

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 LEBANON

Local Law No. _____ of the year 20 17

A local law to supersede the common law of Incompatibility of Office
(Insert Title)

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

County City Town Village
(Select one.)

of LEBANON as follows:

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

Section 1. Title

A local law to supersede the common law of Incompatibility of Office.

Section 2. Background

The common law doctrine of Incompatibility of Office declares that one person should not hold two public offices in which there exists an inconsistency of function or where the basic duties of each office would necessarily interfere with the other, or where the holder of one office would be required to account or to be subordinate in some way to the other (*People ex rel Ryan vs. Green*, 58 NY 295; *Corsall vs. Gover*, 10 Misc. 2nd 664, 174 NYS 2d 62; 1979 N.Y. Op. Atty. Gen. (Inf.) 231).

The Attorney General's office has however issued opinions that a local government is authorized to adopt and amend local laws consistent with the Constitution and general State Law relating to the powers, duties and qualifications of its officers and employees under Municipal Home Rule Law Section 10 (1) (ii)(a) (1), and that said local laws may overcome the doctrine of Incompatibility of Office provided that the local legislative body first finds that the overall public interest would be served by the local law.

Section 3. Authority

This local law is adopted pursuant to Municipal Home Rule Law Section 10 (1) (ii) (a) (1), which grants to local governments the authority to enact local laws regarding the qualifications of local officers.

Section 4. Finding of Overall Public Interest

The Town Clerk has diligently searched for someone willing to serve as Deputy Clerk; the only person interested is a member of the Town Board.

Lebanon is a rural Town with a small population, therefore limiting the number of people available to become Deputy Clerk

Recent family medical situations have limited the amount of time the Town Clerk can spend in the office and perform Town Clerk duties. It would be in the overall public interest to have a Deputy Clerk who could have the office open and who could perform some Town Clerk tasks.

New York State Town Law Section 30(10) allows the Town Clerk to appoint not more than three deputies. There is no prohibition on appointing a member of the Town Board as Deputy Clerk so long as the appointment is made by the Town Clerk. If there is not deputy, and the Town Clerk is "absent or unable to act", the Town Board may appoint a Deputy Town Clerk, but it may not appoint a member of the Town Board. Therefore it is evident that the State Legislature intended that the Town Clerk could appoint a Town Board member as Deputy Clerk, but the Town Board cannot.

The possibilities of incompatibility of office are limited; the Town Board does not supervise a Deputy Clerk who is appointed by the Town Clerk; that is the Town Clerk's function.

The Town Board finds that it would be in the overall public interest if the Town Clerk was allowed to appoint a member of the Town Board as Deputy Clerk.

The Town Board of the Town of Lebanon hereby finds that it would not constitute incompatibility of office for a member of the Town Board to be appointed by the Town Clerk as Deputy Town Clerk, and for said member of the Town Board to simultaneously hold the two offices of Member of the Town Board and Deputy Town Clerk.

Section 4. Severability

If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, firm or corporation, or circumstance, shall be adjusted or adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this Local Law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 5. Effective Date

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

(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. _____ of 20____ of the ~~(County)(City)(Town)(Village)~~ of LEBANON was duly passed by the Town Board (Name of Legislative Body) on _____ 20____, in accordance with the applicable 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 _____ (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 _____ 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 _____ (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 one above.

Joann Z. Collins
Clerk of the county legislative body, City, Town or Village Clerk or
officer designated by local legislative body

Date: Nov 13, 2017

(Seal)

