

LOCAL LAW NO. 4-2018 A LOCAL LAW AMENDING AND RESTATING LOCAL LAW NO. 4 OF THE YEAR 2016 RELATIVE TO THE LIVINGSTON COUNTY SELF-INSURANCE PLAN FOR WORKERS' COMPENSATION

BE IT ENACTED by the Board of Supervisors in and for the County of Livingston, as follows:

The text of Local Law 2016-4 is hereby **AMENDED AND RESTATED** to read as follows:

Purpose and Intent:

The purpose and intent of this Local Law is to amend Local Law Number 1 of 1956, as amended, relative to the operation of the Livingston County Self-Insurance Plan for Workers' Compensation (hereinafter "the Plan"). This local law continues the plan in full force and effect under Article 5 of the Workers' Compensation Law and amends the Plan's operations as of the date this law becomes effective.

Article 1. Plan Established and Continued.

The plan of self-insurance provided for in Article 5 of the Workers' Compensation Law is hereby established and continued and shall continue to be known by the name of the "Livingston County Self-Insurance Plan for Workers' Compensation."

Article 2. Plan Governance and Supervision.

The plan of self-insurance hereby established shall be under the general supervision of a Claims Committee which shall consist of the County Administrator, County Auditor and County Treasurer. A Third Party Administrator may be retained, at the Livingston County Board of Supervisor's option, to administer the day-to-day operations of the plan, claims administration and third-party reimbursement. The cost of the Third Party Administrator shall constitute a plan expense. The Claims Committee shall appoint a Secretary and any other employees of the plan within the limits of the appropriation therefore; and shall audit all bills or claims against the plan before payment, if not otherwise delegated to a Third Party Administrator by the Committee, except such sums as may be payable under §25 of the Workers' Compensation Law and awards of the Workers' Compensation Board. The committee shall also have the authority to authorize appeals to the Workers' Compensation Board or Appellate Division, Fourth Department, to commence litigation to recover claim monies paid by the plan or entitled to be recovered by the plan or to otherwise protect the interests of the plan; to approve Workers' Compensation Law § 32 settlements of claims and to assert, compromise or waive workers' compensation liens as to third party actions or recoveries from collateral sources when it is in the best interests of the Plan to do so.

Article 3. Plan Secretary.

The Claims Committee shall appoint a Plan Secretary. The Secretary may receive compensation as Plan Secretary and perform the duties of Plan Secretary in addition to any other county employment held. It shall be the duty of the Secretary to keep minutes of the Claims Committee, to issue certificates evidencing coverage upon request and to maintain a census of each participant in the plan on an annual basis. The Secretary shall perform such other duties as may be necessary to operate the plan in accordance with the Workers' Compensation Law or other applicable laws; shall attend hearings of cases before the Workers' Compensation Board when necessary; shall have the power to authorize necessary medical care which appears from medical reports and information to be justifiable; and shall have the authority to purchase supplies, stationery, forms, books and equipment as may be necessary for the operation of said plan within the limits of the appropriation by the County Board of Supervisors and subject to the procurement policies of the County of Livingston.

Article 4. Participants in Plan; Procedure for Participation; Withdrawal.

(A) Plan Participation.

The County of Livingston shall be a participant in the plan. The Towns and Villages, Town Fire Districts and Town Ambulance Districts located within the geographical boundaries of Livingston County, and the Livingston County Water and Sewer Authority may elect to become participants of said plan. Those municipalities and other entities currently participating in the plan at the time of the adoption of this local law be and are hereby continued in their plan enrollment in the plan.

(B) Procedure for Plan Enrollment.

(1) Any municipality or eligible entity electing to become a participant shall file a certified copy of a resolution or ordinance of its governing body electing to become a participant on or before the first day of August in any year, with membership to be effective on the first day of January following such election, except that for Plan Year 2019, an eligible entity electing to become a participant shall file a certified copy of a resolution or ordinance of its governing body electing to become a participant on or before the first day of December, 2018, with membership to be effective on the first day of January 2019.

(2) Any municipality or eligible entity choosing to become a participant shall provide the Plan Secretary with a certified list of its past five (5) year claims history.

(3) The plan shall not be responsible for any claims accruing before the date a municipality or other entity becomes a participant or for incurred but not reported claims prior to becoming a participant.

(C) Procedure for Withdrawal from Plan.

(1) Any participant may withdraw from said plan by filing a certified copy of a resolution of its governing body with the Plan Secretary electing to withdraw as a participant on or before the first day of September in any year with said withdrawal to be effective on the first day of January following the election. Failure to do so on or before the deadline herein shall make the participant liable for the following year's plan assessment as determined by the County Legislature whether or not the participant actually continues in the Plan.

(2) As a term and condition for a participant's withdrawal from the Plan, the participant shall pay all outstanding claims as they mature together with twenty (20) percent of claims paid which represents their share of administrative costs, and the participant shall permit the county to withhold the participant's share of sales tax revenue (if applicable) in an amount sufficient to pay its outstanding liabilities in any succeeding year in the event that the participant fails to pay its outstanding claims, when due, in addition to any other remedies provided for by law to recoup said funds.

(3) In lieu of the requirements of section C(2) of this Article, and at the county's option, the participant withdrawing from the plan shall pay the present value of its total outstanding liabilities, in full, together with an amount equal to its share of future administration costs thirty (30) days prior to the date of its withdrawal from the plan.

(4) Notwithstanding any payments under section C(2) or C(3) of this Article, a participant which withdraws from the Plan shall also be responsible to the plan for the costs attendant to any incurred but not reported claims (IBNR) during the time the participant was a member of the Plan without limitation.

Article 5. Duties of Plan Participants.

All participants in the plan shall cooperate fully with the Claims Committee, Third Party Administrator, if any, and Plan Secretary in the administration of the plan, shall render such reports as may be required, shall promptly

furnish all pertinent information relative to any claim and aid in the investigation of any claim regarding its own employees or volunteers.

Article 6. Reports.

- (A) Each participant shall maintain a record of all injuries received by employees in the course of their employment or volunteers. The following or equivalent reports or forms, as well as any others required to be filed with the Workers' Compensation Board pursuant to the Workers' Compensation Law or other law, shall be filed promptly with said Board or as otherwise directed by the county and/or Third Party Administrator, if retained:
- (1) Form C-2: employer's report of injury;
 - (2) Form C-3
 - (3) Form C-11: employer's report of injured employee's change in employment status resulting from injury.
 - (4) Form C-61: supplemental report of employer in death case.
 - (5) Form C-240: employer's statement of wage earnings preceding date of accident.
 - (6) VF-1 (Notice to Liable Political Subdivision); VF-2 (Political Subdivision's Report of Injury of Firefighter) when applicable.
 - (7) VAW-1 (Notice to Liable Political Subdivision); VAW-2 (Political Subdivision's Report of Injury to Volunteer Ambulance Worker) when applicable.
 - (8) Such other and further forms as the NYS Workers' Compensation Board or Plan may require.
- (B) Each participant shall complete, maintain and provide such other reports and forms as required by the Workers' Compensation Board, the county and/or the Third Party Administrator, including forms or reports required by the New York State Department of Labor Division of Public Employee Safety & Health and such other information as may be requested by the county or the Third Party Administrator shall be filed promptly by the participant with the county or Third Party Administrator.
- (C) Forms for reports to be filed by participants pursuant to this section shall be furnished by, and be an expense of, the plan; the TPA or county shall develop procedures to expedite or file forms on behalf of a respective participant if it serves the interests of the plan.
- (D) The Claims Committee shall report to the County Legislature the failure of a participant to keep or file the required reports hereunder.

Article 7. Safety Programs.

The Chairman of the Livingston County Board of Supervisors shall appoint a Labor-Management Safety Committee as required by Workers' Compensation Law § 71(2). The Committee shall, consistent with the provisions of Workers' Compensation Law § 71, develop, review and enforce the implementation of general, plan-wide safety programs designed for the responsible and reasonable protection of the lives, health and safety of the participants' employees or volunteers by employee classification on an ongoing basis. Priority shall be given to occupations where there are unique hazards and/or recurring injuries to assist in minimizing future plan exposures and risks. The participants shall abide by the safety recommendations of the Committee and shall take such steps as may be deemed by the Committee, as reasonable and practicable, to protect the lives, health and safety of the participants' employees. If a participant's own safety training, programs or procedures are sufficient, the Committee may approve same without further action. The Committee shall report to the Livingston County Board of Supervisors the failure of a participant to abide by the safety recommendations of

the Committee. The costs of developing plan safety programs shall be a plan charge. Notwithstanding any other provision to the contrary, nothing herein shall be construed to prohibit any participant from developing or implementing any safety program or procedure, provided that said program or procedure is required by rule, law or regulation or has been approved by the Committee as providing the same or stricter standards of safety.

Article 8. Penalties.

(A) (1) The Claims Committee, after giving 15 days' written notice of the proposed Claims Committee action to the participant alleged to have violated the provisions of this chapter, may impose the following penalties upon a participant:

- (a) For failure to file reports: a fine not to exceed \$500 for any single violation.
- (b) For failure to implement safety recommendations of the Labor-Management Safety Committee: a fine not to exceed \$500 for any single violation and an additional fine not to exceed \$500 per day for each violation still in existence after the expiration of the 30 days from the receipt of a notice of additional penalty to the participant forwarded by the Claims Committee by certified mail, return receipt requested.

(2) Notwithstanding any other provisions to the contrary, any financial penalty imposed by the Claims Committee pursuant to this section may be recovered by an action in any court of competent jurisdiction on behalf of the County of Livingston or be included in the liability of the participant for the annual estimated expenses of the plan and collected in the same as said liability.

(3) Any participant who fails to pay its liability for the annual estimated expenses of the plan as provided herein shall be subject to an automatic penalty equal to one and one-half (1-1/2) percent per month of the participant's liability for the annual estimated expenses of the plan until said amount is paid in full. The Claims Committee, without additional notice, may impose an additional five (5) percent penalty if the participant's unpaid annual estimated liabilities of the plan are included in a succeeding tax levy. The county reserves the right to utilize any remedy available under the Workers' Compensation Law, or its common law right of set-off, to recoup any delinquent plan assessments.

(B) Expulsion. The Claims Committee may expel a participant for failure to observe the rules and regulations adopted herein or for any violation of the provisions of the Workers' Compensation Law, provided that the Committee's determination of expulsion shall be made after a public hearing of which the participant has had at least 15 days' written notice.

(C) Regulations. The Claims Committee shall have the power to adopt, amend or repeal rules and regulations consistent with this chapter for the conduct of hearings concerning the imposition of a penalty against or expulsion of a participant.

(D) Judicial review. Any participant aggrieved by the imposition of a penalty or expulsion as provided herein may have the determination of the Claims Committee reviewed by an Article 78 of the Civil Practice Law and Rules in Supreme Court, Livingston County, provided that said proceeding is commenced within 30 days after the final determination of the Claims Committee sought to be reviewed.

Article 9. Shares of Each Participant.

The share of each participant in the plan regarding annual Plan assessments, administrative costs and contributions shall be collected as provided for in § 67(1) of the Workers' Compensation Law. The County

Treasurer may, alternatively, use the county's common law right of set-off to collect any delinquent shares, assessments or payments owed from a plan participant to the Plan from any payments owed to a given plan participant from the County of Livingston deriving from any source whatsoever including, inter alia, sales tax payments or delinquent real property tax payments.

Article 10. Payment of Benefits.

The County Treasurer and/or Third Party Administrator shall pay to claimants workers' compensation benefits as provided in § 25 of the Workers' Compensation Law or benefits as provided by the VFB or VABL, where applicable, upon order of the Plan Secretary. Other payments of liabilities of the plan shall be made by the County Treasurer or Third Party Administrator upon vouchers duly approved by the Claims Committee.

Article 11. Penalties for Offenses.

The violation of any of the provisions of this Local Law by any participant shall be grounds for the expulsion of such participant from the plan.

Article 12. Formula for Plan Apportionments (Non-VFBL & Non- VABL).

Apportionment of all Plan costs shall be determined by taking the total amount to be assessed and applying the following formula:

- (1) Fifty percent (50%) of the total revenue for the Plan shall be generated based on Taxable Real Property. Fifty percent (50%) of any Plan participant's annual assessment shall be computed based upon a plan participant's taxable real property in the following proportion:
 - (a) For the County, Towns and Villages: The proportion that the full valuation of its taxable real property bears to the aggregate full valuation of all participants; and
 - (b) For Town Fire Districts and Town Ambulance Districts: The proportion that twenty percent (20%) of the full valuation of its taxable real property bears to the aggregate full valuation of all participants.
- (2) Fifty percent (50%) of the total revenue for the Plan shall be generated based on Experience Rating. Fifty percent (50%) of any Plan participant's annual assessment shall be computed upon an Experience Rating. An experience modifier will be calculated for each Plan participant comparing actual losses to expected losses for a three-year experience utilizing one base expected loss rate for all employees, plus factors published annually by The New York State Workers' Compensation Board. The Experience Rating premium will be calculated using the current year Loss Cost for Municipal Employees as reported on the Quarterly Unified Employer Assessment Municipal Self-Insurers Remittance Form, as a base rate, multiplied by participant payrolls and experience modifiers. A uniform Special Plan Discount Ratio up to 25% may be applied each year to achieve fulfillment of the Livingston County Self Insurance Plan Annual Estimate and Apportionment of Expense budgeted Amount to Be Raised by Tax.

- (3) The apportionment of plan costs formula of fifty percent (50%) assessed valuation and fifty percent (50%) experience rating shall be phased in as follows:

<u>Plan Year</u>	<u>Assessment Percentage</u>	<u>Experience Percentage</u>
2017	90%	10%
2018	80%	20%
2019	70%	30%
2020	60%	40%
2021 and thereafter	50%	50%

- (4) Special district or authorities participating in the Plan with limited taxable real property will have unique rating factors developed by the County and will be calculated on an annual basis. The County will apply a Special District or Authority Discount / Surcharge, in addition to standard rating factors such as taxable values, payrolls, experience modifiers, and towns/villages/counties served to manage special participant pricing to within 30% of New York State Workers' Compensation Board (NYSWCB) rating guidelines. In calculating the NYSWC Premium for a Special District or Authority, the Plan shall cap any NYSWCB annual rate increase to a maximum of 25%.

The following special district or authorities are included in the Plan:

- (a) Livonia Ambulance District #1
- (b) Livingston Water and Sewer Authority Service

Article 13. Costs of Plan.

Notwithstanding any other provisions to the contrary, any expense, charges or costs of the Plan shall be borne solely by the participants of the Plan.

Article 14. Insurance.

The Plan may procure stop loss, excess and third party employer's liability insurance for the benefit of all plan participants as a Plan expense subject to the appropriation of the Livingston County Board of Supervisors.

Article 15. Severability.

If any part of this local law or the application thereof to any person or circumstance should be adjudged to be invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the application, part or provision of this law directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the rest and remainder of this local law or the application thereof to other persons or circumstances and the Livingston County Board of Supervisors hereby declares that it would have passed this local law or the remainder of it had such invalid application or provision been apparent.

Article 18. Effective Date.

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

September 12, 2018 (Introduced)

October 10, 2018 (Adopted)