

DEFECTS – PRIOR NOTICE OF

LOCAL LAW NO. 1 OF THE YEAR 1974

**A Local Law to Require Prior Written Notice
Of Certain Dangerous Conditions for the Town of Kirkwood**

Adopted October 1, 1974

Be it enacted by the Town Board of the Town of Kirkwood as follows:

SECTION 1. No civil action shall be maintained against the Town of Kirkwood (hereinafter referred to as “the Town”) or the town superintendent of highways of the Town, or against any improvement district in the Town for damages or injuries to person or property (including those arising from the operation of snowmobiles) sustained by reason of any highway, bridge, culvert, highway marking, sign or device, or any other property owned, operated or maintained by any improvement district therein, being defective, out of repair, unsafe, dangerous or obstructed unless written notice of such defective, unsafe, dangerous, or obstructed condition of such highway, bridge, culvert, highway marking sign or device, or any other property owned, operated or maintained by the Town, or any property owned, operated or maintained by any improvement district, was actually given to the town clerk of the Town or the town superintendent of highways of the Town, 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 maintained for damages or injuries to persons or property sustained solely in consequence of the existence of snow or ice upon any highway, bridge, culvert or any other property owned by the Town or any property owned by any improvement district in the Town unless written notice thereof, specifying the particular place, was actually given to the town clerk of the Town or the superintendent of highways of the Town 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.

SECTION 2. No civil action will be maintained against the Town and/or the town superintendent of highways of the Town for damages or injuries to person or property sustained by reason of any defect in the sidewalks of the Town or in consequence of the existence of snow or ice upon any of its sidewalks, unless such sidewalks have been constructed or are maintained by the Town or the superintendent of highways of the Town pursuant to statute, nor shall any action be maintained for damages or injuries to person or property sustained by reason of such defect or in consequence of such existence of snow or ice unless written notice thereof, specifying the particular place, was actually given to the town clerk of the Town or to the superintendent of highways of the Town and there was a failure or neglect to cause such defect to be remedied, 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 3. The town superintendent of highways of the Town shall transmit, in writing, to the town clerk of the Town within five (5) days after receipt thereof, all written notices received by him pursuant to this law, and he shall take any and all corrective action with respect thereto as soon as practicable.

SECTION 4. The town clerk of the Town shall keep an index record, in a separate book, of all written notices which the town clerk shall receive of the existence of a defective, unsafe, dangerous or obstructed condition in or upon, or of an accumulation of ice and snow upon any town highway, bridge, culvert or a sidewalk, or any other property owned by the Town, or by any improvement district, which record shall state the date of the 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. The record of such notice shall be preserved for a period of five (5) years from the date it is received. The town clerk, upon receipt of such written notice, shall immediately and in writing notify the town superintendent of highways of the town of the receipt of such notice.

SECTION 5. Nothing contained in this law shall be held to repeal or modify or waive any existing requirement or statute of limitations which is applicable to these causes of action but, on the contrary, shall be held to be additional requirements to the rights to maintain such action, nor shall anything herein contained be held to modify any existing rule of law relative to the question of contributory negligence, nor to impose upon the Town, its

officers and employees, and/or any of its improvement districts any greater duty or obligations than that it shall keep its streets, sidewalks and public places in a reasonably safe condition for public use and travel.

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

SECTION 6. This local law shall take effect immediately upon its passage by the town board of the Town and its filing with the Secretary of State.