

Village of East Nassau
Local Law No. 2 of 2019

A local law establishing the requirement of notice of defect in the Village of East Nassau

Be it enacted by the Board of Trustees of the Village of East Nassau as follows:

Section I: Legislative Intent. It is the intent of this Law to protect the health and safety of the community by requiring actual written notice of defective and hazardous conditions existing on Village-owned or maintained properties. The receipt of actual written notice will enhance the Village's ability to remedy dangerous conditions on all properties under the management and care of Village personnel in an expeditious and safe manner. It is the intention of the Village Board of Trustees to require notice of defects and/or dangerous conditions of any kind, nature or type, not just physical conditions, such as holes or cracks, so as to strengthen and increase the Village's capacity to protect lives and property and the public welfare. This Law exists for the benefit of the public and the Village and incidentally for the individual. This Law is enacted pursuant to the powers granted to the Village by virtue of the Municipal Home Rule Law and Article IX, section 2(c)(5) and (6) of the New York State Constitution.

Section II: Notice Required. No civil action or any cause of action shall be maintained against the Village of East Nassau, Rensselaer County, New York, or the Village Superintendent of Public Works or any of the Village's officers, agent or employees, for damages or injuries to person or property sustained by reason, or in consequence, of any Village property under the direct or indirect control of the Village being defective, out of repair, unsafe, dangerous or obstructed unless written notice of such defective, unsafe, dangerous or obstructed condition of such Village Property was actually given to the Village Clerk and that 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, nor such 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 Village property, unless written notice thereof, specifying the particular place, was actually given to the Village Clerk 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. The filing of a notice of defect shall be a condition precedent to the filing or maintaining of an action or special proceeding against the Village, its officers, agents and employees for such damage or injury to persons or property.

Section III: Sidewalks. No civil action shall be maintained against the Village of East Nassau, the Village Superintendent of Public Works or any of the Village's officers, agents or employees, for damages or injuries to person or property sustained by reason of any defect in its sidewalks 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 Village or the Superintendent of Public Works of the Village, or any of the Village's officers, agents or employees, pursuant to statute, nor shall any action be maintained for damages or injuries to person 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, was actually given to the Village Clerk, and there was a failure or

neglect to cause such defect to be remedied, 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.

Section IV: Village Property, Defects Defined. Village property or property under direct or indirect control of the Village shall include, but not be limited to, any park, recreational facility, garage, village hall, any other village building, property, street, highway, bridge, culvert, sidewalk, crosswalk or parts or appurtenances thereof. Defects, unsafe or dangerous conditions referred to in this Law include, in addition to physical conditions and without limitation, the lack or absence or failure to provide or failure to maintain signs, safety devices, traffic control devices or snow and ice control.

Section V. Records. The Village Clerk shall keep an indexed record of all written notices of defect, which record shall state the time and date of receipt of each notice received. After receipt, the Clerk shall promptly forward copies of such notices to the Mayor, the Superintendent of Public Works, and the Board of Trustees. The record of each notice shall be preserved for a period of five years after the date it is received.

Section VI: Form and Service. (A) The notice of defect shall state that it is a notice of defect, the name and address of the complainant, the specific nature of the defective condition and the exact location of the defective condition. (B) The notice of defect shall be signed by the complainant and be verified. (C) The notice shall be served on the Village by either delivering a copy thereof personally to the Village Clerk or by certified or registered mail addressed to the Village Clerk.

Section VII: Liability. (A) This Law shall not create new or additional liability for the Village where there was no specific existing duty on the part of the Village to repair or replace the defective or dangerous condition. (B) No claim shall be presented nor any action maintained against the Village, its officers, agents or employees for damages or inquiries resulting from a defective or dangerous condition for which a notice of defect has been filed where the Board of Trustees or Superintendent of Public Works has determined the remedy or action appropriate to cure such defective or dangerous condition unless such determination is without rational basis or is grossly negligent or unless the remedy or action specified in such determination has not been implemented within a reasonable time. Nothing in this Law shall be deemed to preclude the Board of Trustees from making a determination that no remedial or corrective action is either necessary, appropriate or justified for a condition for which a notice of defect has been filed.

Section VIII: This local law shall take effect immediately upon its filing in the office of the Secretary of State.

END OF LAW