

## 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 Chester

Local Law No. 3 of the year 2012

A local law entitled "Disciplinary Hearing Procedures for Members of the Village of Chester Police  
(Insert Title)  
Department"

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

County  City  Town  Village  
(Select one.)

of Chester as follows:

### Section 1 - Legislative Intent

Pursuant to Section 8-804 and Section 8-806 of the New York State Village Law, the Village Board of Trustees of the Village of Chester (the "Village Board") is empowered to adopt and make rules and regulations for the examination, hearing, investigation and determination of the charges made or preferred against any member or members of the Village of Chester Police Department. The New York Court of Appeals determination in the *Matter of Patrolmen's Benevolent Association of New York v. New York State PERB*, declared that local Village and Town Boards may not relinquish or "bargain away" to members, or their collective bargaining representatives, the statutorily-delegated power of municipal boards to impose disciplinary measures on members of the local police department. The holding in 2011 of the Appellate Division of the State of New York, Second Department, in the matter entitled *Town of Wallkill v. Civil Service Employees Association, Inc.*, declared that when legislation exists that predates the enactment of New York Civil Service Law Sections 75 and 76, and such legislation commits police discipline to the discretion of local authorities, then, as a matter of public policy, discipline is a prohibited subject of collective bargaining. The powers set forth in Village Law Sections 8-804 and 8-806 are contained in legislation which predates the enactment of New York Civil Service Law Sections 75 and 76.

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

This local law is enacted in order to comply with and conform to the provisions of Sections 8-804 and 8-806 of the New York State Village Law, the public policy of the State of New York, and case law of the Court of Appeals and the Appellate Division, Second Department, and provides that the Village Board, not the Village Mayor, or any third party, shall make all final determinations concerning the investigation of complaints and imposition of disciplinary penalties with respect to members of the Village of Chester Police Department.

This local law shall be applicable to all complaints concerning allegations of misconduct or incompetence lodged against any member of the Village of Chester Police Department on or after the Effective Date hereof.

#### Section 2 - Investigatory Procedure

Complaints concerning allegations of misconduct or incompetence against any member of the Village of Chester Police Department shall continue to be investigated pursuant to the procedures currently in effect and as stated in the Village of Chester Police Department Rules and Regulations.

#### Section 3 - Substantiated Complaints

The Chief of Police or his or her designee, upon a determination that a complaint against a member of the Village of Chester Police Department is substantiated, shall prepare and serve a Notice of Discipline in accordance with Section 3.4 (formerly Section 4-200) and Section 4.1 (formerly Section 4-210) of the Village of Chester Police Department Rules and Regulations

#### Section 4 - Member Response

Within fourteen (14) days of the service of the Notice of Discipline upon any member of the Village of Chester Police Department, the member shall respond in writing as to his or her acceptance of or objection to the charges, specifications, and discipline imposed.

#### Section 5 - Hearing and Determination of Substantiated Complaints

The member, within fourteen (14) days of receiving the Notice of Discipline, may request in writing a hearing on the charges and specifications before the Village Board.

Within forty-five (45) days of the Village Board's receipt of the member's written request for a hearing, the Village Board shall do one of the following:

1. Designate a Village Board Member to sit as a trier of fact to hear, report and recommend a determination upon the charges filed against the member of the Village of Chester Police Department; or

2. Select a Hearing Officer to sit as a trier of fact to hear, report and recommend a determination upon the charges filed against the member of the Village of Chester Police Department.

#### Section 6 - Recommended Decision and Final Determination

The Village Board Member or the Hearing Officer selected to hear, report and recommend a determination upon the charges shall conduct a hearing and shall issue to the Village Board a decision containing recommended findings of fact and a recommended disciplinary penalty, if applicable. Said decision shall be reviewed by the Village Board, and after its review, the Village Board may accept or reject, in the whole or in part, the recommended findings of fact and/or the recommended disciplinary penalty, if applicable. The Village Board shall make a final determination of the charges alleged in the Notice of Discipline and, where applicable, shall impose any penalty consistent with the provisions of the New York State Village Law, or any other penalty that may be agreed to between the Village Board and the Respondent member or that member's authorized representative.

#### Section 7 - Appeal

In accordance with Village Law Section 8-806, the determination of the Village Board shall be subject to review by the Supreme Court in the judicial district in which the Village of Chester is located. Any such review shall be in the manner provided for by Article 78 of the Civil Practice Law and Rules, provided that the proceeding must be commenced within thirty (30) days from the date of the Village Board's determination.

#### Section 8 - Due Process and Representation

Any member who is served with a Notice of Discipline may have a representative or legal counsel represent him or her in connection with any proceedings provided for by this local law. The hearing of the charges alleged in the Notice of Discipline shall be conducted in accordance with the provisions of Village Law Sections 8-804 and 8-806, and such hearing shall be transcribed by a Stenographer. A copy of the transcript of the proceedings shall be provided to the Respondent member free of charge.

#### Section 9 - Implementation

The Chief of Police is hereby directed to take all necessary steps to implement the provisions of this local law, and to provide notice of the same to the members of the Village of Chester Police Department.

#### Section 10 - Separability

If any part or provision of this local law or the application thereof to any person or

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

#### Section 11 - Repeal

All ordinances, local laws, rules and regulations and parts thereof inconsistent with this local law are hereby repealed.

#### Section 12 - Effective Date

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

### **Changes to Village Code Chapter 19 - Police Department**

Divide the chapter into 2 articles:

Article I – Established, §19-1, §19-2, §19-3

Article II – Disciplinary Hearing Procedures:

§19-4 Legislative Intent

§19-5 Investigatory Procedure

§19-6 Substantiated Complaints

§19-7 Member Response

§19-8 Hearing and Determination of Substantiated Complaints

§19-9 Recommended Decision and Final Determination

§19-10 Appeal

§19-11 Due Process and Representation

§19-12 Implementation

§19-13 Separability

§19-14 Repeal

§19-15 Effective Date

(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. 3 of 2012 of the (County)(City)(Town)(Village) of Chester was duly passed by the Village Board on November 5, 2012, 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) *(Name of Legislative Body)* (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted *(Elective Chief Executive Officer\*)* on \_\_\_\_\_ 2012, 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.

*Rebecca Rivera*

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

Rebecca Rivera, Village Clerk

Date: 11-8-12

(Seal)