

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 Town Village
(Select one.)

FILED
STATE RECORDS

DEC 16 2016

of Incorporated Village of Malverne

DEPARTMENT OF STATE

Local Law No. #5 of the year 20 16

A local law to amend Section 38-18A of the Building Code for the Village of Malverne entitled

(Insert Title)

"Keeping sidewalks and curbs in good order"

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

County City Town Village
(Select one.)

of Incorporated Village of Malverne as follows:

The following language shall be added as Section 38-18(A)(i) of the Malverne Code:
Such owner or occupant and each of them shall be liable for any injury or damage by reason of omission, failure or negligence to make, maintain, or repair such sidewalk.

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

(Complete the certification 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. #5 of 20 16 of the (County)(City)(Town)(Village) of Incorporated Village of Malverne was duly passed by the Board of Trustee on December 7 20 16, 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) *(Name of Legislative Body)* (repassed after disapproval) by the _____ and was deemed duly adopted *(Elective Chief Executive Officer*)* on _____ 20 , in accordance with the applicable provisions of law.

3. (Final adoption by 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) *(Name of Legislative Body)* (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) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20 _____. Such local *(Elective Chief Executive Officer*)* 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.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

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 appropriate 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 a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph one above.

Yvesse Ormel

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 12/7/16

(Seal)

Joseph Santoro

Village Attorney

12/7/16
Date

LOCAL LAW 5 -2016: LIABILITY OF ABUTTING LANDOWNERS FOR SIDEWALK DEFECTS

Proposed Amendment: An amendment (Subdivision A(i)) of Section 38-18 of the Malverne Code titled "Keeping sidewalks and curbs in good order."

Background: Section 38.18(A) requires all property owners to keep curbs and sidewalks, together with any portion of their property paved and used as a sidewalk or public walk, immediately in the front, side, abutting or upon their property, in good order and repair, at proper grade to provide adequate drainage, to keep at all times level with the sidewalk or public walk, gas, sewer or drain, stop or vent boxes, driveways and driveway ramps, and to keep the sidewalks or public walks at all times free and clear of all obstruction to safe and convenient passage.

Statutory Amendment: The Board of Trustees has determined that it is appropriate to add to this statute the responsibility of the owner or occupant for liability in the event of any injury or damage by reason of negligence to make, maintain or repair such sidewalk. Accordingly, the following specific language shall be added as Section 38-18 (A)(i) of the Malverne Code:

Such owner or occupant and each of them shall be liable for any injury or damage by reason of omission, failure or negligence to make, maintain, or repair such sidewalk.

Rationale: Generally, liability for injuries sustained as a result of negligent maintenance or the existence of dangerous or defective conditions to public sidewalks is placed on the municipality and not the abutting landowner. There are, however, circumstances under which this general rule is unacceptable and the abutting landowner will be held liable. Hausser v. Giunta, 88 N.Y.2d 449 (1996). A local ordinance or statute may specifically charge an abutting landowner with a duty to maintain and repair the sidewalks and imposes liability for injuries resulting from the breach of that duty. The Malverne Board of Trustees endorses this view and seeks to add a single sentence to the already enacted provisions of Section 38.18 to reflect that liability for sidewalk defects shall be imposed on any and all abutting landowners and occupants: