

# **Prior Written Notices**

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**TUG HILL COMMISSION TECHNICAL PAPER SERIES**

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# TABLE OF CONTENTS

<b>PRIOR WRITTEN NOTICES</b> .....	<b>1</b>
<b>IMPORTANT POINTS</b> .....	<b>1</b>
<b>Prior Written Notice Model Local Law</b> .....	<b>3</b>

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The Tug Hill Commission *Technical and Issue Paper Series* are designed to help local officials and citizens in the Tug Hill region and other rural parts of New York State. The *Technical Paper Series* provides guidance on procedures based on questions frequently received by the Commission. The *Issue Paper Series* provides background on key issues facing the region without taking advocacy positions. Other papers in each series are available from the Tug Hill Commission at the address and phone number on the cover.

## Prior Written Notices

Section 65-a of Town Law provides that the town and its highway superintendent may not be sued for dangerous conditions unless prior written notice of the problem was given *or unless the dangerous condition had existed so long that it should have been discovered by reasonable care and diligence*. A similar provision governs ice and snow conditions. For villages, Village Law Section 6-628 offers similar protection.

Many towns and villages have chosen to strengthen the protection offered by Town Law Section 65-a and Village Law Section 6-628 by adopting local laws that require prior written notice of defective or dangerous conditions. They do this pursuant to the authority granted in General Municipal Law Section 50-e. Such local laws, which supersede the statute law sections, have often been adopted in order to eliminate the “reasonable care and diligence” provision above.

General Municipal Law Section 50-e (4) provides that a town may adopt a local law requiring prior written notice of dangerous conditions and defects regarding highways, streets, bridges, culverts, crosswalks, and sidewalks. Such a law must spell out these specific defects. It must contain a clear statement that it is intended to supersede Section 65-a of Town Law or Section 6-628 of Village Law. It must contain a requirement that any notice be transmitted to the municipal clerk, who is then responsible for transmitting the notice to the municipal board within a specific time frame. And of course, it must comply with the requirements for adoption of local laws generally, such as being filed with the Secretary of State. It should be noted that Section 65-a (4) of Town Law and Section 4-402 of Village Law requires the municipal clerk to keep a separate indexed record of all such notices. Unless superseded, this requirement should be complied with, as the keeping of such a record will demonstrate the town’s intent to comply with statute.

The New York State Court of Appeals unanimously ruled that local laws may not expand the concept of prior written notice beyond the six categories of GML Section 50-e. New York Municipal Insurance Reciprocal (NYMIR), which insures many towns, is advising its clients not to adopt laws that go beyond these six categories. Further, NYMIR advises that if a community’s prior notice law does go beyond the six categories, it should be amended to cover only the six categories. A model local law drafted for NYMIR is attached.

## Important Points

- It is clear that a town may adopt a local law requiring prior written notice of dangerous conditions and defects regarding highways, streets, bridges, culverts, crosswalks, and sidewalks, under the authority of General Municipal Law Section 50-e (4) and of Municipal Home Rule Law Section 22.
- **Such a local law *must* contain a clear statement that it is intended to supersede Section 65-a of Town Law or Section 6-628 of Village Law.**

- **The language of General Municipal Law Section 50-e (4) prohibits municipalities from expanding prior notice law beyond the six listed locations: streets, highways, bridges, culverts, sidewalks, or crosswalks.**
- Such a local law must contain a requirement that any prior written notice of dangerous or defective conditions that is submitted pursuant to its terms must be transmitted to the Town Clerk and then to the Town Board within a specific time frame.
- The locally adopted law must comply with the requirements for adoption of local laws generally, such as; it must be filed with the Secretary of State.
- The Town Clerk must keep a separate indexed record of all notices received pursuant to the local prior notice law.

# Prior Written Notice Model Local Law

## Notice of Highway Defects

Local Law No. \_\_\_\_\_ of the Year 19\_\_\_\_

A local law providing for written notification of defects and obstructions on town highways, bridges, streets, sidewalks, crosswalks, and culverts in the Town of \_\_\_\_\_.

Be it enacted by the Town Board of the Town of \_\_\_\_\_.

Section 1. No civil actions shall be maintained against the town or town superintendent of highways for damages or injuries to person or property sustained by reason of any highway, bridge, street, sidewalk, crosswalk, or culvert being defective, out of repair, unsafe, dangerous, or obstructed unless written notice of such defective, unsafe, dangerous, or obstructed condition of such highway, bridge, street, sidewalk, crosswalk, or culvert was actually given to the town clerk or town superintendent of highways, and 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.

No 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 highway, bridge, street, sidewalk, crosswalk, or culvert, unless written notice thereof, specifying the particular place, was actually given to the town clerk or town superintendent of highways and there was 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.

Section 2. The town superintendent of highways shall transmit in writing to the town clerk within five days after the receipt thereof all written notices received pursuant to this local law and subdivision 2 of section 65-a of the Town Law. The town clerk shall cause all written notices received pursuant to this local law and subdivision 2 of section 65-a of the Town Law, to be presented to the town board within five days of the receipt thereof or at the next succeeding town board meeting, whichever shall be sooner.

Section 3. This local law shall supersede in its application to the Town of \_\_\_\_\_ subdivisions 1 and 3 of section 65-a of the Town Law.

Section 4. This local law shall take effect immediately upon its filing in the office of the Secretary of State.

Please note that Town Law Section 65-a, Subdivision 4, requires the Town Clerk to keep a separate indexed record of all such notices received. In the event of litigation, the Town will be expected to demonstrate compliance with this provision.