Streets, Sidewalks and Everything in Between

March 2017

NEW YORK STATE CONFERENCE OF MAYORS AND MUNICIPAL OFFICIALS

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Streets, Sidewalks and Everything in Between

by

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Streets

Definitions

The definitions used in this section are derived from a comprehensive review of case law, statutes, opinions of the Attorney General and the Office of the State Comptroller, and other secondary sources. Each definition has been summarized in an attempt to better illustrate the intended meaning of the terms, as well as how each is commonly used in everyday parlance.

Street - A "street" is any "highway, road, avenue, lane or alley which the public have [sic] a right to use" and appears on the official map or a map filed with the county clerk.[1]

Paper Street - The term "paper street" or "mapped street" refers to streets that appear on the official map of the municipality or a mapped filed in the office of the county clerk but which have not been created.[2]

Private Street - Any street that appears on the official map or a map filed with the county clerk but which has not been accepted for dedication or taken by eminent domain by the municipality.[3]

Public Street - Those streets that have been accepted for dedication[4] or taken by eminent domain by a municipality. Historically, the term "street" has been used to describe thoroughfares in municipal areas while a particular "road" or "highway" has been used to describe thoroughfares outside of cities and villages.[5]

Road - A "road" is a strip of land, either improved or unimproved, used for purposes of travel between two points. If the public has the right to use a road than it may also be termed a street.

Private Road - Any road that has not been dedicated to a municipality and upon which the public has no right of access.[6]

Statutes and court decisions began defining these terms over one hundred years ago when there existed in this state a much sharper distinction existed between "municipal areas" such as cities and incorporated villages versus other areas of a more rural character. For example, suburbs didn't yet exist when the definitions of these terms were being forged by the Legislature and courts.

Highway - "Highways" are public roads maintained by the State, county or town. Town highways are specifically defined to exclude any roads within the boundaries of a village.[7]

Right-of-way - The area alongside both sides of a roadway that, while not paved, is municipally owned. This area includes not only the paved or traveled portion of the street but also reasonable shoulders, including sidewalks and the grassy area between the sidewalk and the paved street.[8] Roads may have been dedicated without specified rights-of-way or continuous use of a private road may have led to it becoming a street by prescription without defined rights-of-way. In the absence of a recorded dedication, a right-of-way would be interpreted as a reasonable width from the paved portion.[9]

Closing a Street - Procedure whereby a municipality prohibits through passage from one end of a street to the other by means of some type of physical barrier at a point along the street. Street closings can be either permanent or temporary.[10] Temporary closings occur for such things as parades, water main breaks or emergencies and utilize temporary barricades for access, while permanent closings involve the erection of some type of fixed barrier.

Board of Estimate and Apportionment - It is part of the Department of Finance in cities of the Second Class. It includes the mayor, comptroller, corporation counsel, president of the common council and the city engineer. (Second Class Cities Law § 71).

Opening a Street - A phrase which has two distinct meanings. While most commonly used to describe digging or excavating a hole or trench into the street, it is also sometimes used to describe when a street closing is ended or a street is otherwise made accessible for travel.

Discontinuing a Street - Procedure whereby a municipality ends the use of a public street as a thoroughfare,[11] and eliminates that parcel of land's classification as a street on the official map. A street can only be discontinued after it is determined to be useless by the municipality.[12]

Abandoning a Highway - A road or highway is deemed abandoned if it is unused for a period of six years.[13] Abandonment differs from discontinuance in that no affirmative act of a municipal body is required for the road or highway to become abandoned. Public streets cannot be abandoned. Paper streets can be abandoned if they appear upon a subdivision map and the subdivision is abandoned.

Bridge - As defined in § 230 (1) of the Highway Law, it is "[a] structure including supports erected over a depression or an obstruction such as water, highway, or railway, having a track or passageway for carrying traffic or other moving loads and having an opening measured along the center of the track or roadway of more than twenty feet between under croppings of abutments or spring lines or arches, or extreme ends of openings for multiple boxes and may include multiple pipes where the clear distance between openings is less than half of the smaller contiguous opening. The term bridge, as defined in this section, shall also include the approaches."

Culvert - A structure that allows water to flow under a road, railroad, trailer or similar obstruction. As defined in § 230(2) of the Highway Law, it is "a structure whether of single or multiple span construction within an interior width of twenty feet or less when measurement is made horizontally along a center line of roadway from face to face of abutments or sidewalks immediately below the copings or fillets; or, if there are no copings or fillets at points six inches below the bridge seats or immediately under the top slab in case of frame structures."[14] Both cities and villages are responsible for the repair of any culverts located within their boundaries.

Second Class Cities - Any city that had a population between 50,000 and 175,000 on December 31, 1923, regardless of subsequent increases or decreases (1981 Op. Atty. Gen., No. 81-63, p. 196). There are eight cities which meet this criteria: Albany, Binghamton, Niagara Falls, Schenectady, Syracuse, Troy, Utica and Yonkers.

Dedication

Village property owners may dedicate an entire private street, a part thereof or grant an easement to the village for the use as a public street.[15] If a property owner grants the village an easement, the village will only have the right to use the street in accordance with the easement. An owner may also dedicate land not previously laid out as a street to be used as a street. Though there may be someone willing to donate land, a municipality is not required to accept a street for dedication.[16] The process for this dedication and acceptance is as follows:

- The offer of dedication must be made in writing by the owner of the property and the board of trustees may by resolution determine to accept the offer. No street less than two rods (33 feet) in width may be accepted unless the resolution is passed unanimously by the board of trustees.
- As required by § 6-614 of the Village Law, the board must hold a public hearing which must be conducted in accordance with Article 21 of the Village Law. The notice for the hearing "must state the general object of the resolution and … the name of the street proposed to be accepted."

- The owner may convey by deed the land to be dedicated to the village, and the board of trustees may accept the conveyance by a second resolution that must be recorded in the county clerk's office. All offers of dedication must be recorded in full in the minutes of the board of trustees.
- Upon acceptance of the offer and conveyance by resolution of the board of trustees, the land becomes a public street.[17]

IF THERE IS ANY DISPUTE OVER WHETHER A PARTICULAR STREET WAS DEDICATED AND/OR ACCEPTED BY A CITY OR VILLAGE, THE ISSUE WILL NEED TO BE DECIDED IN A COURT. THE BURDEN OF PROOF WILL FALL TO THE PARTY ASSERTING THAT THE LAND WAS DEDICATED.[18]

Abandonment and Discontinuance

A street or highway is discontinued when a municipality uses legislative action to end a street's existence. Before a highway or street may be discontinued it must be found to have become "useless."[19] Pursuant to Highway Law § 205, a street or highway is abandoned when it is unused and untraveled for a period of six years.[20] It is important to note that both discontinuance and abandonment are distinguishable from the circumstance of a municipality closing a street. Closing a street only occurs for a limited period of time and can only be done in either an emergency situation or with specific statutory authority.[21] Once a municipality discontinues a street, it may sell the land for adequate compensation [22] or title may revert to the former owner.[23]

Villages

As noted above, to discontinue a street, a village board must find that the street has become useless. Once the board has made this finding, it will pass a resolution discontinuing the street after the appropriate notice and a public hearing.

Cities

In cities which are subject to the Second Class Cities Law, streets may be discontinued only after the common council publishes a notice that indicates the city's intent to discontinue a particular street. This notice must be published for 10 days in the city's official paper and give any interested person an opportunity to be heard.[24] An ordinance to discontinue a street requires an affirmative vote of three-fourths of the common council members.

With respect to all other cities, the General City Law § 20(7) grants general authority to every city to "discontinue streets." More specific provisions may be found in individual city charters. The Attorney General has written that "[i]n this State, delegation of the power to discontinue streets to cities is found in most of the original city charters and also in General City § 20, subd. 7…."[25]

Naming Streets

Streets may be named or renamed by a simple resolution of the legislative body of the municipality.[26] No public hearing on the matter is necessary. The Court of Appeals has stated that "there is no vested right in the name of the street."[27]

Cities of the Second Class may only alter the names of streets through an ordinance. An ordinance changing the name of a street cannot be passed by the common council until it has been published at least once a week, for two consecutive weeks, in the official paper of the city.[28]

Streets by Prescription

One of the lesser known methods of acquiring streets is through prescription, which is similar to the legal concept of adverse possession. In villages, this is achieved when a private street has been used continuously as

a street for ten years or more, thereby giving it the same force and effect as if it had been originally laid out and recorded as a public street.[29] During the requisite period, it must be shown "that the village has continuously maintained and repaired the alleged street and, thus, assumed control thereof during the period of time in question [citation omitted]."[30] Another court has explained that "[t]he unorganized public cannot acquire rights [to private streets] by prescription or dedication by use alone." [citation omitted][31]

In cities of the Second Class, all lands within the city that the public has used continuously as a street for 20 years or more, will be a street with the same force and effect as though it had been originally duly laid out and recorded as a street.[32] Such a road must have been used by the public on a continuous basis and must have been repaired or essentially adopted by the public authorities for those years.[33]

Municipal attorneys often run into problems when an issue arises over a street that was not laid out as a municipal street, is a paper street, or if ownership of the street is in question. The search should begin in the records of the municipality to determine if title to the street was ever conveyed to the municipality by a private owner. A search may also provide some other data about the street's existence. If this search comes up empty, the next stop should be at the County Clerk's Office to examine additional maps which may be on file there.

If there is any dispute or question about whether a street has been created by prescription, city or village officials may need to obtain a declaratory judgment in State Supreme Court.

Repairing and Maintaining Streets

Villages

The board of trustees may grade, pave, or repave a street or part of a street wholly at the expense of the village, or wholly at the expense of the adjoining land owners, or partly at the expense of each.[34] Before any expenses may be charged against an owner of adjoining land, the board must hold a public hearing.[35] If all or part of the expense will be assessed to the adjoining land owners, the board may apportion it upon the lands and assess the expense as a whole or by installments. If a street is improved wholly at the expense of the adjoining land owners, however, the cost for the improvements is to be assessed proportionally to the benefit each lot will derive from the improvement.[36]

The board of trustees must hold a public hearing if the cost of grading or paving any portion of the street is to be assessed in whole or in part to the adjoining landowners.[37] If the board determines that street paving is for the benefit of the village without expense to the abutting landowners, no hearing or notice is required.

Repairing Streets on Village Boundary Lines

When a street is located on a boundary between a village and another village, city, or town, the highway or street commissioners of each adjoining municipality must, by May 1, annually meet to allocate the expenses and labor of keeping that street in repair. The cost and labor needed for these repairs must be divided as equally as practicable. Within 10 days after making their decision, the officers must file with the clerk of each municipality, a certificate showing the part of the street allotted to each.[38]

Town Improvements of Village Streets

The town board may authorize the Superintendent of Highways to use town highway equipment and personnel to remove snow and ice from streets and sidewalks in any village or portion thereof within the town, and to repair and improve village streets and sidewalks of a village located within the town.[39] The work would be performed upon the terms and conditions agreed to by both the town and village boards. Intermunicipal agreements for this type of work are not subject to competitive bidding requirements.[40]

Cities

In cities, no public municipal street utility or improvement may be constructed in any street or highway until it has become a public street or highway and is placed on the official map.[41]

In cities of the Second Class, the grade of streets is fixed or established at the direction of the common council.[42] The council, by ordinance, prescribes, approves and adopts the materials to be used in paving, repaving, repairing, surfacing or resurfacing the streets and public places of the city, and fixes the standards tests required for each material.[43] The city engineer prepares the standard specifications and the work is submitted to bid.[44] The common council may, by ordinance approved by the board of estimate and apportionment, fix and determine the amount of expenses the city will bear with respect to "opening, altering, grading, curbing or paving a street. . . ."[45]

Maintaining and Improving Private Roads

Cities and villages may not use equipment or spend money to improve, maintain, or plow private roads or driveways, nor may they provide lighting on private roads.[46] To do otherwise would violate the New York State Constitution by providing a gift of municipal funds or equipment to a private entity.[47] Municipalities have no authority to maintain a private road prior to formal acceptance of an offer of dedication of streets in a subdivision.[48]

The following demonstrates impermissible gifts of municipal funds with respect to private roads:

- Municipalities may not enter into contracts to perform work for private individuals because no valid municipal purpose exists. Municipalities may not repair, resurface, improve, or maintain a private highway or alley in the municipality at its own expense or by charging the cost to the abutting property owner.[49]
- Municipalities may not erect gates or warnings at a privately-owned grade crossing.[50]
- Municipalities may not remove snow from private property (e.g., driveways, roads, or parking lots) with its own equipment, by hiring privately-owned equipment, or through financing the removal[51] even if removal is in the interest of fire protection[52] or for a disabled individual.[53]
- Municipalities may not form a district and provide snow removal on private driveways as a public service to all residents.[54]
- Municipalities may not provide tax rebates to residents of private streets for expenses incurred by them for snow removal,[55] nor may municipalities accept "limited easements" on private streets solely to facilitate snow removal.[56]
- Municipalities may not improve private streets by providing street lights.[57]

Municipalities may not, absent a contract pursuant to General Municipal Law § 122-b, plow the parking area of an ambulance corps,[58] the parking lot of a church,[59] or State canal lands.[60]

Occasionally, municipalities may enter onto private land and do work. These limited exceptions require an emergency or safety hazard:

- Municipalities may use highway equipment to remove snow from private roads to provide access to hydrants.[61]
- Municipalities may use employees and equipment to plow snow from private roadways if the situation is unusual and involves a serious emergency threatening life, health, and or safety (such as fire).[62] The emergency must actually exist and the snow may not be plowed merely as a precautionary measure.

Although municipalities may not maintain private roads, they may impose reasonable maintenance standards on private roads.[63] The standards must relate "to the public health, comfort, safety, and welfare of the

community."[64] In addition, a city or village may regulate traffic on private roads that are open to public vehicle traffic.[65] If a municipality assumes control of a private road and maintains it, however, a pedestrian may be able to hold the municipality liable for injuries occurring there.[66]

Maintaining State Highways

A state highway may be built, rebuilt, or improved to run through a village to form a continuous highway on the state highway system.[67] The State is responsible for the maintenance and repair of, and control of snow and ice "as the commissioner of transportation may deem to be necessary to provide reasonable passage and movement of vehicles over" state highways running through villages.[68]

Under Highway Law § 46, villages are responsible for maintaining sidewalks, sewers, water mains, curbs, paved gutters, conduits, facilities and appurtenances that are along the State highway (see, 4th unnumbered paragraph in § 46). The State may assume maintenance responsibility over these highway right-of-way areas.

There are currently 38 cities that have arterial maintenance agreements with the State. Pursuant to these agreements, the cities maintain certain designated State-owned arterial highways and the State compensates those cities for this service. Although the current reimbursement rate of $.85 per square yard of pavement is well below the total actual cost that these cities bear, most continue to perform the maintenance for safety reasons.

The State must maintain drainage ditches and storm sewer facilities along a state highway only if the highway was constructed after 1970.[69] Prior to January 1, 1971, the effective date of chapter 628 of the Laws of 1970 amending § 46 of the Highway Law, maintenance of drainage facilities for State highways within villages was strictly a village function. However, one court has concluded that if the State, after 1970 "reconstruct[s] or substantially rehabilitate[s]" a State highway which was in existence prior to the effective date of chapter 628 of the Laws of 1970, the previous statutory obligation imposed upon villages of maintaining drainage ditches and storm sewers associated with such highway is no longer applicable.[70]

Villages

A board of trustees may petition the Commissioner of Transportation for construction or improvement of a highway to connect paved or improved village streets with a State highway.[71] The resolution is not subject to a permissive referendum unless the entire cost of the improvement is borne by the village and is to be paid from taxes levied for the fiscal year in which such expenditure is to be made.[72]

Cities

While the State is responsible for the paved area of the highway in cities,[73] responsibility for sidewalks, facilities and appurtenances to the highway is that of the city "or [that of] the agency or unit owning or having control and jurisdiction thereof."[74] Curbs are considered part of the roadway and not part of the sidewalk for maintenance purposes, except when the curb falls within the parameters of Highway Law § 12(5) and the State is required to maintain them.[75]

The State may contract for a term of up to five years with a county, city, town or village for removal of ice and snow on State highways and the municipality may rent its machinery and equipment for such purposes to the State.[76]

Maintaining County Roads

A county board of supervisors may lay out, construct, open, alter, or discontinue a county highway.[77] All roads under county jurisdiction must be shown on a county map.[78] The county highway superintendent is responsible for maintaining county roads.[79] Counties are authorized to maintain those portions of county roads that lie

within a village.[80] Counties may apportion the maintenance costs between it and the municipality in which the road is located.[81] A city or village may pay for the maintenance of the highway from any fund available for highway purposes. When a village board of trustees petitions the county to construct or improve a highway through the village, the village must maintain it, unless the county agrees otherwise.[82]

The county board of supervisors may spend money to remove snow and ice from designated county roads.[83] It may also spend money to plant trees, and to cut and remove noxious weeds and brush.[84]

A county may contract with any city, town, or village to remove snow from county roads.[85]

A county may contract with another municipality to rent highway tools or equipment, remove snow, sand roads, or erect snow fences.[86] Such a contract cannot exceed 10 years and any money received must be placed in the general fund of the municipality providing the services.

The county highway superintendent may decide to construct sidewalks along a county road or the board of supervisors could vote to authorize the work.[87] Once constructed, the county is responsible for maintaining the sidewalk. If a city or village requests the county to install a sidewalk along the county road, the city or village is responsible for maintenance.[88]

Bridges and Culverts

Cities are entrusted with the care of bridges.[89] The responsibility of villages for bridges within their boundaries is far more complicated. Village Law § 6-604 provides generally that public bridges within a village are under the control of the town highway superintendent, and the expense of constructing and repairing such a bridge is a town charge "unless the village assumes the whole or part of such expense."[90] In addition, however, the same statute provides that "[i]f the board of trustees of a village has the supervision and control of a bridge therein, it shall continue to exercise such control under this chapter."[91]

Thus, public bridges located within a village are under the care of the town[92] but a village may assume the control, care, and maintenance of a bridge within its boundaries if the board adopts a resolution subject to a permissive referendum.[93] Alternatively, the village board, subject to a permissive referendum, may enter into an agreement with the town in which any part of the village is situated, to construct or repair a bridge in any part of the village included in the town at the joint expense of the village and town.[94]

In a case decided in September 2015,[95] a town board sought to shift the responsibility for maintenance and repair of a bridge within a village within the town on the ground that the village had assumed responsibility therefor by providing services such as snowplowing. The trial court disagreed, declaring that "[t]here is no evidence in the record before this court establishing that the Village assumed control, care and maintenance…of the bridge at issue…."

A village, by resolution subject to permissive referendum, may also relinquish the control over any bridge within village boundaries with the consent of the town board within which such bridge is situated, or may cancel any agreements made with the superintendent of highways.[96]

In contrast to bridges, it is clear that "[t]he responsibility for the repair and maintenance of a culvert in a village street rests upon the village, since a culvert is considered part of the street,"[97] and pursuant to what is now § 6-602 of the Village Law, "[t]he streets and public grounds of a village constitute a separate highway district and are under the exclusive control and supervision…of the village." The Court of Appeals has explained that "the hallmarks of a culvert" include "pipe-or box-like construction, or earth fill between the top of the structure and the road surface."[98]

Sidewalks

A sidewalk within the municipal right-of-way is considered part of the street,[99] and therefore a property owner may not install a sidewalk along a municipal right-of-way without permission.[100] Curbs are also considered part of the street.[101]

Sidewalk Installation

Villages and cities may install sidewalks on municipal streets and may raise the costs in one of five ways:

- The municipality may install the sidewalks at the municipality's expense wherever the municipality deems it appropriate;[102]
- The municipality may install the sidewalks wholly or partially at the expense of the adjoining property owner.[103] If costs are to be shared, the municipality determines the percentage it will pay. In villages, when adjoining property owners bear the whole expense, the cost must be assessed as nearly as possible to the benefit each lot will receive.[104] When the property owner is assessed for improvements in villages, assessments may be done on an annual installment basis so long as the portion of the assessments which are not paid in the current year are financed by issuing obligations pursuant to the Local Finance Law;[105]
- The municipality may require the adjoining property owner to install sidewalks according to municipal specifications entirely at the property owner's expense or share the cost with the property owner.[106] To do this, the municipality must pass a local law to require installation. The local law may provide that upon notice to the property owner and upon default, the work may be done by the municipality or contracted out by the municipality and then charged or assessed against the adjoining property owner;
- The municipality may allow the adjoining property owner or occupant to install sidewalks according to municipal specifications entirely at the property owner's expense; or
- The municipality may allow the adjoining property owner or occupant to install sidewalks according to municipal specifications and pay a portion of the expense.[107] The village share may not exceed 50% of the expense.[108] The board of trustees must adopt a resolution before consenting to bear the expense, stating the proportionate amount that the village will pay for all similar walks of the same kind constructed with the village's consent. The proportionate amount may be changed but at no time within one year from the date of the last fixing or changing thereof.

The municipality's sidewalk installation policy should be uniform throughout the municipality or throughout the district.

Whenever a village installs a sidewalk that is wholly or partially at the expense of an adjoining landowner, certain procedures must be followed for notice and public hearing.[109] Notice must be published in the official newspaper of the village that a public hearing will be held not less than ten days after the first publication of such notice.[110]

Municipalities are not authorized to use these procedures on private streets. Although a village planning board may require sidewalks to be installed on private roads as part of subdivision approval, the village could not agree to install or reimburse any portion of the installation costs to the subdivision builder.[111]

Additionally, "adjoining" means adjoining the street and not the specific sidewalk, so if sidewalks exist only on one side of the street, the property owners on the other side of the street may be required to share the installation expense.[112] In cities of the Second Class, the common council may, by ordinance approved by the board of estimate and apportionment, fix and determine the amount and proportion of expenses the city will bear with respect to creation of a sidewalk.[113]

Maintenance and Repair

Sidewalk maintenance is subject to the same five provisions available for installing sidewalks.[114] In villages, a public hearing must be held when maintenance will be wholly or partially at the property owner's expense.[115] Cities may enact local laws requiring adjoining property owners to maintain sidewalks, even if the city initially constructed the sidewalks and owns them.[116]

In cities of the Second Class, the commissioner of public works may require owners of property that abuts city streets to repair any sidewalk in front of their property and bring it up to true grade.[117] If the property owner responsible for the sidewalk fails to either repair the sidewalk or bring it up to grade after five days written notice,[118] the commissioner must have the sidewalk repaired and present the property owner with a bill for the expenses of the repair.

Snow and Ice Removal

Pursuant to their police powers, cities and villages may enact local laws requiring owners of adjacent property to remove ice and snow from sidewalks.[119]

The local law should state:

- How long the owner has to remove the ice or snow after a storm (e.g., the city of Albany provides for a 48-hour "grace" period, after which the city may remove the snow or ice and charge back the cost to the owner);
- Who is responsible in the case of leased premises; and
- A procedure when the ice is too thick to be removed immediately.

Other possible provisions may include:

- In the event the snow or ice is not removed promptly, the municipality will assume the responsibility and charge back the costs against the property owner;[120]
- If the property owner does not pay, these charges become a lien against the property;[121]
- A fine for non-compliance; and
- A ban on throwing snow back into the street.

Pursuant to Second Class Cities Law § 92, owners of property which abut city streets and sidewalks are required to remove ice and snow from sidewalks.[122] The Second Class Cities Law further provides that the owner must remove the snow or ice within 12 hours after a storm or the municipality will remove the accumulation and charge the costs against the property owner.[123]

Abandonment of Sidewalks

Sidewalks may be abandoned under the rules previously discussed for abandoning streets. As noted earlier, pursuant to Highway Law § 205, a public right-of-way is deemed abandoned when it is unused and untraveled for a period of six years.[124]

Villages

To discontinue a sidewalk, the village board must find that a street has become useless.[125] Once the board has made this finding, it will pass a resolution discontinuing the sidewalk after the appropriate notice and a public hearing.[126]

Cities

Sidewalks in cities of the Second Class may only be discontinued after the common council publishes a notice that indicates the city's intent to discontinue a particular sidewalk. This notice must be published for 10 days in the city's official paper and give any interested person an opportunity to be heard.[127] An ordinance to discontinue a sidewalk requires an affirmative vote of three-fourths of all of the members of the common council.

All other cities should check their charters for other provisions dealing with the discontinuance of sidewalks.

Transfer of Liability

Even with a local law requiring property owners to maintain sidewalks, the liability for accidents due to defective conditions is not automatically transferred to the abutting property owner. Abutting owners may not be liable even if they fail to comply with a provision of a charter or other regulation conferring on them the responsibility for removing ice and snow, and maintaining and repairing sidewalks. The municipality must specifically impose liability on the property owner by local law.[128]

Villages, by local law, may impose liability on the landowner for failure to maintain the sidewalk.[129]

Cities may amend their charters to shift tort liability to owners of abutting land, but any local law to that effect must not only impose a duty for maintenance and repair on those owners, it must specifically state that if the landowner breaches the duty that owner will be liable to those injured as a result of defects in the sidewalks caused by such negligence.[130]

Even without a local law transferring liability, the "special benefit rule" exists,[131] which allows a municipality, charged with the duty of maintaining its sidewalks in a reasonably safe condition, to shift a portion of its liability to the abutting landowner where the injury is caused by the landowner's failure to reasonably maintain a sidewalk installation constructed for the special use and benefit of the property. This covers situations where such items as a valve cover or grate, installed for the benefit of the property, caused the accident.

The transfer of liability provisions would not protect a municipality sued for negligent design or negligent sidewalk installation.[132]

Speed Limits: Vehicle and Traffic Law § 1643

A city or village may, by local law, ordinance (cities only), order, rule or regulation, establish maximum speed limits different than the statutory maximum speed limit of 55 miles per hour on highways (including private roads open to public motor vehicle traffic) within the city or village, within designated areas of the municipality or along designated highways.[133] A city or village may not alter speed limits on State highways that are either maintained by the State or on which the State has established speed limits higher or lower than 55 miles per hour, or with respect to which the Department of Transportation has expressly excluded a city or village from establishing speed limits.[134] Also, a city or village may not establish speed limits on State highways which are controlled-access highways or highways under the jurisdiction of the Thruway Authority, a regional state park commission, a county park commission, a parkway authority, a bridge authority, or a bridge and tunnel authority.[135]

Area Speed Limits

Cities and villages may establish area-wide speed limits for highways for which the municipality is authorized to set the speed limit.[136] Area speed limits may be established for all highways within a specified area of the municipality, except those specifically excluded.[137] Area speed limits are typically called the "village speed limit" or "city speed limit." Area speed limits may not be less than 30 miles per hour.[138] For example, the local

law creating an area speed limit could read as follows: "The speed limit on all village streets is 30 miles per hour unless otherwise designated and posted."

Linear Speed Limits

Linear speed limits are established along a particular highway or portion of a highway.[139] Linear speed limits may not be less than 25 miles per hour.[140] As a general rule, linear speed limits are listed in a schedule. For example, the local law creating a linear speed limit could read as follows: "The maximum speed limit on the following city streets are 25 miles per hour: Main Street from 1st Avenue to 10th Avenue; Elm Place from Murray Place to Glenwood Court; etc."

School Speed Limits

School speed limits are linear speed limits that may be established on a portion of a highway passing a school building. School speed limits may only be enacted for a distance not to exceed 1,320 feet on a highway passing a school building, entrance or exit of a school abutting on the highway.[141] School speed limits may not be less than 15 miles per hour.[142] According to state regulations, school speed limits may only be enacted if:

- The school speed limit zone contains a crosswalk;
- The crosswalk is supervised;
- The school has one or more grades below the tenth grade; and
- There is no nearby traffic control signal, pedestrian overpass or underpass, or bridge suitable for pedestrian use.[143]

However, a municipality may not establish a 15 miles per hour speed limit on a city street that only dead-ends at the edge of school district property, but does not pass a school building. Municipalities may warn motorists of the presence of school children by placing a "school child" sign on the street.[144] Institutional settings for day care, nursery school, or pre-school meet the definition of school building allowing for the enactment of school speed limits.[145]

Advisory Speed Limits

A city or village may post an "advisory speed" which is the recommended speed, under optimum conditions, at a particular location along a highway such as a curve or hill.[146] These speeds appear underneath signs which alert motorists to the upcoming road conditions.[147] Advisory speed limits may be any speed, but tickets may not be issued to individuals for exceeding advisory speed limits, although driving in excess of an advisory speed limit may be unreasonable or reckless, which are violations of the Rules of the Road.[148]

Speed Limits on Bridges and Elevated Structures

If a city or village determines that vehicles may damage a bridge or elevated structure by traversing the bridge or structure at an excessive speed, the municipality may establish a maximum speed limit for that bridge or structure that is lower than is otherwise allowed.[149] Speed limits for bridges or elevated structures on state highways maintained by the State may not be adopted unless written permission has been obtained from the Department of Transportation.[150]

Speed Limits on Municipal Property

Municipalities may establish speed limits on municipal property, including parks, that are lower than 55 miles per hour.[151] For any speed limit to be effective, signs must be posted setting forth the established maximum speed limit.[152]

Speed Bumps and Humps

The installation of speed bumps[153] or speed humps,[154] while not expressly authorized, is also not expressly prohibited by State law. Speed bumps are regulated highway design features.[155] Because speed bumps are highway design features, the design and installation of a speed bump is subject to the laws and procedures that generally govern highway maintenance and improvement projects. However, the State Department of Transportation has not promulgated regulations governing the use of speed bumps or humps (also referred to as vertical shifts), but the engineering guidelines (which are attached as appendices to the Department's Highway Design Manual) recommend that speed bumps **not** be installed on public roadways because they may cause vehicle damage.[156] In addition, local governments have been found liable for injuries to motorists that resulted from unreasonable speed bumps.[157] Cities and villages should consult with their municipal insurance carrier before installing speed bumps or humps.

Regulating Traffic and Parking on State Highways in Your Municipality

Absent the written consent of the State Department of Transportation, cities and villages **may not** enact traffic or parking regulations on State highways running through their jurisdictions and maintained by the State, including the placing or maintaining of any traffic control device on the State highway, or at any location that prohibits, restricts, or limits the movement of traffic traveling on, entering onto, or crossing such highway.[158] The Department of Transportation may rescind or modify such approval at any time.[159]

Regulating Traffic on Private Properties: Vehicle and Traffic Law § 1640-a

Overview of Regulating Traffic on Private Property

The legislative body of any city or village may regulate the parking areas and driveways of:

- Hospitals;
- Shopping centers;[160]
- Office buildings;
- Places of public assembly;
- Facilities owned or leased by not-for-profit corporations;
- Private apartment house complexes;
- Fire stations; and
- Private condominium complexes.

Municipal traffic and parking regulations can only be enacted for these locations <u>if requested in writing by one of the following</u>:

- The property owner;
- The person in charge of the operation and in control of the area;
- The fire chief of the city or village fire department; or
- The police chief or police commissioner of the police department serving the area.[161]

In the case of a college or university,[162] the provisions of Vehicle and Traffic Law § 1640-a apply only upon the written request of the governing body of the college or university. However, § 1640-a of the Vehicle and Traffic Law does not preclude State law from applying to these private properties, nor does it give cities and villages the exclusive right to regulate traffic in public parking areas.[163] Once a request is received, the city or village may regulate the traffic and parking in those locations by local law or (in the case of cities) ordinance.

Intersections: Traffic Signals and Regulating Turning on Private Property

The city or village may:

- Order stop signs, flashing signals or yield signs to be erected at entrance or exit locations to any of the the parking areas or driveways listed in Vehicle and Traffic Law § 1640-a or designate any intersection in such area as a stop or yield intersection;[164]
- Regulate traffic in any private driveway or parking area, including regulation by means of traffic-control signals;[165] and
- Prohibit or regulate all vehicles or just specific types of vehicles from turning at intersections or other designated locations in the driveway or parking area.[166]

Maximum Speed Limits on Private Driveways and Parking Areas

Notwithstanding the provisions of Vehicle and Traffic Law § 1643, cities and villages may establish maximum speed limits on private driveways or parking areas as slow as 15 miles per hour.[167]

Pedestrian Regulations on Private Property

Cities and villages may regulate the pedestrians crossing any roadway in the private parking areas.[168]

General Use of Private Roadways

Cities and villages may:

- Designate any separate roadway in a parking area for one-way traffic;[169]
- Designate safety zones in a parking area;[170] and
- Adopt additional reasonable rules and regulations with respect to traffic and parking in a parking area as local conditions may require for the public's safety and convenience.[171]

Stopping, Standing, and Parking on Private Driveways and Parking Areas

Cities and villages may prohibit, regulate, restrict or limit the stopping, standing or parking of vehicles in specified areas of a parking area.[172]

Vehicle Removal on Private Property

Cities and villages may provide for the removal and storage of vehicles parked or abandoned in any parking area during snowstorms, floods, fires or other public emergencies, or found unattended in any such area, (1) where they constitute an obstruction to traffic, or (2) where stopping, standing or parking is prohibited, and they may also provide for the payment of reasonable charges for such removal and storage by the owner or operator of any such vehicle.[173]

Handicap Regulations

The Vehicle and Traffic Law makes special provisions with relation to stopping, standing or parking of vehicles owned by severely disabled persons and registered pursuant to Vehicle and Traffic Law § 404-a or those possessing a special vehicle identification parking permit issued in accordance with Vehicle and Traffic Law § 1203-a.[174] Special provisions apply for shopping centers with at least five separate retail stores and at least 20 off-street parking spaces. In those situations, the shopping center must designate at least five percent of the parking spaces or 10 spaces, whichever is less, as handicapped only parking spaces.[175]

Municipal Home Rule Authority (Police Powers)

In New York State, local governments are authorized to adopt local laws to protect the health, safety and well-being of persons and property provided that the law is not inconsistent with the State constitution or any State

law of general applicability.[176] Local laws enacted pursuant to this "police power" are valid if they have are substantially related to a permissible governmental objective and are reasonably calculated to achieve that objective.[177]

Police powers may be utilized to regulate traffic and parking on private property beyond what is authorized by statute provided that the legislative body of the municipality reasonably determines that such regulation promotes the health, safety and welfare of persons and property.[178] Municipalities may regulate parking on private property and private roads which are open to the public.[179] At the request of a school, a municipality may utilize its police powers to regulate parking on school property provided that the law is applied uniformly and permits any school to request and obtain such services if needed.[180] A city or village may also regulate parking on the grounds of a State psychiatric center if a request is made by the appropriate governing board of the facility.[181]

Vehicle Regulation

Except as provided by the Vehicle and Traffic Law, cities and villages may not enact or enforce any local law, ordinance, order, rule or regulation that requires motor vehicle or motorcycle owners or operators to pay any type of tax, fee, license or permit for the use of the public highways.[182] Municipalities are also prohibited from adopting any local enactment which excludes motor vehicle or motorcycle owners or operators from the free use of public highways unless such enactment is expressly authorized by state law.[183]

Municipal Facilities

A city or village may by local law, ordinance (cities only), order, rule, or regulation, enact traffic and parking restrictions for the driveways and parking fields accessory to any playground, park, municipal building, installation or facility under its jurisdiction.[184] For these locations, a city or village may:

- Prohibit, restrict or limit vehicles from stopping, standing or parking;
- Regulate the direction of traffic;
- Establish **any** speed limit;
- Provide for the removal and storage of vehicles (A city or village may also provide for reasonable removal and storage charges for towed vehicles) when:
    - Parked during snowstorms, floods, fires or other public emergencies,
    - Left unattended where they constitute an obstruction to traffic, or
    - Abandoned; and
- Adopt other reasonable traffic restrictions as conditions may require subject to limitations found in other law.[185]

Municipal Parking Facilities

Cities and villages are authorized to utilize municipal property to construct and operate off-street parking facilities and to acquire real property for such purposes.[186] A city or village may:

- Establish an off-street parking area for the exclusive use of residents;[187]
- Charge non-residents higher fees for the use of municipal parking facilities;[188] and
- Allow unlimited parking time for residents, while limiting the use of a parking facility by nonresidents to a specific time limit.[189]

Truck Routes

Both cities and villages have the same ability to control regular truck traffic within the municipality.[190] Specifically, they may enact local laws that relate to the exclusion of truck traffic from certain highways and the designation of truck routes within their boundaries and to exclude trucks in excess of any designated weight, length, etc. from certain highways.[191] This exclusion may include trucks, commercial vehicles, tractors, tractor trailer combinations, tractor-semi-trailer combinations or tractor trailer-semi-trailer combinations in excess of any designated weight, length, height, or eight feet in width, from highways or set limits on hours of operation of such vehicles on particular city or village highways or segments of highway.[192]

This exclusion cannot be construed to prevent the delivery or pickup of merchandise or other property along the highway from which such vehicles have been excluded. Local laws concerning the regulation of truck traffic must be narrowly tailored to exclude commercial vehicles of a size or weight exceeding the limitations set forth in the local law. One court has put forth a test to use in determining whether or not such a local law would be deemed valid, to wit: it is necessary to balance the effect of the ordinance in promoting the health, safety and welfare of the community against the hardships and difficulties it causes to individual property owners."[193] A local law of this nature must show that the potential hardship caused to individuals is outweighed by the health, safety and welfare of the community.[194]

Compression Release Engine Brakes (i.e., Jake Brakes)[195]

The term "Jake Brake" refers to all of Jacobs Vehicle Systems products including exhaust, driveline, and engine brakes.[196] Engine brakes are used extensively on heavy-duty trucks, with diesel engines over a certain size.[197] When operating, the engine brake produces a distinctive staccato sound.

When an engine brake is used on a vehicle with a poorly muffled or un-muffled engine exhaust the sound can be offensive. Also, trucks that are poorly maintained, illegally modified or have defective exhaust systems can trigger negative community reaction. Most high profile, professional fleets adequately maintain their trucks and equip them with the appropriate quality mufflers to reduce the noise for both the driver and the communities they drive through.

The NYS Attorney General has opined[198] that a village is not authorized to enact a local law prohibiting, except in cases of emergency, the use within the village of truck engine compression brakes:

> Regulation of use of the streets and highways by operators of motor vehicles has long been governed by State law except to the extent that the Legislature delegates power to local governments. Vehicle and Traffic Law §§ 1600, 1604; People v. Grant, 306 NY 258 (1954). The Vehicle and Traffic Law contains comprehensive provisions governing equipment for motor vehicles operated upon the public highways of the State. Vehicle and Traffic Law Article 9. The Commissioner of Motor Vehicles is directed to establish standards for brake efficiency. All vehicles are required to have adequate brakes; trailers and semi-trailers over specified weights also must have adequate brakes. Vehicle and Traffic Law § 375(1); see also, 15 NYCRR §§ 41.1, 41.2, and 53 (establishing standards for service brakes, auxiliary brakes and brake linings). These provisions do not restrict truck drivers' use of engine compression brakes. Because State law regulates this subject, without a delegation of authority to villages, regulation of truck brakes by villages is pre-empted. People v. Grant, 306 NY 258, 260 (1954).

While villages are authorized to enact local laws with respect to specified subjects, such as to exclude trucks from certain highways and to designate truck routes within village boundaries under NYS Vehicle and Traffic Law § 1640(5) and (10), respectively, the law does not "empower villages to either prohibit or require the use of particular types of truck brakes or other equipment."[199]

New York State requires every motor vehicle operated or driven on a public highway to have an adequate muffler and exhaust system.[200] Your local police department is authorized to stop noisy vehicles and check them for muffler integrity and cite those that are not in compliance.[201] This is a fairly easy step that should produce a noticeable improvement in the quality of life of your community.

Enforcement of local laws and warning signs that prohibit unmuffled engine brake use (except in an emergency) would be effective measures as they prohibit those out of compliance, while allowing properly muffled vehicles to use engine brakes.

Traffic Control Devices

Traffic Control signs are used to communicate a message. They advise drivers of basic road rules, warn of special conditions, state parking rules, etc. Liability claims can arise for improper use or maintenance of signs, for example, where a specific sign was required but not in place, or there were signs missing that were not replaced. In such cases, a "routine" automobile accident may lead to a significant liability for the city or village, particularly if serious injuries occur. In that circumstance, the municipality responsible for sign maintenance could become a financially-liable defendant.

The Federal Highway Administration has created the Manual of Uniform Traffic Control Devices (MUTCD). The MUTCD has been adopted by New York and other states. (Note, however, that the New York State Department of Transportation does produce a New York State Supplement that makes some changes to the adopted national MUTCD). All signs must be in compliance with the MUTCD's specific requirements.

Sign installation involves the following elements:

- Certainty that the roadway is within the municipality's jurisdiction and control;
- Authority to place the sign;
- Governing board approval;
- Installation in accordance with MUTCD standards; and
- Documentation in a sign log:
  - Installation date,
  - Location,
  - Type of device,
  - Inspection date,
  - Replacement date, and
  - Identity of worker who did the job.

Inspections and Surveys - Regular, documented inspections of signs and traffic control devices are one of the most important components to a comprehensive sign management program. Do not rely on casual observations. Set a schedule for inspections. Since signs are often damaged during plowing season, a municipality-wide survey in the early spring is a good idea. However, more inspections may be necessary in the event of significant weather events such as flooding or tornadoes. The inspector should keep an inspection log.

Once an accurate sign count is taken, and the condition of the signs noted, a preventive maintenance/replacement program should be initiated. The amount of maintenance required depends on the deficiencies identified in the inspection program.

Building Maintenance

Given the changing of the seasons in the Northeast it is incumbent upon city and village officials to regularly do routine maintenance on their facilities.

- Heating equipment – Is it in proper operating condition? Are boilers and other HVAC systems checked annually by a heating contractor?
- Buildings – Are windows, doors, roof, etc. functional or do they need repairs before inclement weather strikes?
- Plumbing/Ventilation – Are pipes insulated? Are air conditioning units enclosed?
- Drainage systems – Are drains, gutters and down-spouts clean and debris-free so that water will drain away from buildings?
- Fire suppression equipment – Are fire hydrants marked and easy to locate/clear after a heavy snow?

Municipal Responsibility and Liability

Prior Written Notice of Defect

When injuries occur on a public street, highway, sidewalk, crosswalk, bridge or culvert, a city or village may be protected from liability through prior notice of defect requirements. Prior written notice laws provide that to maintain a cause of action against a city or village for a defect in streets or sidewalks, for example, the appropriate local governing body must have received prior written notice of the defect and have had an opportunity to correct the defective condition within a reasonable time after the receipt of such notice.[202]

Villages do not need to enact a separate local law regarding notice of defect as it is included in State statute.[203] Notice of the defective condition must be in writing and given to the village clerk. Any notice of defect given to municipal departments other than the clerk does not comply with the statutory notice requirements. [204]

City charters will often include a prior written notice requirement. State law (General Municipal Law § 50-e[4]) specifically authorizes local prior written notice enactments.[205]

The village or city clerk must keep a record of all written notices of defect indexed according to the location of the alleged defective, unsafe, dangerous or obstructed condition, or the location of accumulated snow or ice.[206]

This record must state the:

- Date of receipt of the notice;
- Notice and location of the condition; and
- Name and address of the person from whom the notice is received.[207]

It is recommended that the record (both in villages and cities) also include:

- The municipal follow-up procedure (who, when and how);
- The date, time and method of repair;
- If no action was needed, a clear statement of the reasons why;
- If the repair could not be done immediately, a statement of what other corrective actions (warning or restriction) were taken to protect the public; and
- A record of any other follow-up activity.

All complaints should be forwarded to the Department of Public Works superintendent for immediate action. A system should be in place for the superintendent to report to the clerk's office after an inspection has been completed, and again after corrective action has been taken.

Since record keeping is probably discoverable in a lawsuit alleging a sidewalk defect, evidence of prudent follow-up to complaints demonstrates good faith attempts to correct dangerous conditions.

The village clerk must report notices of defect to the village board at its next meeting following the receipt of such notice or within 10 days, whichever is earlier. The record of each notice must be preserved for five years from the date of receipt. [208]

Cities need to include the prior notice of defect requirement in their city charters or enact a separate local law regarding prior notice of defect.[209] The city must "keep an indexed record, in a separate book, of all written notices which it shall receive of the existence of such defective, unsafe, dangerous or obstructed condition, or of such snow or ice… ."[210] Where the statute, charter or local law specifies the city officer or employee to whom the written notice should be given, "the record shall be made and kept by the person so specified," and the record of each notice must be preserved for five years from the date of receipt.[211]

The Second Class Cities Law requires that a written notice of defect be given to the commissioner of public works.[212]

Self-Inspections

Self-inspections or inventories are a good way to identify road and sidewalk defects. They enable a municipality to identify and correct dangerous conditions before they occur.[213] However, even "actual notice of the condition [does] not satisfy the prior written notice requirement."[214] Nonetheless, municipalities should act reasonably and prudently in addressing and correcting a dangerous condition.[215]

Telephone or Walk-in Complaints

Handling telephone or in-person complaints can be difficult. Some municipalities adhere to their prior written notice policy and advise complainants that notice must be made pursuant to the law and that the municipality will not accept notice in any other manner, such as a telephone call or a verbal communication.

Local laws requiring prior written notice of defect on streets and sidewalks must be strictly enforced as a pre-condition for municipal liability. Verbal notice is insufficient to satisfy a statutory requirement of written notice to a municipality regarding a defect in a street or sidewalk.[216]

Once a municipality receives written notice of a defect, it then has a "reasonable" amount of time to correct the defect.[217] What is "reasonable" will depend on the facts and circumstances of the particular situation.[218]

Exceptions to the Prior Written Notice Requirement

Only two exceptions exist regarding prior written notice:

- Where the municipality created the defective or hazardous condition through an affirmative act of negligence;[219] and
- Where a "special use" confers a special benefit upon the locality.[220]

Post-Notice Issues

All notices should be followed promptly by an inspection of the location. Depending on the type of condition, the response should include:

- An assessment of the condition;
- The prompt repair of small defects;
- Temporary repairs suitable to correct the condition when time is needed to purchase supplies, or when weather or other more urgent jobs cause a delay;
- A restriction of pedestrian traffic in the area when repair work cannot begin immediately; and
- An insurance certificate obtained from contractors retained to do sidewalk repairs in which the municipality is listed as an unrestricted additional insured.

Constructive Notice

Courts have defined "constructive notice" as any condition that would be revealed upon reasonable inspection or is a condition readily observable that has existed for such a length of time that reasonable prudence should have discovered the condition.[221] Constructive notice is insufficient to satisfy a statutory requirement of written notice to a municipality regarding a defect in a street or sidewalk. [222]

"To constitute constructive notice, a defect must be visible and apparent and it must exist for a sufficient length of time prior to the accident to permit [the defendant] to discover and remedy it."[223] It is well settled that "[t]o impose liability upon the defendant, there must be evidence tending to show the existence of a dangerous or defective condition and that the defendant either created the condition or had actual or constructive knowledge of it."[224]

Notice of Claim

In any case founded upon tort, where a notice of claim is required by law, the notice of claim must be served on a municipality as a condition precedent to the commencement of an action or proceeding within 90 days after the claim arises, with an exception in a wrongful death action, in which case the 90 days will run from the appointment of a representative of the decedent's estate.[225]

The notice must be in writing, sworn to by or on behalf of the claimant, and must set forth:

- The name, post office address of each claimant, and of his/her attorney, if any;
- The nature of the claim;
- The time when, the place where and the manner in which the claim arose; and
- The items of damage or injuries claimed to have been sustained so far as then practicable.[226]

The notice must be served on the municipality by personal delivery, or by registered or certified mail, to the person designated to receive service on behalf of the municipality, or to the municipal attorney.[227]

The municipality must make and keep a record of all notices of claims, numbered consecutively and indexed alphabetically according to the name of the claimant. The record must be made and kept by an officer or employee designated by the governing body of the municipality, usually, the clerk. The record of each claim must be retained for five years after the date of the final disposition thereof.[228]

Further, the clerk is required to maintain a record of all notices of claims received. The record must include the following:

- Name and post office address of the claimant and of his/her attorney, if any;
- Date of service;
- Time, place and manner of injury;
- Nature of the injury and amount claimed;
- Whether the claim was approved or disapproved, with the date;
- Whether referred to an insurance carrier, with the date;
- Carrier's disposition of the claim with the date;
- Date of service of a complaint;
- Name and address of any named co-defendant;
- Name and address of any third party defendant;
- Municipal corporation's equitable share determined in accordance with the relative culpability of each party pursuant to an itemized decision or itemized jury verdict;
- The extent to which the municipal corporation has paid more than such equitable share;
- Date and result of any trial;
- Date and result of any appeal;
- Date and amount of any settlement;
- Date and amount of any judgment paid; and
- Reason and date the file was closed. [229]

Liability and Street Design

In 2016, the New York State Court of Appeals handed down a decision in *Turturro v. City of New York*,[230] which pulled back some of the legal defenses that local governments have historically relied on to minimize their liability in tort cases. In the *Turturro* case, the Court was called on to determine (a) whether New York City was acting in a proprietary or governmental capacity when it failed to conduct an adequate traffic calming study after receiving numerous complaints of speeding on a specific road and (b) whether the evidence introduced at trial was legally sufficient to uphold the jury's verdict regarding the issues of proximate cause and the City's claim of qualified immunity.

The Court held that the claimed cause of the plaintiff's injuries, namely the City's failure to conduct an adequate traffic calming study, was proprietary in nature and, as a result, plaintiffs were not obligated to prove the existence of a special duty in order to succeed on a tort claim against the City. The Court also held that there was a rational process by which the jury could have concluded that the City's negligence was a proximate cause of the accident and that the doctrine of qualified immunity did not apply. As a result of this decision, local government officials need to take additional steps to minimize the risk that their communities will be exposed to liability, particularly in the area of street design and safety.

Of particular concern in the Court's decision was its holding that, even when a third party's intervening act is intentional, reckless, or criminal, local governments have a duty to mitigate against the behavior because the "the intentional or criminal" behavior of the intervening third party (in the *Turturro* case, the driver of the vehicle was driving 54 mph in a 30 mph zone) is "reasonably foreseeable."[231] After recognizing this established jurisprudence, the Court held that "[b]ased on the evidence presented at trial, there was a valid line of reasoning and permissible inferences from which the jury could conclude that [the driver's] speeding . . . was a foreseeable consequence of the City's failure to implement traffic calming measures, the purpose of which is to

modify driver behavior and to deter drivers from speeding. In other words, [the driver's] speeding, although reckless and criminal, was "a 'reasonably foreseeable' consequence of circumstances created by the [City]."[232]

Also of note was the Court of Appeals' reliance on plaintiffs' expert testimony "that it was known among traffic engineers that straight, wide roads with little interference from pedestrians and other vehicles . . . encourage speeding because drivers feel more comfortable on roadways with those characteristics" and "that traffic calming measures deter speeding because they cause drivers to be more cautious, and that such measures are known to reduce the overall speed on roadways."[233]

The *Turturro* decision provides plaintiffs with a road map for establishing liability against local governments, even when an intervening third party is also found liable because their actions were intentional, reckless, or criminal. Consequently, local officials must take this into account when responding to information, including complaints from the public, about speeding and other unsafe driving behavior.

Ironically, long-held traffic engineering standards are largely responsible for bringing about the types of unsafe driving behavior like that in the *Turturro* case. With the goal of making roads safer for drivers and vehicle occupants, traffic engineers have designed streets wider and without trees or other obstacles along the sides. The natural consequence of these design features is that drivers feel like they can, and in fact, should drive faster than the posted speed limit, putting themselves and pedestrians at risk.

Fortunately, traffic engineers have finally begun to recognize this irony and have begun to embrace the modern trend of designing roads to slow drivers down. Despite the turning of this tide in thinking about road safety and design, municipal officials still face the practical difficulty that redesigning and rebuilding roads to make them safer can be expensive. As local government officials evaluate their infrastructure needs and public safety concerns, they must now take into consideration not only the cost of redesigning and reconstructing roads, but also the potential liability they will be exposed to if they decline to design and construct roads that are safe not only for the vehicle occupants but pedestrians as well.

Trees

Municipalities are responsible for the maintenance of trees which are located on public property, such as parks and playgrounds, and those that grow in the rights-of-way along public streets.

The term "right-of-way" is used to describe the area alongside both sides of a roadway that, while not paved, is nonetheless owned by a municipality. This area may contain a sidewalk and likely contains utility poles.

In most instances, a standard roadway that is dedicated to a municipality is 50 feet wide but only the center 34 feet is paved. This leaves 16 feet of unpaved municipal property which becomes eight feet of unpaved land along each side of the paved portion.

The 50 foot roadway, however, is not universal. Roads may have been dedicated in the past that do not contain enumerated right-of-ways or, continuous use of a private road may have led to that road becoming public by prescription without clearly defined right-of-ways. In the absence of a recorded dedication setting forth the width of right-of-ways, a right-of-way is construed to be a reasonable width from the paved portion of the road. It is important to determine precise widths of all right-of-way areas, to create an accurate inventory of municipal trees and determine the boundaries of municipal responsibility for overhanging branches from other trees.

Both cities and villages have the duty to keep municipal streets and right-of-ways in a reasonably safe condition.[234] This duty requires that a village or city rectify dangerous conditions caused by trees that grow directly in the right-of-way [235] or limbs from privately owned trees that hang over right-of-way property.[236] It can also include some type of municipal inspection program for dangerous conditions resulting from trees and limbs.

Notice of Defect

A village will not be held liable for injuries sustained as a result of a dangerous condition in a roadway or right-of-way caused by a tree unless the municipality has actual or constructive notice of the condition, had a reasonable opportunity to remedy the situation, and thereafter failed to take reasonable steps to correct the condition.[237] (Note that, in contrast to potential municipal liability for defects in a street or sidewalk, in the case of a dangerous condition in a roadway or right-of-way caused by a tree, constructive notice to the municipality will suffice). Village Law § 6-628 requires actual notice to be written and filed with the municipal clerk.[238] Cities of the second class have similar protection (Second Class Cities Law § 244), but all other cities must pass local legislation that requires prior written notice of defect.[239]

Constructive Notice

Court decisions have found municipal liability when the municipality lacks a tree inspection program where reasonable inspection would have revealed the dangerous condition of the tree[240] and an injury is caused by a tree that would have been deemed dangerous by even the most cursory glance.[241]

Remedies

Villages and cities also have a duty to remedy a dangerous condition when tree limbs extend over their rights-of-way even though the tree itself is located on private property. A municipality can enact a local law requiring adjoining property owners to maintain the trees in a right-of-way (only if they own to the center of the street). This law can also provide that a property owner who fails to maintain trees may be charged the costs incurred when a municipality is forced to perform such work.[242] The aforementioned local law must comply with due process which provides the property owner with notice and an opportunity to be heard.

The local law may also require property owners to remove trees located on their land when such tree is a danger to the public. However, an adjoining property owner cannot be required to remove a tree located on public property.[243] Even if abutting owners are required to maintain trees, a municipality retains liability despite the transfer of maintenance responsibility.

Tree Trimming

Local governments are prohibited from performing any work or using public equipment on private property.[244] As a result, a village or city is precluded from entering onto private property to remove a tree except in the limited instance when a tree has created an imminent threat to public safety. To utilize public equipment and personnel to perform work on private property requires a substantial threat to the public at large and an immediate danger of such peril occurring. The potential for future danger would not be a sufficient basis to enter onto private property and remove a tree.

Maintaining streets and right-of-ways clear of obstructions or dangerous conditions is a valid public function. Pruning or trimming branches that stretch from a private tree into or over the municipal right-of-way is constitutional. The fact that a private property owner receives the incidental benefit of a tree trimming does not negate the valid public purpose.

Tree trimming and removal operations may generate a number of constituent questions. A homeowner may witness a neighbor's trees being trimmed by public works employees or contractors hired by the local government and want to know why trees on their own property were ignored. Another resident may inquire as to why only certain portions of their tree were trimmed to the exclusion of other sections. A third common concern is the perceived lack of aesthetic consideration involved during the trimming process wherein the shape of a tree may be substantially altered whereby the tree is no longer the perfectly shaped accompaniment to a front lawn. Providing the public with information regarding a tree trimming program and the limitations placed upon a local government by both the Constitution and State statute in this area will help alleviate such concerns.

In addition, because major disturbances in electric service may result from fallen tree limbs coming in contact with transmission and distribution wires, the State Public Service Commission has adopted regulations imposing a duty on utilities which deliver electricity to routinely ensure that tree limbs do not threaten the safety of the delivery of such service.[245]

A city or village may contract for tree trimming and removal services. If the contract exceeds $35,000, State competitive bidding statutes would apply.[246] Nonetheless, a municipality would remain liable for dangerous tree conditions and such responsibility could not be contracted away.

Rapid response to any notice of a dangerous condition received by a local government avoids further potential liability. A successful remediation program should incorporate an immediate investigation of a reported dangerous condition to determine the severity of the danger as well as identify whether alleviating the condition is the responsibility of the local government. Rapid implementation of any necessary efforts to remedy a dangerous situation for which the municipality is responsible provides further protection by quickly eliminating the condition that could give rise to liability.

Any county, city, town or village may "provide for the protection and conservation of trees and related vegetation."[247] Each local legislative body may impose "appropriate conditions applicable to any activity involving the removal or destruction of trees or the substantial alteration of grade level around trees which may include, where appropriate, requirements that the activity be done as specified in an approved landscape plan and that the removed trees be replaced by the planting of the same or alternate species of trees, and may provide, in connection therewith, plantings for screening purposes."[248] In addition, a coterminous town-village may expend funds to create a Shade Tree Commission for the planting care and preservation of trees and shrubs along public streets [in the right-of-way] and on other public property.[249] Villages may not spend more than $2500 dollars per year in this endeavor, except that the Village of Scarsdale is authorized to expend "such sum as may be necessary and appropriate therefor."[250]

Call Before You Dig -- Underground Facilities Protection

A "local governing body," defined as "a town or city outside the city or New York or a county within the city of New York"[251] that operates underground facilities including electricity, gas, steam, petroleum, telephone or telegraph, cable television, sewage removal, traffic control systems, or water is required to participate in a one-call notification system.[252] In New York State, rules and regulations have been adopted to protect buried facilities from accidental damage that could result in service interruptions, loss of life, personal injury, property damage, and municipal liability. The phrase "call before you dig," is not just a good idea, it is the law.[253]

Under the regulations promulgated by the N.Y.S. Public Service Commission, Call Dig Safely New York, Inc. and its New York City and Long Island counterpart, New York City/Long Island One Call/Dig Safely, Inc., are not-for-profit organizations that serve as communications hubs. These organizations relay pending excavation plans to members whose buried services may be directly affected by the planned excavation.

Excavators--including municipalities--are required to contact the one-call system to request a mark-out prior to digging. This applies even if a municipality is planning to excavate on their own facilities, even in an emergency. The one-call system will notify the municipality of any other underground facilities in the area that may be affected by the proposed excavation.

New York State regulations[254] require that:

- All excavators must call the one-call system at least two full working days prior to a dig.
- All operators of underground facilities must become members of the one-call network.
- Upon notification that an excavation will take place on their property they must locate and mark those utilities within two working days.

- In the event of an emergency, operators must locate their buried utilities as soon as possible.
- Once the buried utilities are marked at a site, the excavators must verify the precise locations of the underground facility.
- The excavator is responsible for protecting and preserving the stakings, markings or other designations.
- The excavator must provide support and prevent damage to any underground facility or its protective coating.
- Excavators and utility operators must understand and use the State Color Code for facility markings.
- These rules and regulations will be enforced by the Public Service Commission in conjunction with the Attorney General.
- Penalties for noncompliance are set from up to $2,500 for a first violation and up to an additional $10,000 for each succeeding violation,[255] and an excavator can be enjoined from completing work on a site.[256]

Training can be arranged by contacting Dig Safely NY at 1-800-309-8298 or www.digsafelynewyork.com.

Appendix

Sample Notice of Hearing on Resolution for Laying Out a Street

NOTICE IS HEREBY GIVEN that on _________20__, the Board of Trustees\City Council of the Village\City of _________ adopted a resolution for the laying out of a street in said Village\City whose proposed course is as follows (insert general description of proposed course). The Board of Trustees\City Council will meet at _______, on \ ___________________, 20__, at __P.M. to consider said resolution and hear all persons interested in the same.

Dated: __________, N.Y. __________, 20__

____

Village\City Clerk

Village\City of _________

Sample Notice of Hearing for Widening a Street

NOTICE IS HEREBY GIVEN that on _____, 20__, the Board of Trustees\City Council of the Village\City of _____ adopted a resolution for the widening of _____ Street in said Village\City. The Board of Trustees\City \ Council will meet at _________, on , 20__, at ___P.M. to consider said resolution and hear all persons interested in the same.

Dated: ________, N.Y.

________, 20__

____

Village\City Clerk
Village\City of ____

Sample Notice of Hearing to Discontinue a Street

NOTICE IS HEREBY GIVEN that, the Board of Trustees\City Council of the Village\City of _____ intends to discontinue _____Street in said Village\City, more particularly described as follows: (Insert description). NOTICE IS FURTHER GIVEN that the Board of Trustees\City Council of the Village\City of _____will meet at the Village\City Hall Building at ____________, New York, on the ____day of ___, 20__ at ________o'clock in the afternoon of that day, at which time all persons interested may be heard in reference to the contemplated discontinuance of ________Street.

Dated: _________N.Y.

_______, 20__

____

Village\City Clerk
Village\City of ____

Sample Notice to Adjoining Property Owner to Repair Sidewalk

PLEASE TAKE NOTICE that an inspection of the sidewalk adjoining the property owned by you at _____, has disclosed that said sidewalk [statement of how the sidewalk is defective and where the defect exists] and is in need of repair. You are hereby required, pursuant to Local Law No. ____, a copy of which is attached, to make all necessary repairs to said sidewalk. If you fail or neglect to make such repairs within thirty (30) days after this notice shall have been served upon you personally, or forty (40) days if served by mail as provided by law, this department shall undertake such repairs and a bill will be presented to you for any expenses incurred thereby. If you do not agree with the findings of the Superintendent of Public Works that your sidewalk is in violation of Local Law No. ___, you may contact the Village\City Clerk within five (5) business days of receipt of this notice to schedule a hearing before the Village Board of Trustees\City Council. If you need an extension of time to complete the repairs, contact the Superintendent of Public Works to arrange for an extension of time.

Dated: _________, N.Y.

________, 20___

____

Signature

Sample Local Law Requiring New Sidewalk Construction

Section 1: a) When the Village Board of Trustees\City Council deems that in the interests of the general public, new sidewalks must be constructed. The Superintendent of Public Works, or his or her agent, by written notice, may require the owner of any building, occupied lot, or vacant lot within the limits of the Village\City, to construct said sidewalk in accordance with the Standard Specifications for Installation of Public Sidewalks. [The standard specifications can either by contained in a resolution adopted by the governing body or the governing body can authorize an officer or employee to develop specifications.]

b) Written notice must be served upon the owner or his or her executor, legal representative, or agent, either personally or by first class prepaid mail addressed to the last known address of the owner or other person mentioned herein, as said address is shown on the records of the assessor. If the name of the owner or place of residence cannot be ascertained, notice must be served by posting in a conspicuous place upon the premises.

Section 2. The cost of such construction must be paid in whole by the adjacent property owner; or, shared by the owner and the Village\City at the rate of __% by the Village\City and __% by the adjacent property owner, except for tax-exempt entities, who shall pay the full cost of construction.

Section 3. The property owner has the option of doing the work or hiring a contractor. The Village\City must share the verified expense, provided however that the Village\City may not pay any amount greater that the maximum rate established by the [governing body], except for tax-exempt entities, who shall pay the full cost of such construction.

Section 4. If the owner or agent fails to construct such sidewalk within thirty (30) days of service of the notice, the Superintendent of Public Works, or his or her agent, may cause the sidewalk to be constructed and the owner must pay [the expense incurred\ [or] __% of the expense incurred], except for tax exempt entities, who shall pay the full cost of such construction.

Section 5. This local law shall take effect immediately.

Sample Local Law Regarding Sidewalk Maintenance

ARTICLE I - SIDEWALK MAINTENANCE

SECTION 1. Duty to Repair Sidewalks: The owner of any premises must keep tile sidewalks, on or running along the street row adjoining the property, in reasonably good and safe repair for users thereof, and is responsible for all necessary preventive and corrective maintenance to accomplish such result.

SECTION 2. Conditions that may constitute defective sidewalks: A defective sidewalk that is not in accordance with the standards set forth in Section 1 means any sidewalk which has one or more of the following conditions:

1) Unacceptable quality of sidewalk surface, including but not limited to holes, depressions, breaks, or projections;
2) Ridges or gaps between adjoining sidewalk blocks;
3) Differences in elevation of the surface or of adjoining sidewalk blocks;
4) Peeling or crumbling of the surface of the sidewalk;
5) Tilting of sidewalk or sidewalk blocks except in the case of handicap ramps, driveway approaches or other similar situations; or
6) Missing portions of surface.

The above applies regardless of the type of sidewalk that exists, whether flagstone, brick, concrete, blacktop or any other material.

All defective sidewalks within the terms stated above are hereby declared to be a public nuisance.

ARTICLE II - NOTICE REQUIREMENTS

SECTION 1. The Superintendent of Public Works or his or her designated agent has jurisdiction for the purpose of ordering the repair of a defective sidewalk and for taking remedial action towards making the surface in good repair.

SECTION 2. Upon receipt of information that a sidewalk may be defective, the Superintendent shall make an inspection of the sidewalk and file a report in his or her office.

SECTION 3. If the report confirms the existence of a defective sidewalk as defined in this Local Law, the Superintendent may cause a notice to be served upon the owner or his or her executor, legal representative, or agent, either personally or by first class prepaid mail, addressed to the last known address or the owner or other person mentioned herein as said address is shown on the records of the assessor. If the name of the owner or place of residence cannot be ascertained, notice may be served by posting in a conspicuous place upon the premises.

SECTION 4. Contents of the Notice. The notice must contain the following:

1) Description of the premises upon which the sidewalk is located;
2) The statement of the particulars in which the sidewalk is defective;
3) A designation of the area in which repair or replacement is to be made;
4) An order that the repair or correction of the defective portion of the sidewalk must commence within thirty (30) days of personal service or within forty (40) days of service by mail;
5) A procedure to schedule a hearing before the Village Board\City Council, if the owner does not agree with the findings of the Superintendent of Public Works. That hearing must be scheduled not less than twenty (20) business days from the date of service of the written notice; and

6) A statement that, in the event of neglect or refusal to comply with the order to repair or replace the defective sidewalk, the Village Board\City Council is authorized to secure and repair the sidewalk and that all expenses thereof will be assessed against the land on which the sidewalk is located including related necessary or incidental expenses.

SECTION 5. The Superintendent may extend time requirements for cause and in writing and upon reasonable terms and conditions.

ARTICLE III - WORK AND MATERIAL REQUIREMENTS

SECTION 1. The property owner/contractor is responsible for the quality of the finished sidewalk. A representative of the Department of Public Works will inspect the project from time to time and may require the owner to remove and replace new construction that does not meet construction standards as set forth below and as may be modified from time to time.

SECTION 2. Before engaging upon sidewalk repair or construction, the contractor, on behalf of the owner, must first obtain a permit from the Superintendent of Public Works or his or her designated agent. The applications will be furnished by the Superintendent.

SECTION 3. Fees. At the time of making application to the Village\City for a permit to construct or repair a sidewalk, the owner or contractor must pay to the Village\City a permit fee in such amount as the Board of Trustees\City Council may from time to time determine.

SECTION 4. No permit may be issued to a contractor until he has filed with the Village\City Clerk a certificate showing that he carries worker's compensation for all of his employees together with such other insurance as the Superintendent may by rule or regulation require.

SECTION 5. No person may repair or reconstruct a sidewalk unless it is in accordance with the grade established and obtained from the Village\City Department of Public Works.

SECTION 6. All replacement sidewalks must be made of concrete.

SECTION 7. All sidewalk repair or construction is to be performed in accordance with rules and regulations established by the Superintendent of Public Works, who will prepare the same and promptly file them in the Office of the Village\City Clerk. They shall include:

1) Minimum dimensions of width and depth of sidewalk blocks in residential and business areas;
2) Excavation and sub-base requirement;
3) Forming and reinforcement;
4) Concrete mixture specifications;
5) Fine and coarse aggregate specifications;
6) Water quality;
7) Mixing of concrete ingredients;
8) Joints;
9) Finishing;
10) Protection of wet concrete;
11) Construction safeguards; and
12) Any other matter or items that the Superintendent deems necessary, appropriate, or desirable.

SECTION 8. A copy of any permit issued in accordance with this Local Law, in the possession of the persons actually doing the work will be available for inspection by the Superintendent of Public Works or his or her representatives.

ARTICLE IV - ENFORCEMENT

SECTION 1. No person, whether or not they are interested in the property affected by this Local Law may hinder or obstruct the Department of Public Works or any person acting on the Department's behalf, including any contractor performing the work authorized by this Local Law.

SECTION 2. Sidewalk repair or replacement work performed by the Village\City, because of the neglect, refusal or failure of the owner to agree to the work shall make such work ineligible for any Village\City sidewalk repair or construction reimbursement plan.

SECTION 3. Any person or persons violating any provisions of this Local Law is/are subject to either or both a fine not to exceed two hundred fifty dollars ($250) or a sentence of imprisonment not to exceed 14 days. Such penalties may be in addition to any other remedies or actions that may be taken by the Village\City either as provided herein or as may otherwise be permitted by Law.

SECTION 4. The Village\City shall be reimbursed for the cost of the work performed or services rendered as provided in this chapter by assessment against and collection from the lots or parcels of land where such work was performed or services rendered for so much of the actual and complete cost as incurred upon and from each lot or lots, in the manner provided for the assessment of the cost of public improvements by applicable law, together with appropriate interest.

ARTICLE V - EFFECTIVE DATE

This Local Law is effective immediately upon its filing with the Secretary of the State of New York.

Sample Local Law on Snow Removal

Section 1. Purpose. The purpose of this local law is to preserve the public peace and good order in the Village\City, and to contribute to the public welfare, safety and good order of its people and to contribute to the safe conveyance of its people over the streets and sidewalks of the Village\City by establishing certain regulations for the removal of snow and ice from the streets and sidewalks of the Village\City, that are consistent with the rights and privileges of other residents of the Village\City.

Section 2. Duty of Property Owner and Occupant. Every owner and occupant of every parcel of real estate adjoining a public sidewalk, whether the parcel of real estate is occupied by a structure or not, must keep the sidewalks adjoining the property free from snow and ice for the full paved width of the sidewalk.

Section 3. Time Limit. Snow and ice must be removed within twenty-four (24) hours after the end of a snowfall. In addition, sidewalks in front of commercial establishments and commercial parking lots must be kept free of snow and ice at all times between the hours of 9:00 A.M. and 5:00 P.M.

Section 4. Severe Icing. In case snow and ice on any sidewalk is frozen so hard that it cannot be removed without damage to the sidewalk, the owner or occupant must, within the time specified in Section 3, cover the sidewalk with ashes, sand, sawdust or other suitable material, so that it is no longer dangerous to life and limb. As soon as practical thereafter, the sidewalk must be completely cleared of snow, ice and other materials strewn thereon, as provided in this Local Law.

Section 5. Removal by Village\City. Whenever the owner or occupant of a parcel of real estate adjoining a public sidewalk fails to remove the snow and ice from such sidewalk adjoining such property within the time specified in this Local Law or within four (4) hours after notice by the Superintendent of Public Works to remove same, the Superintendent of Public Works may remove the snow or ice from the sidewalk and notify the Village\City Clerk of the expense incurred by the amount of labor, equipment and materials used. The charge may not be less than the equivalent of one's hour wage for the highest paid hourly Village employee.

Section 6. Collection of Costs for Removal by Village\City. The Village\City Clerk must promptly present to the owner or occupant of each parcel a bill for the removal of snow and ice as certified by the Superintendent of Public Works. If not paid within thirty (30) days, the cost thereof may be assessed against the property, added to the ensuing tax bill and become a lien thereon, collectible in the same manner as delinquent Village\City taxes.

Section 7. Snow, Ice and Water Falling From Buildings. The owners or occupants of buildings adjacent to public sidewalks must take measures to protect the public from falling snow, ice or water from such buildings.

Section 8. Depositing on Streets. No person, firm or corporation may deposit, throw, place or strew, or cause to be deposited, thrown, placed or strewn, any snow or ice upon any street, avenue or roadway within the Village\City.

Section 9. Placing of Snow and Ice on Another's Property. No person, firm, corporation, property owner or occupant may remove snow or ice from any parcel of real estate and place it upon another parcel of real estate without the express permission of the owner of the parcel of real estate upon which the snow or ice is to be placed.

Section 10. Penalties for Offenses. Any person, firm or corporation that violates any section of this local law, upon conviction thereof, is subject to a fine of not more than $100.00 for each offense. Each day that a violation continues constitutes a separate offense.

Section 11. Severability. Should any section, paragraph, sentence, clause or phrase of this Local Law be declared unconstitutional or invalid for any reason, the remainder of this local law will not be affected thereby.

Section 12. When Effective. This Local Law takes effect upon its filing with the Secretary of State as provided by law.

Endnotes

[1] Village Law § 6-600; Vehicle and Traffic Law § 134 & 148.

[2] See, General City Law § 35 & Village Law § 7-734.

[3] See, Vehicle and Traffic Law § 133. It is important to note that defining a street as private does not mean the public cannot use it. Rather, the term "private" in such an instance means that the street is neither owned by, nor dedicated to, a municipality. Thus, the municipality is not responsible for the street's maintenance. A public right of access would still exist, however, pursuant to the definition of a street.

[4] See, e.g., Village Law § 6-610.

[5] Statutes and court decisions began defining these terms over a hundred years ago when there existed in this state a much sharper distinction between "municipal areas" such as cities and incorporated villages versus other areas of a more rural character. For example, suburbs didn't yet exist when the definitions of these terms were being forged by the Legislature and courts.

[6] See, Vehicle and Traffic Law § 133.

[7] Highway Law § 3(5).

[8] 1974 Op. Atty. Gen. (Inf.) p. 177.

[9] See, Vehicle and Traffic Law § 139.

[10] But see, Town of Huntington v. Foster, n.o.r., 219 NYS2d 220 (Sup. Ct., Suffolk County, 1961).

[11] See, e.g., Village Laws §§ 6-612 and 6-614.

[12] See, 26 Op. State Compt. 231, at 232 (1970), and cases cited therein.

[13] Highway Law § 205.

[14] But see, Village of Chestnut Ridge v. Howard, 92 NY2d 718 (1999), rev'g. 248 A.D.2d 392 (2d Dep't. 1998).

[15] Village Law § 6-610.

[16] DiLucia v. Town Board of the Town of Westford, 160 A.D.2d 1152, 1153, (3d Dept. 1990) lv. to app. den., 76 N.Y.2d 706, (1990), cert. denied, 498 U.S. 1120 (1991).

[17] Village Law § 6-610.

[18] Matter of City of New York (177th St.), 239 NY 119, at 127-128; see also, Winston v. Village of Scarsdale, 170 A.D.2d 672, 673 (2d Dept. 1991), lv to app. denied, 78 N.Y.2d 855 (1991).

[19] Matter of McFadden, 96 AD 58 (3d Dept. 1904); see also, 11 Op. State Compt. 234 (1955), and 19 Op. State Compt. 272 [2d Opn.] (1963).

[20] Highway Law § 205(1).

[21] For example, pursuant to the Vehicle and Traffic Law § 1660(a)(10), (16), (17), (18) towns may establish truck routes, designate one-way streets and restrict stopping, standing or parking vehicles on streets.

[22] 24 Op. State Compt. 678 (1968).

[23] See, In re Queens Boulevard, 254 App. Div. 685 (2nd Dept. 1938), aff'd, 278 NY 721; see also, Downes v. Dimock & Fink Co., 75 App. Div. 513 (1st Dept. 1902).

[24] General City Law § 20 (7); Second Class Cities Law § 101.

[25] 1972 Op. Atty. Gen. 194, 195.

[26] 1986 Op. St. Compt. No. 86-30, p. 50.

[27] Bacon v. Miller, 247 N.Y. 311 (1928).

[28] Second Class Cities Law § 99.

[29] Village Law § 6-626.

[30] Impastato v. Village of Catskill, 55 A.D.2d 714, at 715 (3d Dept. 1976), aff'd 43 NY2d 888 (1978).

[31] Forest Hills Gardens Corp. v. Baroth, 147 Misc.2d 404, 408 (Sup. Ct. Queens Co. 1990).

[32] Second Class Cities Law § 101.

[33] American Nassau Bldg. Sys., Ltd, v. Press, 143 A.D.2d 789 (2d Dept. 1988), app. den., 73 NY2d 705 (1989).

[34] Village Law § 6-622.

[35] Id.

[36] Id.; see also 1979 Op. St. Compt. 79-816 (unreported; copy available upon request); 1983 Op. St. Compt. No. 83-203, p. 262;1990 Op. Atty. Gen. (Inf.) 90-68, p. 1128.

[37] Village Law § 6-622. See also, Village Law §§ 21-2100, 21-2102.

[38] Village Law § 6-618.

[39] Highway Law § 142-c.

[40] See, 1981 Op. State Compt. No. 81-104, p. 105.

[41] General City Law § 36(1).

[42] Second Class Cities Law § 99.

[43] Second Class Cities Law § 124.

[44] Id.

[45] Second Class Cities Law § 100.

[46] See, e.g., 6 Op. State Compt. 32 [2d Opn.] (1950)

[47] N.Y. Constitution Art. VIII, § 1; see generally, NYCOM publication, "The Public's Property: The Constitution's Prohibition Against Gifts and Loans" (July 2010), pp. 26-30 .

[48] See, Smith v. Smythe, 197 NY 457 (1910).

[49] Id; see also, 1980 Op. St Compt. No. 80-617, p.168.

[50] 12 Op. St. Compt. 200 (2d Opn.) (1956).

[51] 1979 Op. St. Compt. No. 79-62, p. 9.

[52] 14 Op. St. Compt. 124 (1958).

[53] 1990 Op. St. Compt. No. 90-59, p. 136.

[54] 1968 Op. Atty. Gen. (Inf.) p. 127.

[55] 30 Op. St. Compt. 141 (1974).

[56] 33 Op. St. Compt. 167 (1977).

[57] 1993 Op. St. Compt. No. 93-25, p. 44; 1983 Op. St. Compt. No. 83-47, p. 54; -17 Op. St. Compt. 162 (1961); 7 Op. St. Compt. 285 (1st Opn.) (1951); 1967 Atty. Gen. (Inf.) p. 103; Ferguson v. Producers Gas Co., 286 A.D. 521- (4th Dep't. 1955).

[58] 1982 Op. St. Compt. No. 82-123, p. 153.

[59] 16 Op. St. Compt. 23 (1960).

[60] 25 Op. St. Compt. 20 (1969).

[61] 25 Op. St. Compt. 3 (1969).

[62] 1979 Op. St. Compt. No. 79-62, p. 9; 28 Op. St. Compt. 31 (1972); 26 Op. St. Compt. 27 (1st Opn. 1970).

[63] 1987 Op. Atty. Gen. (Inf.) 87-2; 1985 Op. Atty. Gen. (Inf.) 85-13, p. 178.

[64] D'Angelo v. Cole, 67 N.Y.2d 65, at 69 (1986).

[65] Vehicle and Traffic Law 1640; 1990 Op. Atty. Gen. No. 90-2, p. 1002.

[66] Svartz v. Town of Fallsburg, 241 A.D.2d 799, 800 (3d Dept. 1997).

[67] Highway Law § 46.

[68] Highway Law §§ 12(1) and (2), 46.

[69] Washington County Sewer Dist. No. 2 v. White, 177 A.D.2d 204, 206 (3d Dept. 1992); Mason v. State, 180 A.D.2d 63 (3d Dept. 1992); 1985 Op. Atty. Gen. (Inf.) 85-40, p. 116.

[70] Mason v. State, op. cit, at 66.

[71] Highway Law § 47.

[72] Village Law § 6-630 (6).

[73] Highway Law § 349-c.

[74] Highway Law § 349-c (2.2).

[75] Nado v. State, 161 Misc.2d 178 (Ct. of Claims 1993), affd. 220 A.D.2d 397 (2d Dept. 1995).

[76] Highway Law § 12(2).

[77] Highway Law § 131-b.

[78] Highway Law § 115.

[79] Highway Law § 129.

[80] Highway Law § 131; 1986 Op. Atty. Gen. (Inf.) No. 86-69, p. 132.

[81] Highway Law § 129.

[82] Highway Law § 196.

[83] Highway Law § 135.

[84] Id.

[85] Highway Law § 135-a.

[86] Id.

[87] Highway Law §§ 102(15), 118.

[88] Highway Law § 136(3).

[89] General City Law § 20(9).

[90] See, 20 Op. State Compt. 314 (1964), and 19 Op. State Compt. 468 (1963).

[91] For a complete history of this statute, see, 1969 Op. Atty. Gen. 102, and Taylor v. Village of Matteawan, 122 AD 406 (2d Dept. 1907), construing L. 1870, c. 291, title 8, § 2.

[92] Village Law § 6-604.

[93] Village Law § 6-606.

[94] Id.

[95] Town of Aurora v. Village of East Aurora, index # 802681/2014 (Sup. Ct., Erie County). Copy available upon request.

[96] Village Law § 6-608.

[97] 20 Op. State Compt. 314, at 315 (1964).

[98] Village of Chestnut Ridge v. Howard, 92 NY2d 718, at 724 (1999).

[99] Lyman v. Village of Potsdam, 228 NY 398 (1920).

[100] "A sidewalk is for pedestrian use, and any area defined for pedestrian passage within the street boundaries is part of the street." Donnelly v. Village of Perry, 88 A.D.2d 764, 765 (4th Dept. 1982); People v. Lieberman, 32 Misc. 2d 741 (Ct. of Special Sessions of the Village of Mount Kisco, Westchester County 1961). See also 1994 Op. Atty. Gen. (Inf.) No. 94-37, p. 1066; Village Law §§ 6-600, 6-620.

[101] 1983 Op. St. Compt. No. 83-203, p. 262.

[102] Village Law § 6-622; General City Law § 20(11).

[103] Id.

[104] Village Law § 6-622.

[105] Village Law § 5-518(3); 1985 Op. St. Compt. No. 85-30, p. 42.

[106] Village Law § 6-622; 1990 Op. Atty. Gen. (Inf.) No. 90-68, p. 1128.

[107] Village Law § 6-620.

[108] Village Law § 6-620.

[109] Village Law § 6-622.

[110] Village Law § 22-2200(1).

[111] Village Law § 7-730[1].

[112] Sokolov v. Village of Manorhaven, 41 A.D.2d 570 (2d Dept. 1973), affd. 34 NY2d 610 (1974); 1987 Op. Atty. Gen. (Inf.) No. 87-37, p. 95.

[113] Second Class Cities Law § 100.

[114] Village Law § 6-622; 1990 Op. Atty. Gen. (Inf.) No. 90-68, p. 1128.

[115] 1990 Op. Atty. Gen. (Inf.) No. 90-68, p. 1128.

[116] 1994 Op. Atty. Gen. (Inf.) No. 94-37, p. 1066.

[117] Second Class Cities Law § 92.

[118] If the owner is a non-resident, notice may be sent by mail to his or her last known address. If the address of the owner cannot be found through due diligence, the notice may be posted in a conspicuous place on the subject property.

[119] 1985 Op. Atty. Gen. (Inf.) No. 85-13, p. 78.

[120] Highway Law § 142-c(1).

[121] 1985 Op. Atty. Gen. (Inf.) No. 85-13, p. 78.

[122] Second Class Cities Law § 92.

[123] Id.

[124] Highway Law § 205(1).

[125] 19 Op. State Compt. 272 [2d Opn.] (1964).

[126] Village Law § 6-614; see also,1978 Op. St. Compt. No. 78-631, unreported (copy in Appendix).

[127] Second Class Cities Law § 101.

[128] Kiernan v. Thompson, 137 A.D.2d 957 (3d Dept. 1988), aff'd 73NY2d 840 (1998); and, Jacques v. Maratakey, 41 A.D.2d 883 (3d Dept. 1973).

[129] See, e.g., Village of Port Jervis v. First Nat'l Bk of Port Jefferson, 96 NY 550 (1884).

[130] Municipal Home Rule Law § 11(1)(j); 1994 Op. Atty. Gen. (Inf.) No. 94-50, p. 1086.

[131] D'Ambrosio v. City of New York, 55 N.Y.2d 454 (1982).

[132] Kiernan v. Thompson, 134 A.D.2d 27 (3d Dept. 1987).

[133] Vehicle and Traffic Law § 1643.

[134] Vehicle and Traffic Law § 1643; Vehicle and Traffic Law § 1624.

[135] Vehicle and Traffic Law § 1646.

[136] Vehicle and Traffic Law § 1643.

[137] 17 NYCRR, § 200.6(b)(3).

[138] Vehicle and Traffic Law § 1643; see also Op. St. Comp. 98-23.

[139] 17 NYCRR, § 200.6(b) (36).

[140] Vehicle and Traffic Law § 1643; see also, Op. St. Comp. 98-23.

[141] Vehicle and Traffic Law § 1643; see also, 1999 Op. Atty. Gen. 99-15, p. 1040, in which the Attorney General advised that a city may not establish a 15 MPH speed limit on a city street that dead-ends at the edge of school district property, but does not pass a school building. However, that opinion also explains that the city may warn motorists of the presence of school children by placing a "school child" warning sign on the street.

[142] Id.

[143] 17 NYCRR, § 212.4(a).

[144] 1999 Op. Atty. Gen. No. 99-15, p. 1040.

[145] 1989 Op. Atty. Gen. No. 89-20, p. 85.

[146] NYCRR Title 17, § 200.6(b)(1); NYCRR Title 17, § 200.6(b)(55).

[147] See, 17 NYCRR, § 239.1.

[148] See, Vehicle and Traffic Law § 1180 which imposes a "reasonable and prudent" standard. See also, Vehicle and Traffic Law § 1212 which prohibits reckless driving.

[149] Vehicle and Traffic Law § 1644.

[150] Vehicle and Traffic Law § 1644; see also Vehicle and Traffic Law § 1684.

[151] Vehicle and Traffic Law § 1670(3); see "Municipal Facilities," infra.

[152] Vehicle and Traffic Law § 1683 (a)(15); see also, People v. Hall, 108 Misc.2d 507 (Ossining Town Justice Ct. 1981).

[153] See, 2003 Op. Atty. Gen. (Inf.) No. 2003-15, p. 1079, at p. 1080 for a thorough analysis of speed bumps and humps ("Speed bumps are installations of raised pavement on roads or parking lots intended to slow vehicular traffic; they are generally three to six inches in height and one to three feet in length across the roadway or driving area. See JKS Associates, Inc., INCA Engineers, Inc. & R. David MacDonald, A Guidebook for Residential Traffic Management 41 (Dec. 1994), reprinted in N.Y.S. Dep't of Transportation, Highway Design Manual, ch. 25, App. A (Rev. 36, Feb. 5, 1999). Speed bumps generally are intended to reduce vehicle speeds to five to ten miles per hour. Florida Pedestrian Planning and Design Handbook 129 (Sept. 1998), reprinted in N.Y.S. Dep't of Transportation, Highway Design Manual, ch. 25, App. B (Rev. 36, Feb. 5, 1999)").

[154] Speed humps are general only two to three inches high, and three to twelve feet in length, as compared to speed bumps which are generally three to six inches high and one to three feet in length. See, 2003 Op. Atty. Gen. (Inf.) No. 2003-15, at p. 1080, fn.1.

[155] Speed bumps are not traffic control devices, which Vehicle and Traffic Law § 153 defines as signs, signals, markings and other devices placed on a roadway to regulate, guide or warn traffic. The Department of Transportation previously considered speed bumps to be non-conforming traffic control devices but current Department regulations describe highway design features as "non-traffic control devices," 17 N.Y.C.R.R. 200.9(b). The N.Y.S. Dep't of Transportation, Highway Design Manual, § 25.6, T. 25-1 & n.3 (Rev. 36, Feb. 5, 1999) categorizes speed bumps and other vertical pavement shifts separately from traffic control devices used as traffic calming measures. Accordingly, the State Attorney General's Office has concluded that "the installation of a speed bump . . . is not subject to state-wide uniformity as a traffic control device. [emphasis added]"

[156] The Department's Highway Design Manual is the policy for designing and constructing projects on state highways and on other highways when funded or administered by the Department. The Manual, while not binding on local government projects that are not receiving State funding, may be considered as evidence of a generally accepted standard of care in highway design. See, Light v. State, 250 A.D.2d 988, 989 (3d Dep't), lv. to app. den., 92 N.Y.2d 807 (1998); Benjamin v. State, 203 A.D.2d 629, 630 (3d Dep't 1994).

[157] See, Colyer v. State of New York, 208 A.D.2d 490 (2d Dep't 1994) (The State was found liable for injuries caused by a speed bump that created an unreasonably dangerous condition); see also Op. State Compt. No. 78-837 (concluding that village should not erect bumps on streets to encourage the slowing of traffic because they could lead to potential tort liability).

[158] Vehicle and Traffic Law § 1684.

[159] Id.

[160] See, Vehicle and Traffic Law § 129-a (definition of shopping center parking area).

[161] Vehicle and Traffic Law § 1660-a. See also, 1984 Op. St. Comp. 84-47 p. 57.

[162] As defined in Education Law § 2.

[163] See, People v. Murphy, 169 Misc.2d 357 (N.Y. Sup. App. Term 1996).

[164] Vehicle and Traffic Law § 1640-a(1).

[165] Vehicle and Traffic Law § 1640-a(2).

[166] Vehicle and Traffic Law § 1640-a(3).

[167] Vehicle and Traffic Law § 1640-a(2-a).

[168] Vehicle and Traffic Law § 1640-a(4).

[169] Vehicle and Traffic Law § 1640-a(5).

[170] Vehicle and Traffic Law § 1640-a(7).

[171] Vehicle and Traffic Law § 1640-a(9).

[172] Vehicle and Traffic Law § 1640-a(6).

[173] Vehicle and Traffic Law § 1640-a(8).

[174] Vehicle and Traffic Law § 1640-a(10).

[175] Vehicle and Traffic Law § 1203-c.

[176] Municipal Home Rule Law § 10(1)(a)(12); General City Law § 20(13); Village Law § 4-412(1).

[177] Good Humor Corp. v. City of New York, 290 N.Y. 312, 317 (1943).

[178] See, 1992 Op. Atty. Gen. No. 92-6, p. 1020.

[179] 1982 Op. Atty. Gen. No. 82-37, p. 130; see also, 1986 Op. Atty. Gen. No. 86-10, p. 60 (may regulate parking on lawns of private residences); regarding private roads see Op. Atty. Gen. No. 90-2, p. 1002 and 1981 Op. St. Comp. 81-310, p. 338.

[180] 1992 Op. Atty. Gen. No. 92-6.

[181] 1985 Op. Atty. Gen. No. 85-44, p. 121. State highways on the grounds of State facilities, however, are not subject to local regulation.

[182] Vehicle and Traffic Law § 1604.

[183] See, Village of Mineola v. Village of East Williston, 648 N.Y.S.2d 170, 170-1 (2d Dep't 1996) ("A resolution concerning traffic regulations will be upheld, so long as it is reasonable and nondiscriminatory [citing People v. Randazzo, 60 N.Y.2d 952; Cohen v. Village Flower Hill, 198 A.D.2d 468, Vehicle and Traffic Law § 1640[a][16]). Based on the facts of this case, the regulation enacted by the Incorporated Village of East Williston which provides for a traffic control device in the form of a barricade upon Sagamore Avenue at or near the Mineola/East Williston boundary discriminates against Mineola residents and is, therefore, invalid."); see also Cohen v. Flower Hill, 198 A.D.2d 468 (2d Dep't 1993) ("A resolution concerning traffic regulations will be upheld, so long as it is reasonable and nondiscriminatory. The factors to be weighed in determining its validity include the availability of convenient alternate routes, any discriminatory effect, and the necessity of the regulation of traffic conditions [citation omitted]").

[184] Vehicle and Traffic Law § 1670; see also Bavaro v. Parente, 96 A.D.2d 519 (2d Dep't 1983).

[185] Vehicle and Traffic Law § 1670.

[186] General Municipal Law § 72-j; Village Law § 4-412; General City Law § 20(2).

[187] People ex rel. Village of Larchmont v. Gilbert, n.o.r., 137 N.Y.S.2d 389 (Westchester Co. Ct. 1954), aff'd 307 NY 773 (1959).

[188] People ex rel. Village of Lawrence v. Kraushaar, 195 Misc. 487 (2d Dist.Ct. Nassau Cty 1949).

[189] People ex rel. Village of Lawrence v. Kraushaar, 1989 Op. Atty. Gen. (Inf) No. 89-5, p. 60.

[190] Vehicle and Traffic Law § 1640(a) (5), (10) and (20).

[191] Vehicle and Traffic Law § 1640(a) (5) and (10).

[192] Vehicle and Traffic Law § 1640(a)(20).

[193] White Plains Automotive Supply Co. v. City of Peekskill, 98 A.D.2d 776 (2d Dept. 1983).

[194] See, Bakery Salvage Corp. v. City of Lackawanna, 30 A.D.2d 207, 211 (4th Dept. 1968), aff'd 24 NY2d 643: "An economic loss to an individual by reason of an exercise of police power resulting in a benefit to the community which outweighs the individual's loss does not invalidate the ordinance. (New York Trap Rock Corp. v. Town of Clarkstown, 1 A.D.2d 890, 891)."

[195] Jake Brake® is a registered trademark of Jacobs Vehicle Systems™.

[196] The term "Jake Brake" is sometimes incorrectly used to refer to compression release type engine brakes in general.

[197] 10.0L displacement.

[198] 1999 Op. Atty Gen. (Inf.) No. 99-29, p. 1070.

[199] Id. at 1071.

[200] Vehicle and Traffic Law § 375 [31].

[201] See, e.g., Vehicle and Traffic Law § 390.

[202] N.Y. Const. Art. IX, §§ 2(c)(5) and 2(c)(6).

[203] With exception of the word "obstructive" rather than "obstructed," Civil Practice Law and Rules § 9804 includes the same language.

[204] See, Misek-Falkoff v. Village of Pleasantville, 207 A.D.2d 332-(2d Dep't. 1994).

[205] See, e.g., Amabile v. City of Buffalo, 93 NY2d 471, 474 (1999).

[206] Village Law § 4-402(g). See, Mollahan v. Village of Port Washington North, 153 A.D.2d 881 (2d Dept. 1989), app. den. 76 NY2d 707 (1990).

[207] Village Law § 4-402(g).

[208] Id.

[209] General Municipal Law § 50-e(4), which reads: "Requirements of section exclusive except as to conditions precedent to liability for certain defects or snow or ice. No other or further notice, no other or further service, filing or delivery of the notice of claim, and no notice of intention to commence an action or special proceeding, shall be required as a condition to the commencement of an action or special proceeding for the enforcement of the claim; provided, however, that nothing herein contained shall be deemed to dispense with the requirement of notice of the defective, unsafe, dangerous or obstructed condition of any street, highway, bridge, culvert, sidewalk or crosswalk, or of the existence of snow or ice thereon, where such notice now is, or hereafter may be, required by law, as a condition precedent to liability for damages or injuries to person or property alleged to have been caused by such condition, and the failure or negligence to repair or remove the same after the receipt of such notice."

[210] Id. § 50-g(1).

[211] Id. § 50-g(2).

[212] Second Class Cities Law § 244 reads as follows: "No civil action shall be maintained against the city for damages or injuries to person or property sustained in consequence of any street, highway, bridge, culvert, sidewalk or crosswalk being defective, out of repair, unsafe, dangerous or obstructed unless it appears that written notice of the defective, unsafe, dangerous, obstructed condition of such street, highway, bridge, culvert, sidewalk or crosswalk was actually given to the commissioner of public works, 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, or, in the absence of such notice, unless it appears that such defective, unsafe, dangerous or obstructed condition existed for so long a period that the same should have been discovered and remedied in the exercise of reasonable care and diligence... ."

[213] See, e.g., Delcamp v. Village of Brocton, 270 A.D.2d 842 (4th Dept. 2000).

[214] Delcamp v. Village of Brocton, supra; and, Braun v. Village of New Square, 3 A.D.3d 513, 514 (2d Dept. 2004).

[215] But, cf., Farnsworth v. Village of Potsdam, 228 A.D.2d 79 (3d Dept. 1997).

[216] Amabile v. City of Buffalo, supra , at note 204.

[217] See, Village Law § 6-628; see also, Barrett v. City of Buffalo, 96 A.D.2d 709 (4th Dep't. 1983); and, Hoth v. Incorporated Village of Garden City, 26 Misc2d 1064 (Sup. Ct. Nassau County, 1960).

[218] Ebert v. Incorporated Village of Garden City, 21 Misc2d 607 (Sup. Ct. Nassau County, 1960); and, Barry v. Niagara Frontier Transit System, Inc., 35 NY2d 629 (1974).

[219] See, Kiernan v. Thompson, 73 N.Y.2d 840, 842, (1988).

[220] See, Poirier v. City of Schenectady, 85 N.Y.2d 310, 314-315, (1995); D'Ambrosio v. City of New York, 55 NY2d 454 (1982).

[221] See, 85 NY Jur 2d, Premises Liability § 207.

[222] Amabile v. City of Buffalo, supra, at note 204.

[223] Gordon v. American Museum of Natural History, 67 NY2d 836, 837 (1986); see also, Lewis v. Metropolitan Transportation Authority, 99 A.D.2d 246, 249, (1st Dept. 1984), affd. 64 NY2d 670 (1984).

[224] King v. New York City Transportation Authority, 266 A.D.2d 354, (2d Dept. 1999, citations omitted).

[225] General Municipal Law § 50-e(1)(a). Tort liability arises in actions involving injury resulting from motor vehicles, premises including streets, roads, and sidewalks, law enforcement, nuisance, libel and slander.

[226] Id. § 50-e(2).

[227] Id. § 50-e(3).

[228] Id. § 50-f(1).

[229] Id. § 50-f(2).

[230] 28 N.Y.3d 469 (2016).

[231] Turturro, p. 484, citing Kush v. City of Buffalo, 59 N.Y.2d 26, 33 [1983].

[232] Turturro, p. 484, citing Bell v. Board of Educ. of City of N.Y., 90 N.Y.2d 944, 946 (1997), quoting Kush v. City of Buffalo, 59 N.Y.2d 26, 33 (1983).

[233] Turturro, p. 485.

[234] As part of this duty and subject to due process guarantees, villages may remove obstructions within the village right-of-way area. Villages may also, by local law and subject to due process, require that abutting property owners

remove obstructions in the right-of-way that were placed there with their consent and/or that the cost of removal of such obstructions can be charged back to the abutting owners. 1981 Op. St. Compt. 81-67, p. 68.

[235] Highway Law § 136.

[236] However, see 1985 Op. St. Compt. No. 85-6, which states that dead or dying trees located along a county highway within a village that pose a hazard to the county highway, should be removed by the village for the same Opinion, the Comptroller administered the same trees were to fall and interfere with travel along the county highway, or the branches were to overhang the county highway, it would be the county's responsibility to remove them.

[237] Fowle v. State of New York, 187 A.D.2d 698 (2d Dept. 1992).

[238] Village Law § 6-628.

[239] See, General Municipal Law § 50-e [4].

[240] Harris v. Village of East Hills, 41 N.Y.2d 446 (1977).

[241] Rinaldi v. State of New York, 49 A.D.2d 361 (3d Dep't. 1975). As one court has observed, "[i]n order to constitute constructive notice, a dangerous condition must have been visible and apparent and must have existed for a sufficient length of time prior to the accident to permit [the] defendant's employees to discover and remedy it." Lesser v. Manhattan & Bronx Surface Transit Operating Auth., 157 A.D.2d 352, 357 (1st Dep't. 1990), aff'd sub nom, Fishman v. Manhattan & Bronx Surface Transit Operating Auth. 79 NY2d 1031 (1992); see also, Fowle v. State of New York, 187 A.D.2d 698, 699 (2d Dep't. 1992).

[242] 1974 Op. Atty. Gen. (Inf.) p. 177; 20 Op. St. Compt. 170 (1964); 20 Op. St. Compt. 529 (1964). See also, Village of Cattaraugus v. Johnson, 139 Misc. 368 (Cattaraugus County Court, 1931), aff'd, 233 A.D. 799 (4th Dept. 1931).

[243] 20 Op. St. Compt. 529 (1964).

[244] N.Y. Constitution , Art. VIII, § 1.

[245] 16 NYCRR, Part 84, § 84.3.

[246] General Municipal Law § 103.

[247] Id. § 96-b.2.

[248] Id.

[249] Village Law § 17-1732.

[250] Id.

[251] General Business Law § 760(9).

[252] General Business Law § 761.

[253] See, 16 NYCRR Part 753; General Business Law, Art. 36 (§§ 760-767); Public Service Law § 119-b.

[254] 16 NYCRR Part 753.

[255] General Business Law § 765 (1)(a).

[256] General Business Law § 765(3).

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