

Chapter 39

NOTIFICATION OF DEFECTS

[HISTORY: Adopted by the Board of Trustees of the Village of Brockport 5-5-86 as Local Law No. 2, 1986.¹ Amendments noted where applicable.²]

GENERAL REFERENCES

Limited-traffic streets — See Ch. 38.

Streets and sidewalks — See Ch. 45.

Vehicles and traffic — See Ch. 54.

§ 39-1 **Notification of Unsafe Highways; Failure to Correct; Existence of snow and/or ice**

A. Liability of Village or commission or agency thereof in certain actions. No civil action shall be brought or maintained against the Village of Brockport or against a commission or agency thereof for damages or injuries to person or property sustained in consequence of any street, highway, bridge, culvert, sidewalk, crosswalk, highway marking, sign or device or other property owned, operated or maintained by the Village or by a commission or agency thereof, being defective, out of repair, unsafe, dangerous or obstructed or for damages or injuries to person or property sustained solely in consequence of the existence or accumulation of snow or ice and materials upon any street, highway, bridge, culvert, sidewalk, crosswalk, highway marking, sign or device or other property owned, operated or maintained by the Village or by a commission or agency thereof unless written notice of the existence of such condition, relating to the particular place, had theretofore actually been given to the Clerk of the Village of Brockport and there was a failure or neglect within a reasonable time after the receipt of such notice to repair or remove the defect, danger or obstruction complained of or to cause the snow or ice and materials to be removed or the place otherwise made reasonably safe. No civil action shall be brought or maintained against the Village of Brockport or the Superintendent of Public Works of the Village of Brockport, or any officers, agents or employees of the Village of Brockport, for damages or injuries to person or property sustained in consequence of any street, highway, bridge, culvert, sidewalk, crosswalk, highway marking, sign or device or other property owned, operated or maintained by the Village or by a commission or agency thereof, being defective, out of repair, unsafe, dangerous or obstructed or for damages or injuries to person or property

¹ Editor's Note: This local law was filed with the Secretary of State 5-8-86.

² Editor's Note: Former Ch. 39, Salaries, adopted 4-17-78 as L.L. No. 3, 1978, was repealed 5-7-79 by L.L. No. 2, 1979, said local law to be effective 6-1-79.

sustained solely in consequence of the existence or accumulation of snow or ice and materials upon any street, highway, bridge, culvert, sidewalk, crosswalk, highway marking, sign or device or other property owned, operated or maintained by the Village or by a commission or agency thereof unless written notice of the existence of such condition, relating to the particular place, had theretofore actually been given to the Clerk of the Village of Brockport and there was a failure or neglect within a reasonable time after the receipt of such notice to repair or remove the defect, danger or obstruction complained of or to cause the snow or ice and materials to be removed or the place otherwise made reasonably safe.

§ 39-2 **Non-applicability**

A. Nothing herein contained, however, shall be held to revive any claim or cause of action now barred by any existing requirements or statute of limitations or to waive any existing limitation now applicable to any claim or cause of action against the Village of Brockport.

§ 39-3 **Written notices of defective**

A. No civil action shall be brought or maintained against the Village of Brockport or the Superintendent of Public Works of the Village of Brockport, or any officers, agents or employees of the Village of Brockport, for damages or injuries to person or property sustained in consequence of any street, highway, bridge, culvert, sidewalk, crosswalk, highway marking, sign or device or other property owned, operated or maintained by the Village or by a commission or agency thereof, being defective, out of repair, unsafe, dangerous or obstructed unless written notice of such defective, unsafe dangerous or obstructed condition of such highway, bridge, or culvert or any other property owned or maintained by the Village Brockport was actually given to the Village Clerk of the Village of Brockport or Superintendent of Public Works of the Village of Brockport 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; and no such action shall be brought or maintained for damages or injures to persons or property sustained solely in consequence of the existence of snow or ice and materials upon any street, highway, bridge, culvert, sidewalk, crosswalk, highway marking, sign or device or other property owned, operated or maintained by the Village or by a commission or agency thereof, unless written notice thereof in a form acceptable by the Village Clerk of the Village of Brockport, specifying the particular place and defect, was actually given either the Village Clerk or Superintendent of Public Works of the Village of Brockport 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.

§ 39-4. **Records to be kept**

A. The Village Clerk of the Village of Brockport shall maintain an indexed record, of all written notices, which said Village Clerk shall receive pursuant to this local law, of the existence of a defective, unsafe, dangerous or obstructed condition in or upon, or of an accumulation of ice or snow upon any highway, bridge, culvert or sidewalk within the Village of Brockport. Said 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 from whom the notice is received and date referred to the Superintendent of Public Works. The record of each notice shall be preserved for a period of five years after the date it is received.

§ 39-5 Duties of the Superintendent of Highways

A. The Superintendent of Public Works of the Village of Brockport shall transmit, in writing, to the Village Clerk of the Village of Brockport, within 10 days after receipt thereof, all written notices and the action taken to correct the defect, danger or obstruction complained of.

§ 39-6 Repeal of existing requirements not intended.

A. Nothing contained in this chapter shall be held to repeal or modify or waive any existing requirement or statute of limitations which is applicable to these classes of action but, shall be held to be additional requirements to the right to maintain such action, nor shall anything herein contained to be held to modify any existing rule or law relative to the question of contributory negligence, nor to impose upon the Village of Brockport any greater duty or obligation than to keep its streets, sidewalks and public places in a reasonably safe condition for public use and travel.

§ 39-7 Substitute notice inapplicable

A. There shall be no substitute for written notice as set forth in this chapter. Constructive notice is hereby expressly declared to be insufficient notice.

§ 39-8 Validity

A. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this code shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this code, which shall continue in full force and effect, and to this end the provisions of this code are hereby declared to be severable.

B. Saving clause. This code shall not affect violations of any other ordinance, code or regulation of the municipality existing prior to the effective date hereof, and any such violation shall be governed and shall continue to be punishable to the full extent of

the law under the provisions of those ordinances, codes or regulations in effect at the time the violation was committed.

C. Unconstitutionality or invalidity in part. Should any section, paragraph, sentence, clause or phrase in this code be declared unconstitutional or invalid for any reason, the remainder of the code shall not be affected thereby and shall remain in full force and effect, and to this end the provisions of this code are declared to be severable.

§ 39- 9 **Effective date**

This local law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule law.