

Chapter 5

Civil Action Against Town

A local law requiring prior written notice of defects or conditions on Town property in the Town of Windsor, Broome County, New York

§ 5-1. Notice of defects on property prior to civil action.

§ 5-2. Notice of defective or dangerous sidewalks prior to civil action.

§ 5-3. Transmission of written notices to Town Clerk.

§ 5-4. Record of notices.

§ 5-5. Construction of provisions.

§ 5-6. Severability.

§ 5-7. When effective.

[History: Adopted by the Windsor Town Board, April 7, 1999, as Local Law No. 1-1999. Amendments noted where applicable.]

§ 5-1. Notice of defects on property prior to civil action.

No civil action shall be maintained against the Town of Windsor or the Town Superintendent of Highways of the Town of Windsor nor other employees or offices thereof acting in such capacity for damages of injuries to persons or property sustained by reason of any highway, bridge or culvert or any other property owned or maintained by the Town of Windsor being defective, out of repair, unsafe, dangerous or obstructed unless written notice of such defective, unsafe, dangerous or obstructed condition of such highway, bridge or culvert or any other property owned by the Town of Windsor was actually given to the Town Clerk of the Town of Windsor, or the Town Superintendent of Highways of the Town of Windsor and there was a failure or neglect within a reasonable time after giving such notice to repair or remove the defect, danger or obstruction complained of, and no such action shall be maintained for damages or injuries to persons or property sustained solely in consequence of the existence of snow or ice upon any highway, bridge, culvert or any other property owned by the Town of Windsor, unless written notice thereof, specifying the particular place, location and nature of such condition, and

the name and address of the person making such notice, was actually given to the Town of Windsor or the Town Superintendent of Highways of the Town of Windsor 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.

§ 5-2. Notice of defective or dangerous sidewalks prior to civil action.

No civil action shall be maintained against the Town of Windsor and/or the Town Superintendent of Highways of the Town of Windsor, or any employees, or offices thereof acting in such capacity, for damages or injuries to persons or property sustained by reason of any defect in the sidewalks of the Town of Windsor or in consequence of the existence of snow or ice upon any of its sidewalks, unless such sidewalks have been constructed or are maintained by the Town of Windsor or the Superintendent of Highways of the Town of Windsor pursuant to statute, nor shall any action be maintained for damages or injuries to persons or property sustained by reason of such defect or in consequence of such existence of snow or ice unless written notice thereof, specifying the particular place, location, and nature of such condition, and the name and address of the person making such notice, was actually given to the Town Clerk of the Town of Windsor or to the Town Superintendent of Highways of the Town of Windsor and there was a failure or neglect to cause such defect to be remedied or such snow or ice to be removed or make the place reasonably safe within a reasonable time after the receipt of such notice.

§ 5-3. Transmission of written notices to Town Clerk.

The Town Superintendent of Highways of the Town of Windsor shall transmit, in writing, to the Town Clerk of The Town of Windsor, within ten (10) days after receipt thereof, all written notices received by him pursuant to this law.

§ 5-4. Record of notices.

The Town Clerk of the Town of Windsor shall keep an index record, in a separate file, of all written notices which he/she shall receive of the existence of a defective, unsafe, dangerous or obstructed condition in or upon, or of an accumulation of ice and snow upon, any town highway, bridge, culvert or sidewalk or other property owned by the Town of Windsor, which record shall state the date of the receipt of the notice. Each notice shall be preserved for a period of five (5) years after the date it is received.

§ 5-5. Construction of provisions.

Nothing contained in this law shall be held to repeal or modify or wave any existing requirement or statute of limitations which is applicable to these classes of actions, but on the contrary, shall be held to be additional requirements to the right to maintain such action, nor shall anything herein contained be held to modify any existing rule of law relative to the question of contributory negligence nor to impose upon the Town of Windsor any greater duty or obligation than that it shall keep its streets, sidewalks and public places in a reasonably safe condition for public use and travel.

§ 5-6. Severability.

If any clause, sentence, phrase, paragraph or any part of this law shall for any reason be adjudged finally by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this law but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or part thereof directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this section would have been adopted had any such provisions not been included.

§ 5-7. When effective.

This local law shall take effect immediately upon its passage by the Town Board of the Town of Windsor and its filing with Secretary of the State of New York.