

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 Altona

Town

Village

Local Law No. 2 of the year 2022

A local law requiring prior written notice to the Town of a defective condition as set forth in said Local Law prior to commencement of a civil action for damages resulting from such defective condition.

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

County

City

of Altona

Town

Village

as follows:

**SEE SCHEDULE A. ATTACHED HERETO AND MADE A PART
HEREOF.**

SCHEDULE A

SECTION 1: LEGISLATIVE INTENT

It is the intention of the Town Board to protect the health and safety of the community by requiring actual written notice of defective and hazardous conditions existing on town-owned or maintained properties, including properties owned or maintained by an improvement or special district. The receipt of actual written notice will enhance the town's ability to remedy dangerous conditions on all properties under the management and care of town personnel in an expeditious and safe manner. In order to accomplish this goal, the Town Board is exercising its authority pursuant to § 10(1)(ii)(a)(5),(6),(12), and § 10(1)(ii)(d){3} of the Municipal Home Rule Law, § 50-e(4) of the General Municipal Law, § 130(15) of the Town Law, and any other applicable provision of law now or hereinafter enacted, to supersede and/or expand upon the applicable provisions of § 65-a(1) and (2) of the Town Law and any other applicable provision of law now or hereinafter enacted in the following respects:

- A. The manner of service of a notice of defect and upon whom service will be valid;
- B. A provision requiring the notice of defect to be made by one with first-hand knowledge of the condition;
- C. Requiring prior written notice of a defect and/or obstruction for a street, sidewalk, crosswalk, bridge or culvert; and
- D. In the absence of prior written notice of a defect, the insufficiency of constructive notice as a viable alternative to the imposition of liability upon the Altona Town Board, the Town of Altona, its elected officials, public officers, agents, servants and/or employees, and an improvement or special district of the Town.

SECTION 2: DEFINITIONS

For the purpose of this article, the following words shall have the meanings indicated:

SIDEWALK

The area between the edge of a roadway or highway pavement and the lot line of the abutting property, including but not limited to the curb, utility, brick, tree, dirt or landscape areas.

TOWN

The Town of Altona.

TOWN BOARD

The Town Board of the Town of Altona.

TOWN CLERK

The Town Clerk of the Town of Altona.

SUPERINTENDENT OF HIGHWAYS

The Superintendent of Highways of the Town of Altona

SECTION 3: WRITTEN NOTIFICATION OF DEFECTS, SNOW ICE AND OBSTRUCTIONS; CAUSE OF ACTION

- A. No civil action shall be maintained against the Altona Town Board, the Town of Altona, its elected officials, public officers, agents, servants and/or employees, and no civil action shall be maintained against an improvement or special district within the Town for damages or injuries to person or property sustained by reason of any highway, bridge, culvert, street, sidewalk or crosswalk owned, operated or maintained by the town or owned, operated or maintained by any improvement or special district therein being defective, out of repair, unsafe, dangerous or obstructed unless written notice of the specific location and nature of such defective, unsafe, out of repair, dangerous or obstructed condition by a person with first-hand knowledge was actually given to the Town Clerk or the Town Superintendent of Highways in accordance with §§ 4 and 5 hereof, and there was thereafter a failure or neglect within a reasonable time to repair or remove the defect, danger or obstruction complained of. In no event shall the Altona Town Board, the Town of Altona, its elected officials, public officers, agents, servants and/or employees, or any improvement or special district, be liable for damage or injury to persons or property in the absence of such prior written notice. Constructive notice shall not be applicable or valid.
- B. No civil action shall be maintained against the Altona Town Board, the Town of Altona, its elected officials, public officers, agents, servants and/or employees, and no civil action shall be maintained against an improvement or special district within the Town for damages or injuries to person or property sustained by reason of the existence of snow or ice upon any highway, bridge, culvert, street, sidewalk or crosswalk owned, operated or maintained by the Town of Altona or any improvement or special district unless written notice thereof by a person with first-hand knowledge, specifying the particular place and defect, was actually given to the Town Clerk or Town Superintendent of Highways in accordance with §§ 4 and 5 hereof, 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 the receipt of such notice. In no event shall the Altona Town Board, the Town of Altona, its elected officials, public officers, agents, servants and/or employees, or any improvement or special district, be liable for damage or injury to persons or property in the absence of such prior written notice. Constructive notice shall not be applicable or valid.
- C. Nothing contained herein is intended to relieve a claimant of the obligation to file and serve a notice of claim in accordance with § 50-e of the General Municipal Law and any successor law.
- D. **Exception:** Notwithstanding Subsections A - C herein, the Altona Town Board, the Town of Altona, its elected officials, public officers; agents, servants and/or employees, and an improvement or special district within the Town shall not be liable for damages or injuries to persons or property from defects on Town owned, controlled or maintained highways or streets sustained between the fifteenth day of November and the first day of May.

SECTION 4: DUTIES OF SUPERINTENDENT OF HIGHWAYS AND TOWN CLERK

The Town Superintendent of Highways shall transmit all notices of defect received by him or her pursuant to this section to the Town Clerk within ten (10) working days of receipt. The Town Clerk shall keep an indexed record, in a separate book, of all written notices received pursuant to this article. Such record shall contain the date of receipt of such 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. All such written notices shall be indexed by location of the alleged defect or obstruction. A record of such notices shall be preserved for a period of five (5) years from the date of receipt by the Town Clerk.

SECTION 5: SERVICE OF WRITTEN NOTICE; CONTENTS

Written notice of defect shall be served upon the Superintendent of Highways and/or Town Clerk by personal delivery or by registered, certified or regular mail. Such notice shall be made by a person with first-hand knowledge of the condition, defect or obstruction specified in the notice and shall identify, with particularity, the specific nature and location of each condition, defect or obstruction. In order to be valid, the notice of defect must be actually received by the Superintendent of Highways and/or Town Clerk as specified herein. Service of such notice upon a person other than as authorized in this article shall invalidate the notice.

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

(Complete the certificate 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. 2 of 2022 of the (County)(City)(Town)(Village) of Altona was duly passed by the Town Board on _____, 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) (repassed after disapproval) by the _____ and was deemed
(Elective Chief Executive Officer)*
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, designate 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) (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) (repassed after disapproval) by the _____ on _____ 20____.
(Elective Chief Executive Officer)*

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.

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 appropriated 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 correct transcript there from and the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

Nicole Bushey
Clerk of the county legislative body, City, Town or Village Clerk or officer
Designated by local legislative body

(Seal)

Date: August 8, 2022

(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 CLINTON

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.

Joseph Lavorando
Signature

Joseph Lavorando, Attorney for the Town
Title

County _____
City _____
of _____
Town _____
Village _____

Altona

Date: August 8th, 2022