

LOCAL LAW #1 of 2018
PRIOR NOTICE OF DEFECTS
Adopted 2/22/18

Section 1. Damages due to defective highways; notice required. No civil action shall be maintained against the Village of Horseheads, its elective or appointive officials or employees, for damages or injuries or death to persons or property sustained by reason of any street, highway, bridge, culvert, sidewalk or crosswalk being defective, out-of-repair, unsafe, dangerous or obstructed unless written notice of such defective, unsafe, dangerous or obstructed condition of such street, highway, bridge, culvert, sidewalk or crosswalk or of any part of portion thereof was actually served upon the Village Clerk in accordance with § 4 hereof and there was a failure or neglect within a reasonable time after the giving of such notice (at least 48 hours) to repair or remove the defect, danger or obstruction complained of. Under no circumstances shall the Village of Horseheads, its elective or appointive officials or employees be liable for damages caused to persons or property due to the defective conditions of Village streets and highways in the absence of such prior written notice to the Village of the existence of such condition.

Section 2. Damages due to certain Village property being defective; notice required. No civil action shall be maintained against the Village of Horseheads, its elective or appointive officials or employees, for damages or injuries to persons or property or death sustained by reason of any defective parking lot, parking field, swimming or wading pool or area or equipment, or playground or playground equipment, skating rink or park or park property or of any part of portion thereof, no matter where situated, being defective, out-of-repair, unsafe, dangerous or obstructed unless written notice of the defective, unsafe, dangerous or obstructed condition of such parking lot, parking field, swimming or wading pool or area or pool equipment, playground or playground equipment, skating rink, park or park property was actually served upon the Village Clerk in accordance with § 4 hereof and there was a failure or neglect within a reasonable time after the giving of such notice (at least 48 hours) to repair or remove the defect, danger or obstruction complained of. Under no circumstances shall the Village of Horseheads, its elective or appointive officials or employees be liable for injuries or damages to persons or property due to defective conditions of the aforesaid Village property in the absence of such prior written notice to the Village of the existence of the defective condition causing said injuries or damages.

Section 3. Damages or injuries due to defective traffic signs, sidewalks, crosswalks, walkways, footpaths or bicycle pathways. No civil action shall be maintained against the Village of Horseheads, its elective or appointive officials or employees, for injuries or damages to persons or property sustained by reason of any defect or obstruction or of any part of portion thereof whatsoever in its traffic signs, sidewalks, crosswalks, walkways, footpaths or bicycle pathways or for injuries or damages to persons or property sustained by reason of any defect or obstruction in its traffic signs, sidewalks, crosswalks, walkways, footpaths or bicycle pathways or of any part of portion thereof or in consequence of the existence of snow or ice upon any of its traffic signs, sidewalks, crosswalks, walkways, footpaths or bicycle pathways unless said traffic signs, sidewalks, crosswalks, walkways, footpaths or bicycle pathways, not matter where situated, have been constructed or are maintained by the Village of Horseheads pursuant to statute and written notice of said defect or obstruction causing the injuries or damages was actually served upon the Village Clerk in accordance with § 4 hereof, nor shall any action be maintained for injuries or damages to

persons or property sustained by reason of any defect or obstruction or in consequence of the existence of snow or ice unless such written notice thereof was actually served upon the Village Clerk in accordance with § 4 hereof and there was a failure or neglect to cause the particular defect to be remedied or the obstruction of the snow or ice to be removed or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice (at least 48 hours).

Section 4. Service of Notice ; Contents.

Service of written notice of any defect described in this Local Law shall be accomplished by personal service or service by registered or certified mail actually received by the Village officer specified herein. The written notice must be made by the witness to the condition, defect or obstruction specified in this Local Law. The written notice must identify, with particularity, the specific nature and location of each condition, defect or obstruction complained of.

Section 5. Legislative intent.

- A. It is the intent of the Village Board, pursuant to the Municipal Home Rule Law of the State of New York, to supersede such portions of § 6-628 of the Village Law of the State of New York and § 50-e, Subdivision 4, of the General Municipal Law of the State of New York as stated in this section and fully set forth in §§ 1, 2, 3, and 4 of this Local Law.
- B. It is the intent of the Village Board to supersede that portion of § 6-628 of the Village Law of the State of New York with respect to the manner of service of notice of defects and obstructions as is more fully set forth in § 4 herein.
- C. It is further the intent of the Village Board to require, in addition to the need for prior written notice of defective, out-of-repair, unsafe, dangerous or obstructed highways, bridges, culverts, sidewalks or crosswalks or of a defect in or snow or ice upon any sidewalk or crosswalk, or of defective, unsafe, dangerous or obstructed conditions of any street, highway, bridge, culvert, sidewalk or crosswalk in § 6-628 of the Village Law or § 50-e(4) of the General Municipal Law as a condition precedent to the maintenance of a civil action for damages or injuries to person or property, that such prior written notice is additionally required for any defective, out-of-repair, unsafe, dangerous or obstructed property of the Village of Horseheads or any snow or ice condition upon such property as set forth more fully in §§ 1, 2, and 3 of this Local Law.
- D. It is further the intent of the Village Board to supersede that portion of § 4-402(g) of the Village Law with respect to giving notice of receipt of the written notice to the Village Board as is set forth in §4 of this Local Law.

Section 6. Records. The Village Clerk shall keep an indexed record, in a separate book, of all written notices which said Clerk shall receive pursuant to this Local Law which record shall state the date of receipt of the notice, the nature and location of the condition stated to exist, and the name and address of the person from whom the notice is received. All such written notices shall be indexed according to the location of the alleged defect, condition or accumulation. The record of each notice shall be preserved for a period of five years after the date it is received. The Village Clerk shall notify the Village Manager of any written notices received within 10 days

or by the next meeting of the Village Board, whichever shall come sooner.

Section 7. Repealer. Any local law, ordinance or resolution of the Village in conflict herewith is hereby repealed to the extent of such conflict or inconsistency, except that this repeal shall not effect or prevent the prosecution or punishment of any person for any act done or committed in violation of any local law, ordinance, or regulation hereby repealed prior to the effective date of this local law. Local Law #2 of 1994 is hereby repealed.

Section 8. Severability. In the event any clause, sentence, section or other part of this local law is declared to be invalid, such invalidity shall not effect the remainder of this law.

Section 9. Effective Date. This local law shall take effect as provided by law.