law, the following words, phrases and terms and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular, words used in the singular include the plural, and words used in the masculine include the feminine. The word "shall" is always mandatory and not merely directory.

- A. ADMINISTRATIVE PROCEEDING -- A proceeding before a governmental agency charged with administering and implementing legislation.
- B. BOARD -- The Board of Trustees of the Village.
- C. CIVIL ACTION -- An action brought to enforce, redress or protect private rights, including suits at equity and at law.
- D. COVERED PERSON -- Any person holding a position by election, appointment or employment in the service of the Incorporated Village of Cambridge, whether or not compensated, but shall not include any independent contractor. The term "covered person" shall include a former employee, his estate or judicially appointed personal representative. The benefits of this chapter shall inure only to "covered persons" as defined herein and shall not enlarge or diminish the rights of any other party.
- E. DEPARTMENT HEAD -- The head of a department of the Incorporated Village of Cambridge.

- F. EMPLOYEE -- Any commissioner, member of a public board or commission, trustee, director, officer, employee, volunteer expressly 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 Village of Cambridge, whether or not compensated. The term "employee" shall not include an independent contractor. The term "employee" shall include a former employee, the employee's estate or a judicially appointed personal representative.
- G. JUDICIAL PROCEEDING -- Any proceeding in which judicial action is invoked and taken in a legally constituted court.
- H. TRUSTEE-LIAISON -- A member of the Village Board of Trustees appointed by the Mayor to act as liaison to a particular village department.
- I. VILLAGE -- The Incorporated Village of Cambridge.
- J. VILLAGE ATTORNEY -- The Village Attorney for the Incorporated Village of Cambridge.

Section 3. Application of Public Officers Law.

The full benefits of § 18 of the Public Officers Law of the State of New York are hereby conferred upon all of the employees of the Village, and the Village shall be liable for all of the costs incurred under that section, as well as the costs incurred under **Section 5** and **Section 6** hereof.

Section 4. Benefits to be in addition to other provisions.

The benefits accorded employees of the Village under § 18 of the Public Officers Law shall be available in addition to defense and indemnification provisions conferred by any other enactment.

Section 5. Obligations to provide indemnification and defense of covered person

- A. The Village shall be liable for, and shall assume the liability to the extent that it shall save harmless, any employee for any negligent act or tort, provided such employee, at the time of the negligent act or tort complained of, was acting in the performance of such employee's duties and within the scope of such employee's office, appointment, or employment with the Village. Such liability and saving harmless shall not apply when a civil action or proceeding is brought by or on behalf of the Village, including but not limited to cross-claims and third-party claims interposed or brought by or on behalf of the Village.
- B. In addition to the requirements of Subsection A of this section, the Village shall provide for the defense of any civil action or proceeding brought against an employee and shall indemnify and save harmless such employee from any

judgment of a court of competent jurisdiction, including, but not limited to, judgments for punitive or exemplary damages, fines or penalties, or in the amount of any settlement of a claim; 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. Whenever such action, proceeding, or judgment is for punitive or exemplary damages, fines or penalties, such defense, indemnification, and saving harmless, shall only pertain when such action, proceeding, or judgment arises out of a negligent act or other tort of such employee committed while in the proper discharge of such employee's duties and within the scope of such employee's office, appointment, or employment, subject to the limitations as more fully set forth in Subsection C. The Village is authorized and empowered to purchase insurance to cover the cost of such defense and indemnification. The duty to provide for a defense as set forth in this chapter shall not arise where such civil action or proceeding is brought by or on behalf of the Village, including but not limited to cross-claims and third-party claims interposed or brought by or on behalf of the Village.

- C. The duty to defend, indemnify, and save harmless set forth in this chapter shall not pertain if, based upon the facts and circumstances then known to the Board, the employee's actions were not within the scope of such employee's office, appointment, or employment or not within the scope of such employee's duties. It shall be conclusively presumed that such actions were not within the scope of such employee's office, appointment, or employment or not within the scope of such employee's duties, when the actions were:
- (1) Reckless, malicious, or grossly negligent;
 - (2) Not made in good faith or an intentional wrongdoing; or
 - (3) In willful violation of a clearly established provision of law or Village policy.
- D. No action or special proceeding instituted hereunder shall be prosecuted or maintained against the Village or such employee unless notice of claim shall have been made and served upon the Village in compliance with § 50-e of the General Municipal Law. Every such action shall be commenced pursuant to the provisions of § 50-i of the General Municipal Law. The foregoing shall be a defense against any claim by a plaintiff or petitioner against an employee or the Village, but shall not limit the obligations of the Village under this section to an employee if the provisions of this subsection are not enforced by the court against the plaintiff or petitioner.
- E. It shall be conclusively presumed that any action taken by the Mayor, Deputy Mayor, any Trustee, Village Clerk, Village Attorney or any other employee of the Village, while at any Village meeting, or otherwise when acting, including, but not limited to, speaking, with regard to the Village or Village activities, or applications presently before or proposed to the Village, is an action within the scope of his or her office and in the discharge of his or her duties. In the event of any doubt, the benefit of the doubt shall be in favor of the employee of the

Village. The intent of this Subsection E is to give the broadest coverage and protection permitted by law to the employee of the Village.

- F. Upon entry of final judgment against an employee or upon the settlement of a claim, as provided for in Subsections A and B above, the employee shall serve a copy of such judgment or settlement, personally or by certified or registered mail, within 30 days of the date of entry or settlement, upon the Village Clerk, and, if not inconsistent with the provisions of this chapter, such judgment or settlement shall be certified for payment by the Village Clerk. If the Board concurs in such certification, the judgment or settlement shall be paid upon the audit and warrant of the Treasurer.

Section 6. Representation by private counsel.

Subject to the conditions set forth in Section 5 and Section 9, an employee shall be entitled to be represented by the Village Attorney or other counsel designated by the Board or the Village's insurance carrier; provided, however, that the employee shall be entitled to representation by private counsel of such employee's choice in any civil action or proceeding whenever the Village Attorney, or other counsel designated by the Board or the Village's insurance carrier, determines, based upon the Village Attorney's, other counsel's, or the insurance carrier's investigation and review of the facts and circumstances of the case, that representation by the Village Attorney or other designated counsel would be inappropriate or whenever a 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 such employee's choice. The Village Attorney, or other counsel designated by the Board or the insurance carrier, shall notify the employee, in writing, of such determination that the employee is entitled to be represented by private counsel of such employee's choice. The Board or the insurance carrier may require, as a condition to payment of the fees and expenses of such representation, that the same counsel represent appropriate groups of such employees. If the employee or group of employees is entitled to representation by private counsel under the provisions of this chapter, the Village Attorney, other designated counsel, or the insurance carrier shall so certify to the Board. Reasonable attorneys' fees and litigation expenses shall be paid by the Village or the insurance carrier to such private counsel from time to time during the pendency of the civil action or proceeding, upon the audit and warrant of the Treasurer or the approval of the insurance carrier. 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.

Section 7. Fees and expenses.

The Village Attorney may require, as a condition to payment of the fees and expenses of such representation by private counsel, that appropriate groups of such covered persons be represented by the same counsel. If the covered person or group of covered persons is entitled to representation by private counsel under the provisions of Section 4 of this

chapter, the Village Attorney shall so certify to the Village Comptroller. Reasonable attorneys' fees and litigation expenses shall be paid by the Village to such private counsel from time to time during the pendency of the civil action or proceeding, subject to certification that the covered person is entitled to representation under the terms and conditions of **Section 4** of this chapter by the head of the department or office in which such covered person is employed and upon the audit and warrant of the Village Comptroller. Any dispute with respect to representation of multiple covered persons 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.

Section 8. Preparation by Village Attorney or insurance carrier to avoid default.

Where the employee delivers process and a request for defense to the Village Attorney as required by **Section 9**, the Village Attorney shall take the necessary steps, including the retention of private counsel under the terms and conditions provided in **Section 6**, 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. In the event that insurance is available for such defense, in lieu of the foregoing, the Village Clerk shall forward such process to the insurance carrier or carriers that are responsible for providing such defense.

Section 9. Responsibility of employee, settlement.

- A. The duty to defend, indemnify, and save harmless provided by this chapter shall be conditioned upon delivery to the Village Clerk by the employee of the original or a copy of any summons, complaint, process, notice, demand, or pleading, within five days after such employee is served with, or actually receives, such document, whichever is earlier, and 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. Such delivery shall be deemed a request by the employee that the Village provide for such employee's defense pursuant to this chapter.
- B. In the event that the Village or its insurance carrier recommends settlement of any such action or proceeding, and the employee refuses to agree to the settlement, the Village and its insurance carrier, if any, shall have no liability for any judgment, including, but not limited to, judgments for punitive or exemplary damages, fines or penalties, or any settlement to the extent that the amount of such judgment or settlement exceeds the settlement recommended and refused by the employee.

Section 10. Judgments and settlements.

- A. The Village shall indemnify and save harmless its covered persons in the amount of any judgment rendered against such covered person by any state or federal court or by any administrative agency or in the amount of any settlement of a claim, including punitive or exemplary damages, that arise out of a negligent or

other act committed while in the proper discharge of his or her duties and within the scope of his or her employment. The duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing on the part of the covered person.

- B. Such proper discharge of duty and scope of employment shall be determined by a majority vote of a panel consisting of the Village Administrator, the Trustee-liaison to the department in which the covered person is employed and the department head. In the absence of or unavailability of a Trustee-liaison, the Mayor shall sit on the panel. In the event that the covered person that is the subject of the proper discharge and scope of employment determination is the department head, or in the event that the covered person does not belong to a department, the Village Attorney shall sit as the third member of the panel. In the event that the Village Administrator and the Village Attorney are the covered persons that are the subject of the proper discharge and scope of employment determination, the panel shall consist of the Board of Trustees.
- C. Any proposed settlement, which may be subject to indemnification, must be presented to the Board of Trustees by the Village Attorney, or by the covered person or his private counsel, within three business days of the covered person's receipt of the settlement offer. The Board of Trustees, by a majority of no less than three votes, may approve any proposed settlement. In addition, the Board of Trustees, in its discretion, may initiate settlement discussions as to any pending civil action, administrative proceeding or judicial proceeding, or direct the Village Attorney or the Village Administrator to initiate such settlement discussions. Further, after consultation with the Village Attorney, the Board of Trustees may propose a settlement to the adversarial party. The Village Attorney shall review such proposed settlement as to form and amount, and shall give his or her approval if, in his or her judgment, the settlement is in the best interest of the Village. Nothing in this section shall be construed to authorize the Village to indemnify or save harmless a covered person with respect to a settlement not so reviewed and approved by the Village Attorney.
- D. Upon entry of a final judgment against the covered person or upon the execution of a settlement of the claim, the covered person shall cause to be served a copy of such judgment or settlement, personally or by certified or registered mail within 30 days of the date of entry or settlement, upon the head of the department or office in which he or she is employed or under whom he or she served, and, if not inconsistent with the provisions of this section, such judgment or settlement shall be certified for payment by such head of the department or office. If the Board of Trustees of the Incorporated Village of Rockville Centre concurs in such certification, the judgment or settlement shall be paid upon the audit and warrant of the Village Comptroller. The Board of Trustees shall not concur in the certification of a judgment that it has determined to appeal.

Section 11. Damages, fines and penalties.

Nothing in this chapter shall authorize the Village to indemnify or save harmless a covered person with respect to money recovered from a covered person pursuant to Article 7-A of the State Finance Law.

Section 12. Construal of provisions; applicability.

- A. The benefits of this chapter shall inure only to employees as defined herein and shall not enlarge or diminish the right 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. 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.
- C. The provisions of this chapter shall apply to all actions and proceedings pending upon the effective date thereof or thereafter instituted.
- 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 or any right to defense and/or indemnification available to or conferred upon any unit, entity, officer, or employee of the Village by, in accordance with, or by reason of any other provisions of state or federal statutory or common law.

Section 13. Supersession of Public Officers Law and General Municipal Law.

Pursuant to the authority granted to villages by Municipal Home Rule Law § 10(1)(ii)(e)(3), the provisions with regard to defense and indemnification of officers and employees of public entities of § 18 of the Public Officers Law are hereby superseded in their relation to the Village to the extent required, if at all, that such provisions in said § 18 are hereby supplemented, but not diminished, by the additional indemnification and hold harmless provisions set forth in this chapter.

Section 14. Applicability.

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

Section 15. Liability for costs.

The Board of Trustees of the Incorporated Village of Cambridge hereby accepts the applicability of § 18 of the Public Officers Law for the Incorporated Village of Cambridge and agrees that the Village shall be liable for costs incurred under the provisions of § 18 of the Public Officers Law and confers upon the officers and employees of the Village the benefits of § 18 of such law. Such benefits shall supplement

and be available in addition to defense and indemnification protection conferred by the other provisions of this chapter.

Section 16. Police officers.

Notwithstanding the provisions of any other law, code or charter, the Village shall provide for the defense of any civil action, administrative proceeding or judicial proceeding brought in any state or federal court against a duly appointed police officer of the Cambridge Police Department and shall indemnify and save harmless such police officer from any judgment of a court of competent jurisdiction whenever such action, proceeding or judgment is for damages, including punitive or exemplary damages, arising out of a negligent act or other tort of such police officer committed while in the proper discharge of his or her duties and within the scope of his or her employment. Such proper discharge and scope shall be determined by a majority vote of a panel consisting of the Commissioner of Police, the Village Administrator and the Trustee-liaison to the Police Department.

Section 17. Severability.

If any provision of this Local Law or the application thereof to any person or circumstance is held invalid, the remainder of this Local Law and the application of such provisions to other persons and circumstances shall not be rendered invalid thereby.

Section 18. Effective Date.

This Local Law shall take effect immediately upon filing with the Secretary of State.