

LOCAL LAW FOR THE YEAR 1979 REQUIRING WRITTEN  
NOTICE OF DEFECTIVE, UNSAFE, DANGEROUS OR  
OBSTRUCTED CONDITION PRIOR TO THE MAINTENANCE  
OF AN ACTION AGAINST THE TOWN OF CUYLER FOR  
DAMAGES FOR INJURIES TO PERSONS OR DAMAGES  
TO PROPERTY

SECTION 1.

(a) No action or special proceeding shall be prosecuted or maintained against the Town of Cuyler for personal injury or damage to real or personal property alleged to have been sustained by reason of any street, highway, bridge, culvert, sidewalk or crosswalk being out of repair, unsafe, dangerous or obstructed, including but not limited to trees, vegetation and other natural growth, or in consequence of the existence of snow, ice or caused by any other acts of God thereon, unless it appears that written notice of the defective, unsafe, dangerous or obstructed condition, or the existence of snow or ice, was actually given to the Clerk of the Town of Cuyler, or her authorized agent, and there was a failure or neglect within a reasonable time after the giving of such notice to report or remove the defect, danger or obstruction complained of, or to cause the snow or ice to be removed, or the place otherwise made reasonably safe.

(b) The Town Clerk of the Town of Cuyler, or her authorized agent, shall <sup>keep an</sup> index record in a separate book of all notices which it shall receive of the existence of such defective, unsafe, dangerous, or obstructed condition, or of such snow or ice, 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.

*SECTION 2.*

*Nothing herein contained shall be construed to relieve a claimant of the obligation to send a notice of claim as provided in Section 50-e of the General Municipal Law.*

MEMORANDUM REGARDING LOCAL LAW--ROAD HAZARDS

The Legislature of the State of New York has recently afforded the Towns a protection which was heretofore given only to cities and villages. Prior to ~~the~~<sup>the</sup> ~~that~~ the Legislature acted, the ordinary rules of negligence applied to cases involving persons injured while travelling town highways.

To recover damages from a Town, an individual who is injured only had to show that the Town had a responsibility to maintain the highway; that the Town knew or had reason to know that a defective condition existed and failed to correct the same and the damage was caused by the Town's negligence in performing its duties.

If the Town chooses to enact the local law that is presently being considered, a person must show an additional fact and that fact is that the Town had prior written notice of the defect which caused the accident. There are two sides to this matter, one being the desire of the Town Board to protect the Town from responsibility to pay damages resulting from law suits. If the local law is adopted, certainly the Town will be in a better position because of the fact that it will only be responsible where there was prior written notice.

The other side of the matter is that such a requirement might be considered unreasonable in that if a person is injured because of the clear negligence of the Town in allowing a defective condition to exist and there happened to be no prior written notice, then the injured person would not be able to recover property damages for the Town's negligence.

It should be noted that the passage of this local law will not change the responsibility of the Town for its maintenance in any

way except that before anyone can recover, they must show that the  
Town had written notice of the defect.