

# 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** of Ontario

**Town**

**Village**

**Local Law No.** 7 (Seven) \_\_\_\_\_ **of the year 20** 09

**A local law** Entitled, Amendment to Local Law No. 3 of 2009

*(Insert Title)*

Establishing the Office of the Ontario County Public Defender

**Be it enacted by the** Board of Supervisors \_\_\_\_\_ **of the**  
*(Name of Legislative Body)*

**County**

**City** of Ontario

**Town**

**Village**

**as follows:**

## Section 1: LEGISLATIVE INTENT.

The County of Ontario, through the Board of Supervisors, recognizes its responsibility in providing quality publicly supported legal representation to indigent persons. To that end, the Board seeks to create the Ontario County Public Defender's Office, and it is the intent of this Local Law to establish a framework to achieve that goal in accordance with the laws of the State of New York.

## Section 2: PUBLIC DEFENDER: QUALIFICATIONS; APPOINTMENT; TERM.

Effective immediately, there shall be a Public Defender who shall be appointed by the Board of Supervisors for a four year term. The Public Defender shall be directly responsible to and serve at the pleasure of the Board of Supervisors, and shall have graduated from a regionally accredited or New York State registered college or university with a law degree. S/he shall be admitted to the practice of law in the State of New York, and shall be continuously admitted thereto during the term of office. S/he shall have five years experience as a practicing attorney in the field of criminal law, at least three years of which shall have involved trial practice. The Public Defender shall hold no other public or political office and shall devote full working time to the County, and shall be a resident of the County of Ontario during the term of office.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

### **SECTION 3: GENERAL POWERS.**

- A. The Public Defender shall, as herein provided, act as representative of the Board of Supervisors in the service of providing legal services to the indigent of the County.
- B. 1. The public defender shall represent, without charge, at the request of the defendant, or by order of the court with the consent of the defendant, each indigent defendant who is charged with a crime as defined in Section 722-a of the County Law in the county or counties in which such public defender serves. When representing an indigent defendant, the public defender shall counsel and represent him at every stage of the proceedings following arrest, shall initiate such proceedings as in his judgment are necessary to protect the rights of the accused, and may, in his discretion, prosecute any appeal, if in his judgment the facts and circumstances warrant such appeal.
2. The public defender shall also represent, without charge, in a proceeding in family court or surrogate's court in the county or counties where such public defender serves, any person entitled to counsel pursuant to Section 262 and Section 1120 of the Family Court Act, and Section 407 of the Surrogate's Court Procedure Act, or any person entitled to counsel pursuant to Article 6-C of the Correction Law, who is financially unable to obtain counsel. When representing such person, the public defender shall counsel and represent him at every stage of the proceedings, shall initiate such proceedings as in the judgment of the public defender are necessary to protect the rights of such person, and may prosecute any appeal when, in his judgment the facts and circumstances warrant such appeal.
- C. In addition, the Public Defender may assign professional, technical and clerical personnel in the investigation, preparation, conduct and appeal in any court proceedings involving indigent defendants. The Public Defender shall be responsible for the management and operation of the Public Defender's Office in accordance with sound management principles, Board of Supervisor's policies, and Civil Service law, and shall have the powers and duties necessary to carry out the functions of the office as set forth herein and such other responsibilities as may from time to time be imposed by resolution of the Board of Supervisors. The Public Defender's duties shall include but not be limited to:
1. Developing, managing and submitting budgets for approval by the Board.
  2. Laying off, suspending and/or removing any person employed in the Public Defender's Office.
  3. Setting office policies.
  4. Preparing statistical and other reports as required by the Board for presentation to the community, the Courts, and any other appropriate entity.

5. Representing indigent defendants charged with crimes,
6. Overseeing investigations,
7. Assigning professional, technical and/or clerical personnel to assist in the cases.

#### **SECTION 4: POWERS OF APPOINTMENT AND REMOVAL.**

The Public Defender is vested with the power and authority to appoint, supervise, discipline and remove assistant public defenders and employees, and assign and re-assign powers and duties to such employees, consistent with the laws of the State of New York. Pursuant to Section 716 of Article 18-A of the County Law, the Public Defender may appoint as many assistant attorneys, clerks, investigators, stenographers and other employees as s/he may deem necessary, subject to the authorization of the Board of Supervisors.

#### **SECTION 5: REMOVAL OF THE PUBLIC DEFENDER.**

A. Grounds for Removal. The Public Defender shall be removable by the Board of Supervisors:

1. Because the Public Defender was at the time of his or her appointment or has since become ineligible to hold such office;
2. For malfeasance, misfeasance, or non feasance in office;
3. Upon conviction of a crime or of a misdemeanor involving moral turpitude, or violation of the oath of office.
4. For failure to perform his or her duties as provided by this Local Law in an honorable, competent and reasonably efficient manner; or
5. In the event the Public Defender becomes morally, physically or mentally unfit to act on behalf of the County.

B. Procedures for Removal.

If the Public Defender is to be removed pursuant to this section, the Public Defender shall be given, on demand, a written statement of the reasons alleged for the proposed removal and shall have the right to a hearing thereon at a public meeting of the County Board of Supervisors prior to the date on which the proposed removal is to take effect. Pending such hearing, the Board of Supervisors may suspend the Public Defender from office provided that the period of suspension shall not exceed thirty days. For purposes of this local law, the failure of the Board of Supervisors to reappoint an incumbent Public Defender to a new term of office shall not be deemed a removal or suspension of said Public Defender.

**SECTION 6: CLASSIFICATION.**

Pursuant to Municipal Home Rule Section 10, the Public Defender shall be placed in the unclassified service.

**SECTION 7: LOCAL LAW AMENDED.**

Local Law No. 8 of 1999, requiring the Ontario County residency of certain County officers pursuant to Public Officers Law Section 3(1), is hereby amended in Section 2: Residency Required, to include the title of Public Defender in the list of positions requiring an Ontario County residency.

**SECTION 8: SEPARABILITY.**

If any clause, sentence, paragraph or section of this Local Law shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate the remainder hereof, but shall be confined to its operation to the clause, sentence, paragraph or section directly involved in the controversy in which judgment shall have been rendered.

**SECTION 9: EFFECTIVE DATE.**

This Local Law shall take effect upon its being duly filed as provided by the Municipal Home Rule Law.

**(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. 7 (Seven) of 20 09 of the (County)(City)(Town)(Village) of Ontario was duly passed by the Board of Supervisors on December 3 20 09, in accordance with the applicable *(Name of Legislative Body)* provisions of law.

**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) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted *(Elective Chief Executive Officer\*)* on \_\_\_\_\_ 20 \_\_\_\_\_, 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 \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_ *(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) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_. Such local *(Elective Chief Executive Officer\*)* 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.

(Seal)

*Karen R DeMay*

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

Date: December 7, 2009

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)**

STATE OF NEW YORK  
COUNTY OF Ontario

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

\_\_\_\_\_  
Signature  
Ontario County Attorney  
\_\_\_\_\_  
Title

County \_\_\_\_\_  
City of Ontario  
Town \_\_\_\_\_  
Village \_\_\_\_\_

Date: 12/8/09