

B.

LOCAL LAW NO. 12 - 2011

A LOCAL LAW PROVIDING FOR THE DEFENSE AND INDEMNIFICATION OF THE DIRECTORS
OF THE ONONDAGA COUNTY CONVENTION CENTER WAR MEMORIAL COMPLEX
MANAGEMENT CORPORATION

BE IT ENACTED, BY THE ONONDAGA COUNTY LEGISLATURE OF THE COUNTY OF
ONONDAGA, AS FOLLOWS:

Section 1. Findings/Purpose. Onondaga County owns the Onondaga County Convention Center/War Memorial Complex (Oncenter Complex), a facility which hosts various events, including athletics, concerts, conventions and other related business for the purpose of promoting economic development in Onondaga County and, particularly, the downtown area, including its hotels, shops, and restaurants. In order to provide for the efficient and professional operation of the Oncenter Complex, the County has entered into a Management Agreement, dated October 2007, with the Onondaga County Convention Center/War Memorial Complex Management Corporation (Corporation) for management of the Oncenter Complex, with it being the sole purpose of the Corporation to manage this county-owned facility. The Corporation's board members are elected from among a pool of candidates appointed in part by Onondaga County and serve without compensation. By Resolutions Nos. 135 – 2010 and 208 – 2010, this Onondaga County Legislature has approved several amendments to such agreement to support the Corporation in providing its management services to the County. To promote future civic involvement and as recognition for the valuable service provided to the County, this local law provides the Corporation's board members with defense and indemnification from lawsuits arising from actions committed by those board members within the scope of their official duties.

Section 2. (a) Onondaga County shall provide for the defense of any director of the Onondaga County Convention Center/War Memorial Complex Management Corporation (Corporation) in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the director was acting in good faith within the scope of such director's public employment or duties as shall be determined by the Onondaga County Attorney. This duty to provide a defense shall not arise in conjunction with a criminal or quasi criminal proceeding. This local law extends defense and indemnification benefits only to the Corporation's directors. An employee of the Corporation is not an employee of Onondaga County and is not covered by the provisions of this local law.

(b) The director shall be entitled to be represented by private counsel of such director's choice in any civil action or proceeding whenever the Onondaga County 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 director is entitled to be represented by counsel of the director's choice, provided, however, that the Onondaga County Attorney may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such directors be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by Onondaga County to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of the Onondaga County Legislature.

(c) Any dispute with respect to representation of multiple directors 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.

(d) Where the director delivers process and a written request for a defense to Onondaga County under Section 4 of this local law, the County shall take the necessary steps on behalf of the director to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

(e) Upon a finding by a Court of competent jurisdiction that any director engaged in acts of intentional misconduct, or that said actions subject the director to punitive or exemplary damages, or that such actions were outside the scope of employment of the director, or that the director is otherwise not entitled to defense and indemnification, then the County Attorney shall consider the initiation of an action in good faith to recover any moneys expended by the County for representation of the director by private counsel.

Section 3. (a) Onondaga County shall indemnify and save harmless the Corporation's directors in the amount of any judgment obtained against such directors 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 director was acting within the scope of the director's 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 Onondaga County Legislature where required.

(b) Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this subdivision shall not arise where the injury or damage resulted from bad faith, recklessness, criminal act, or was otherwise not within the director's scope of duties for the County.

(c) Nothing in this subdivision shall authorize Onondaga County to indemnify or save harmless a director with respect to punitive or exemplary damages, fines or penalties, or money recovered from a director pursuant to Section 51 of the General Municipal Law.

(d) Upon entry of a final judgment against the director, or upon the settlement of the claim, the director 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 Onondaga County Attorney; and if not inconsistent with the provisions of this section, the amount of such judgment or settlement shall be paid by Onondaga County.

Section 4. The duty to defend or indemnify and save harmless prescribed by this section shall be conditioned upon: (i) receipt by the Onondaga County Attorney of the original of a summons, complaint, process, notice, demand, or pleading immediately upon the director being served with such document, but in no event later than 3 days thereafter, along with a written request for defense; and (ii) the full cooperation of the director in the defense of such action or proceeding and in defense of any action or proceeding against Onondaga County based upon the same act or omission, and in the prosecution of any appeal. Should the director fail or refuse to cooperate in the defense of the matter subsequent to the assumption of defense by the County, the County may withdraw its representation and duty to indemnify and/or defend upon ten days written notice to the director.

Section 5. The benefits of this section shall inure only to directors as defined herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this section be construed to affect, alter or repeal any provision of the workers' compensation law.

Section 6. This section shall not in any way affect the obligation of any claimant to give notice to Onondaga County under Section 10 of the Court of Claims Act, Section 50-e of the General Municipal Law, or any other provision of law.

Section 7. Onondaga County is authorized and empowered, but not obligated, 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 section, or to act as a self-insurer with respect thereto.

Section 8. All payments made under the terms of this section, 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 9. The provisions of this section shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

Section 10. Except as otherwise specifically provided in this section, the provisions of this section 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 Onondaga County by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

Section 11. If any provision of this local law or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this section or the application of any such provision to any other person or circumstance.

Section 12. Resolution No. 168 - 1990, as previously amended, continues in effect unaffected by this local law.

Section 13. If the Corporation has any insurance for claims covered by this local law, the coverage provided through this local law shall be excess over such insurance, regardless of whether such insurance is collectible or designated as primary or excess.

Section 14. This local law shall take effect immediately with respect to any action of claim initiated or made on or after the date of passage of this local law. Further, this local law shall be filed pursuant to the provisions of the New York State Municipal Home Rule Law.

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I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF LEGISLATION DULY ADOPTED BY THE COUNTY LEGISLATURE OF ONONDAGA COUNTY ON THE

1st DAY OF November, 2011.

Deborah A. Matuso

CLERK, COUNTY LEGISLATURE
ONONDAGA COUNTY, NEW YORK

FILED WITH CLERK
ONON. CO. LEG.

Oct. 12, 2011
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LEGISLATURE