

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
JUN 21 2004

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.

MISCELLANEOUS
& STATE RECORDS

County
~~City~~ of ERIE
~~Town~~
~~Village~~

Local Law No. 3 of the year 2004

A local law requiring prior written notice of defective, out of repair,
(Insert Title)
unsafe, dangerous or obstructed conditions of any street,
highway, bridge, culvert, sidewalk, crosswalk, or
highway markings.

Be it enacted by the Legislature of the
(Name of Legislative Body)

County
~~City~~ of ERIE as follows:
~~Town~~

Section 1. Short title. This Local Law may be cited as the "Erie County Prior Written Notice Local Law of 2004."

Section 2. As used in this Local Law, the following terms and words shall have the meanings indicated below:

- (A) "Bridge" shall mean and include but is not limited to:
 - (1) A structure forming or carrying a highway, road, or street at a height over a river, stream, pond, lake or other body of water or over a chasm, ravine, or the like; and/or
 - (2) Affording passage by vehicles and/or pedestrians between two points at a height above the ground, a body of water, a highway or street, or above a chasm, ravine, or the like.
- (B) "Crosswalk" shall mean and include but is not limited to:
 - (1) That part of a highway or street at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway or street or between the curbs or, in the absence of curbs between the edges of the traversable roadway; and/or
 - (2) Any portion of a highway or street at an intersection or elsewhere indicated for pedestrian crossing by lines or other markings on the surface.
- (C) "Culvert" shall mean and include but is not limited to:
 - (1) A channel, conduit, or tunneled drain of masonry, brickwork or other materials conveying a stream of water across or beneath a canal, railway embankment, highway or street; and/or

- (2) An arched or barrel-shaped drain or sewer; and/or
 - (3) A structure or device affording passage for water to cross under the embankment of a railway, under a highway or street, or beneath a road or driveway, where the configuration of the surface does not require a bridge.
- (D) "Highway" or "Street" shall mean and include a location where the general public has a general right of passage, and shall include but not be limited to:
- (1) The entire width between the boundary lines of every way publicly maintained when any part thereof is open to use of the public for purposes of vehicular traffic (including ATV's and snowmobiles); and/or
 - (2) Any highway, road, street, avenue, alley, public place, public driveway, and any other public way; and/or
 - (3) Any parking lot open to the general public; and/or
 - (4) Any necessary sluices, drains, ditches, waterways, embankments, retaining walls, culverts, and the approaches of any bridge or culvert; and/or
 - (5) Any shoulder or slope.
- (E) "Sidewalk" shall mean and include any area used, intended or designated for pedestrian passage, including but not limited to:
- (1) Any public plaza; and/or
 - (2) Steps connecting: (i) any highway or street to a sidewalk, bridge, or to any public or private property, building or structure; and/or (ii) any sidewalk to a bridge or to any public or private property, building or structure; and/or
 - (3) That portion of a highway or street situated between: (i) the curb lanes and the adjacent property lines; and/or (ii) the lateral lines of that part of a highway or street improved, designed, marked or ordinarily used for vehicular traffic and the adjacent property lines; and/or (iii) the shoulder or slope of any highway or street.

Section 3: No civil action shall be maintained against the County of Erie, its public officers and/or employees (collectively "Erie County") for damages, injuries or death to person or property sustained by reason of any street, highway, bridge, culvert, sidewalk, crosswalk, or highway marking, owned, operated or maintained by Erie County, being defective, out of repair, unsafe, dangerous or obstructed unless written notice is given to the Erie County Commissioner

of Public Works of such defective, out of repair, unsafe, dangerous or obstructed condition of such street, highway, bridge, culvert, sidewalk, crosswalk, or highway marking, and there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger, obstruction or condition complained of.

Section 4: Any written notice filed with the Erie County Commissioner of Public Works pursuant to this Local Law must include, the name and address of the person providing such notice, the nature and specific location of the condition stated to exist. The Commissioner of Public Works shall stamp or otherwise note the date and time such written notice was received. Within ten days after the receipt of such written notice, the Commissioner of Public Works shall transmit it to the Clerk of the Erie County Legislature.

Section 5: The Clerk of the Erie County Legislature shall keep an indexed record, in a separate book, of all written notices received pursuant to this Local Law. Such record shall state the date of receipt of the notice by the Erie County Commissioner of Public Works, the nature and specific location of the condition stated to exist, and the name and address of the person providing such notice. All written notices received pursuant to this Local Law shall be indexed according to the location of the condition stated to exist. The record of each notice shall be preserved for a period of five years after the date it is received by the Clerk of the Erie County Legislature.

Section 6: Nothing contained in this Local Law shall apply to any claim or civil action for property damage in an amount less than \$7,000.00.

Section 7: Nothing contained in this Local Law shall be held to repeal, modify or waive 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 contained in this Local Law be held to modify any existing rule of law relative to the question of contributory negligence or comparative fault; nor shall anything contained in this Local Law be held to impose upon the County of Erie, its officers and employees, any greater duty or obligation that it shall keep its streets, highways, bridges, culverts, sidewalks, crosswalks, or highway markings in a reasonably safe condition for public use and travel.

Section 8: If any clause, sentence, phrase, paragraph or any part of this Local Law shall for any reason be finally adjudged by a court of competent jurisdiction to be invalid, such judgement shall not affect, impair or invalidate the remainder of this Local 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 Local Law would have been adopted had any such provisions not been included.

Section 9: This Local Law shall take effect ninety (90) days after filing same with the Secretary of State pursuant to Section 27 of the New York State Municipal Home Rule Law.

(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. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, in accordance with the applicable provisions of law.

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. 3 of 20 04 of the (County)(City)(Town)(Village) of ERIE was duly passed by the Erie County Legislature on May 27, 20 04, and was (approved)(~~not approved~~) (~~repassed after disapproval~~) by the Erie County Executive and was deemed duly adopted on June 15, 20 04, 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) (repassed after disapproval) by the _____ on _____ 20 _____. 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 _____. 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.

* 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 2, above.

Kevin M. Kelley
Clerk of the county legislative body, ~~City or Town of _____~~
~~Office designated by local legislative body~~

Date: June 18, 2004

(Seal)

(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 Erie

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.

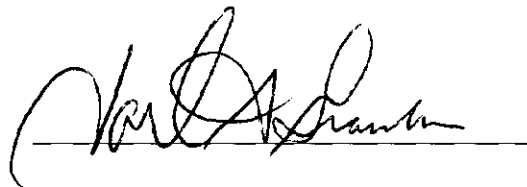
Melissa O. Minner
Signature

Assistant County Attorney
Title

County _____
~~City~~ of Erie
~~Town~~
~~Village~~

Date: June 18, 2004

A Public Hearing was held on the foregoing Local Law Intro. No. 7-2004 on Tuesday, June 15, 2004, due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, JOEL A. GIAMBRA, County Executive of Erie County, do hereby APPROVE and SIGN said Local Law this 15 day of June, 2004.



A Public Hearing was held on the foregoing Local Law Intro. No. 7-2004 on Tuesday, June 15, 2004, due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, JOEL A. GIAMBRA, County Executive of Erie County, do hereby DISAPPROVE and VETO said Local Law this ____ day of June, 2004.
