

DRAFT Local Law

Notice of Highway Defects

Local Law No. 4 of the Year 2019

A local law providing for written notification of defects and obstructions on town highways, bridges, streets, sidewalks, crosswalks, and culverts in the Town of Westerlo.

Be it enacted by the Town Board of the Town of Westerlo.

Section 1. Written Notice Required

A. No civil action shall be commenced against the Town of Westerlo or the Superintendent of Highways for damages or injuries to persons or property sustained by reason of the defective, out-of-repair, unsafe, dangerous or obstructed condition of any highway, street, bridge, culvert, or crosswalk or pedestrian walkway open to the public, of the Town of Westerlo, unless, previous to the occurrence resulting in such damages or injuries, written notice of such defective, out-of-repair, unsafe, dangerous or obstructed condition, identifying with particularity the specific nature and location of each defective, out-of-repair, unsafe, dangerous or obstructed condition complained of, was actually given, in writing, by a person with firsthand knowledge of the condition complained of and specified in the notice, to the Town Clerk or the Town Superintendent of Highways by personal service or service by registered or certified mail actually received by the Town officer or officers specified herein, specifying the particular place and location was actually given to the Town Clerk or Town Superintendent of Highways and there was a failure or neglect within a reasonable time, after the giving of such notice, to repair or remove the defect, danger or obstruction complained of.

No such civil action shall be maintained for damages or injuries to person or property sustained solely in consequence of the existence of snow or ice upon any highway, street, bridge, culvert, or crosswalk or pedestrian walkway open to the public, unless written notice was actually given, in writing, by a person with firsthand knowledge of the condition complained of and specified in the notice, to the Town Clerk or the Town Superintendent of Highways by personal service or service by registered or certified mail actually received by the Town officer or officers specified herein, and there was a failure or neglect to cause such snow or ice to be removed, or to make the place otherwise reasonably safe within a reasonable time after receipt of such notice.

B. In the absence of written notice as required above, no civil claim shall be maintained against the Town of Westerlo; nor shall any civil claim be maintained based on an allegation that such defect, danger or obstruction existed for so long a period of time that the same should have been discovered and remedied in the exercise of reasonable care and diligence; nor a claim that any Town employee possessed actual notice of such

defect, danger or obstruction unless written notice is filed with the Town Clerk as required above.

C. The Town Superintendent of Highways shall transmit, in writing, to the Town Clerk within 10 days after receipt thereof, all written notices received by the Superintendent of Highways pursuant to this chapter and Subdivision 2 of § 65-a of the Town Law.

D. An obscured, defective or missing traffic control device, or an obscured site distance on any road or highway, shall for the purposes of this chapter be deemed a defective, unsafe, dangerous or obstructed condition of a street, highway, bridge, culvert, sidewalk or crosswalk.

Section 2. Records to be Kept.

The Town Clerk shall keep an index record in a separate book of all the notices which he shall receive of the existence of any such alleged defective, unsafe, dangerous or obstructed condition or of snow or ice, which record shall state the date of receipt of the notice, the nature and location of the condition stated to exist and the name and address of the person from whom the notice is received.

Section 3. Records to be Public records.

The indexed record of notices provided for in Section 2 shall be a public record. The original of each notice received shall be preserved for a period of not less than five years after the date when it is received.

Section 4. Construal.

This chapter shall supersede, in its application to the Town of Westerlo, Subdivisions 1, 3 and 4 of § 65-a of the Town Law. Nothing herein contained shall be construed to relieve a claimant of any obligation created by Subdivision 2 of § 65-a of the Town Law. Nothing herein contained shall be construed to relieve a claimant of the obligation to serve a notice of claim on the Town of Westerlo as provided in § 50-e of the General Municipal Law.

Section 5. Notice of Claim Required.

Notwithstanding any inconsistent provision of law, no civil action shall be commenced against the Town of Westerlo for damages sustained by reason of the effect of any local law, zoning law, or zoning amendment upon any property located within the Town of Westerlo unless a notice of claim is served upon the Town of Westerlo within 90 days after the date the claim arises.

Section 6. Form of Notice; Service.

A. The notice shall be in writing, sworn to by or on behalf of the claimant, and shall set forth:

- (1) The name and post office address of each claimant and of his attorney, if any.
- (2) The nature of claim.
- (3) The time, the place where and the manner in which the claim arose.
- (4) The items of damage claimed to have been sustained and the amounts thereof.

B. The notice shall be served upon the Town of Westerlo by delivering a copy thereof personally or by registered or certified mail to the Town Clerk. Service by registered or certified mail shall be complete upon deposit of the notice of claim, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under exclusive care and custody of the United States Post Office.

Section 7. Severability.

The provisions of this chapter are declared to be severable, and if any section, subsection, sentence, clause or phrase hereof shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this chapter, but they shall remain in effect, it being the legislative intent that this chapter shall stand, notwithstanding the invalidity of any part thereof.