

**TOWN OF PENDLETON
LOCAL LAW __ OF 2017
ESTABLISHING THE POSITION OF TOWN CONSTABLE**

Section A. Title:

A **local law establishing the position of Town Constable** for the Town of Pendleton a Town of the second class that has no police department.

Section 2. Purpose:

It is the purpose of this Law to promote the public health, safety, and welfare in the Town of Pendleton, by establishing the position of Town of Pendleton, Town Constable pursuant to §20, Subdivision 1, (b) of the Town Law of the State of New York, which provides in pertinent part as follows:

Except as otherwise provided by law, every town of the second class shall have . . . if there be no town police department, as many constables as the town board may determine necessary. . . .

The Criminal Procedure Law of the State of New York at §2.10 subdivision 1 provides that constables of the Town of Pendleton shall have the powers of and shall be peace officers.

Such Town Constables shall perform such duties as the directed by the Supervisor, Town Board and or Town Justices for the Justice Court of the Town of Pendleton pursuant to the laws of the State of New York.

Section 3. Peace Officer Statute:

NYS Criminal Procedure Law (CPL) Section 2.10 Subdivision (1) sets forth those persons who are peace officers, specifically including a constable of a town. Provided such designation is not inconsistent with local law. The office of Town Constable is expressly authorized by Section 20 (1) (b) of the Town Law.

Section 4 Training:

As peace officers, constables In the Town of Pendleton must be trained In accordance with Section §2.30 of the CPL and any other requirements set forth by the Town Board and/or by the New York State Division of Criminal Justice Services (DCJS) and the Municipal Police Training Council (MPTC).

N.Y. Crim. Proc. Law § 2.30 **Training requirements for peace officers**, contains the following training requirements:

1. Every peace officer in the state of New York must successfully complete a training program, a portion of which shall be prescribed by the municipal police training council and a portion of which shall be prescribed by his or her employer. The portion prescribed by the municipal police training council shall be comprised of subjects, and the hours each is to be taught, that shall be required of all types or classes of peace officers. The hours of instruction required by the municipal police

training council shall not exceed one hundred eighty, unless a greater amount is either required by law or regulation, or is requested by the employer.

The segment prescribed by the employer for its employees shall be comprised of subjects, and the hours each is to be taught, relating to the special nature of the duties of the peace officers employed by it provided, however, that when the subjects prescribed by the employer are identical to the subjects in the training program required by the municipal police training council, the employer shall not be required to provide duplicate training for those subjects.

2. Each state or local agency, unit of local government, state or local commission, or public authority, or public or private organization which employs peace officers shall provide the training mandated by this section, the cost of which will be borne by the employer. Each peace officer satisfactorily completing the course prescribed by the municipal police training council shall be awarded a certificate by the division of criminal justice services attesting to that effect, and no person appointed as a peace officer shall exercise the powers of a peace officer, unless he or she has received such certification within twelve months of appointment.

3. No employer shall allow any peace officer it employs to carry or use a weapon during any phase of the officer's official duties, which constitutes on-duty employment, unless the officer has satisfactorily completed a course of training approved by the municipal police training council in the use of deadly physical force and firearms and other weapons, and annually receives instruction in deadly physical force and the use of firearms and other weapons as approved by the municipal police training council.

4. Upon the failure or refusal to comply with the requirements of this section, the commissioner of the division of criminal justice services shall apply to the Supreme Court for an order directed to the person responsible requiring compliance. Upon such application, the court may issue such order as may be just, and a failure to comply with the order of the court shall be a contempt of court and punishable as such.

5. Every employer of peace officers shall report to the division of criminal justice services, in such form and at such time as the division may by regulation require, the names of all peace officers who have satisfactorily completed any of the training requirements prescribed by this section.

6. A certificate attesting to satisfactory completion of the training requirements imposed under this section awarded to any peace officer by the executive director of the municipal police training council pursuant to this section shall remain valid:

- (a) during the holder's continuous service as a peace officer; and
- (b) for two years after the date of the commencement of an interruption in such service where the holder had, immediately prior to such interruption, served as a peace officer for less than two consecutive years; or

(c) for four years after the date of the commencement of an interruption in such service where the holder had, immediately prior to such interruption, served as a peace officer for two consecutive years or longer.

As used in this subdivision, the term “interruption” shall mean a period of separation from employment as a peace officer by reason of such officer's leave of absence, resignation or removal, other than removal for cause.

Section 5. Powers and Duties:

New York Town Law § 39. Powers and duties of constables and town policemen, provides:

Constables . . . shall have all the power and authority conferred upon constables by the general laws of the state and such additional powers, not inconsistent with law, as shall be conferred upon them by the town board. They shall be subject to the general authority and direction of the town board and to such orders and regulations as the town board may prescribe, not inconsistent with law.

N.Y. Crim. Proc. Law § 2.20 provides that [t]he persons designated in section 2.10 of this article shall have the following powers:

(a) The power to make warrantless arrests pursuant to section 140.25 of this chapter.

(b) The power to use physical force and deadly physical force in making an arrest or preventing an escape pursuant to section 35.30 of the penal law.

(c) The power to carry out warrantless searches whenever such searches are constitutionally permissible and acting pursuant to their special duties.

(d) The power to issue appearance tickets pursuant to subdivision three of section 150.20 of this chapter, when acting pursuant to their special duties.

(e) The power to issue uniform appearance tickets pursuant to article twenty-seven of the parks, recreation and historic preservation law and to issue simplified traffic informations pursuant to section 100.25 of this chapter and section two hundred seven of the vehicle and traffic law whenever acting pursuant to their special duties.

(f) The power to issue a uniform navigation summons and/or complaint pursuant to section nineteen of the navigation law whenever acting pursuant to their special duties.

(g) The power to issue uniform appearance tickets pursuant to article seventy-one of the environmental conservation law, whenever acting pursuant to their special duties.

(h) The power to possess and take custody of firearms not owned by the peace officer, for the purpose of disposing, guarding, or any other lawful purpose, consistent with his duties as a peace officer.

(i) Any other power which a particular peace officer is otherwise authorized to exercise by any general, special or local law or charter whenever acting pursuant to his special duties, provided such power is not inconsistent with the provisions of the penal law or this chapter.

(j) Uniformed court officers shall have the power to issue traffic summonses and complaints for parking, standing, or stopping violations pursuant to the vehicle and traffic law whenever acting pursuant to their special duties.

2. For the purposes of this section a peace officer acts pursuant to his special duties when he performs the duties of his office, pursuant to the specialized nature of his particular employment, whereby he is required or authorized to enforce any general, special or local law or charter, rule, regulation, judgment or order.

3. A peace officer, whether or not acting pursuant to his special duties, who lawfully exercises any of the powers conferred upon him pursuant to this section, shall be deemed to be acting within the scope of his public employment for purposes of defense and indemnification rights and benefits that he may be otherwise entitled to under the provisions of section fifty-k of the general municipal law, section seventeen or eighteen of the public officers law, or any other applicable section of law.

The Town Board does hereby confer the following additional powers upon the Town Constables:

1. Attending proceedings of the Justice Court so as to maintain order, assist the Justices and those who have business before the court.
2. Attending meetings at the Town Hall as necessary to maintain order and to remove disorderly persons from such meetings.
3. Serve and or execute legal papers on behalf of the Town Board and or the Justice Court.
4. Providing security for the Tax Collector and other town officials as requested.
5. Guard the election polls.
6. Escorting prisoners to jail and to court, and having thorn processed.
7. Controlling crowds at any public function within the Ton of Pendleton.

Section 6. Defense and Indemnification:

A constable, whether or not acting pursuant to his special duties, who lawfully exercises any of the powers conferred upon him or her, pursuant to section §2.30 of the CPL shall be deemed to be acting within the scope of his or her public employment for purposes of

defense and indemnification rights and benefits that he or she may be otherwise entitled to under provisions of Section §50-K of the General Municipal Law, Section §17 or §18 of the Public Officers Law, or any other applicable section of law.

Section 7. Residency:

Pursuant to Municipal Home Rule Law § 10(l)(ii) (a)(1), local governments have the authority to enact local laws regarding qualifications of local officers. It is the purpose of this section to modify the requirements of § 23 of the Town Law and § 3 of the Public Officers Law, which sections require that the Constable be a resident and elector within the Town. This section shall supersede Town Law § 23(1) in its application to the offices of Constable for the Town of Pendleton, The person holding the office of Constable in the Town of Pendleton need not be a resident nor an elector of the Town of Pendleton; provided, however, that such person shall reside in Niagara County or an adjoining county within the State of New York.

Section 8: Discharge and/or discipline

The Town Constable of the Town of Pendleton shall serve at the pleasure of the Town Board of the Town of Pendleton and may be discharged without cause. In addition, the Town Board of the Town of Pendleton can impose any reasonable discipline to an appointed Town Constable following the notification of the cause for such discipline and a reasonable opportunity to be heard before the Town Board of the Town of Pendleton.

Section 9. Possession of Firearms:

Despite the provisions of **N.Y. Crim. Proc. Law § 2.20** (h) which provides peace officers the power to possess and take custody of firearms, nothing contained within this local law shall be deemed to authorize such constables to carry, possess, repair or dispose of a firearm unless the appropriate license therefor has been issued pursuant to section 400.00 of the penal law.

Section 10. Severability:

If any section, subsection, phrase, sentence, or other portion of this article is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

This Local Law shall take effect immediately upon filing with the Secretary of State of New York.