

Law & Major Contracts Meeting Agenda



Committee Chair: David Imamura

800 Michaelian Office Bldg.
148 Martine Avenue, 8th Floor
White Plains, NY 10601
www.westchesterlegislators.com

Monday, April 15, 2024

1:00 PM

Committee Room

CALL TO ORDER

Please note: Meetings of the Board of Legislators and its committees are held at the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601, and remotely via the WebEx video conferencing system. Legislators may participate in person or via Webex. Members of the public may attend meetings in person at any of its locations, or view it online on the Westchester County Legislature's website: <https://westchestercountyny.legistar.com/> This website also provides links to materials for all matters to be discussed at a given meeting.

Joint with Legislation committee.

Legislator Emiljana Ulaj will be participating remotely from 520 White Plains Road, Tarrytown, NY 10591.

MINUTES APPROVAL

Wednesday, March 13, 2024 at 3:00 p.m.

Monday, March 18, 2024 at 10:00 a.m.

I. ITEMS FOR DISCUSSION

Guest: Law Dept.: Jason Whitehead, Senior Assistant County Attorney

1. [2024-119](#) PH - Local Law Amending Chapter 780

A RESOLUTION to set a Public Hearing on "A LOCAL LAW amending Chapter 780 of the Laws of Westchester County relating to the requirement that the County receive prior written notice of a defective condition to maintain a civil action." [Public Hearing set for _____, 2024 at _____ .m.]. LOCAL LAW INTRO: 2024-120.

COMMITTEE REFERRAL: COMMITTEE ON LEGISLATION AND LAW & MAJOR CONTRACTS

2. [2024-120](#) LL - Amending Chapter 780

A LOCAL LAW amending Chapter 780 of the Laws of Westchester County relating to the requirement that the County receive prior written notice of a defective condition to maintain a

civil action."

COMMITTEE REFERRAL: COMMITTEE ON LEGISLATION AND LAW & MAJOR CONTRACTS

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT



John M. Nonna
County Attorney

February 8, 2024

Westchester County Board of Legislators
800 Michaelian Office Building
148 Martine Avenue, 8th Floor
White Plains, New York 10601

Dear Honorable Members of the Board:

I respectfully request that your Honorable Board adopt the attached “A Local Law amending Chapter 780 of the Laws of Westchester County relating to the requirement that the County receive prior written notice of a defective condition to maintain a civil action.”

New York State Law provides that the county is liable for damages or injuries to a person or property as a result of property that is “defective, out of repair, unsafe, or dangerous . . . in [a county’s] actual physical possession, control or operation” (New York State County Law (County Law) § 53(2)), but every local government is empowered to adopt and amend local laws in regards to the “presentation, ascertainment, disposition, and discharge of claims against it” (New York State Municipal Home Rule Law (MHRL) § 10(1)(ii)(a)(5)).

In an exercise of their home rule power, local governments may choose to limit their liability in regards to “any street, highway, bridge, culvert, sidewalk or crosswalk” in their charge and control by requiring that they receive “prior written notice” of a defective condition within a reasonable time, in order for a claimant to maintain a lawsuit for personal injuries against the municipality. New York State General Municipal Law (GML) § 50-e(4). New York State Law requires, however, that where there is no prior written notice of a defective condition, a local municipality may nevertheless be held liable if it had constructive notice of the defect, but only in regards to highways, bridges, and culverts. New York State Highway Law (HL) § 139(2)).

In 1992, pursuant its home rule power, Westchester County enacted Chapter 780 of the Laws of Westchester County (LWC) to require prior written notice as a condition precedent to any lawsuit against the County for any defect, unsafe or dangerous condition, including the existence of snow or ice, on any “road, street, highway, bridge, culvert, sidewalk or crosswalk.” LWC §§ 780.01. The County’s prior written notice law also provides a constructive notice exception to the prior notice limitation as required by New York State Law, but the exception was expanded beyond New York State law to include streets, sidewalks, and crosswalks. *Id.*

The County's prior written notice law is expansive, outdated, and should be amended to incorporate favorable developments in decisional law, in addition to placing limitations on the application of constructive notice not mandated by New York State Law.

First, the New York State Court of Appeals has expanded prior written notice protection to include that which is the "functional equivalent" of those categories allowed under New York State Law. *See Woodson v. City of New York*, 93 N.Y.2d 936 (1999) (extending protection to a public stairway or staircase because it "functionally fulfills the same purposes that a standard sidewalk would serve" in providing a passageway for the public); *Groninger v. Village of Mamaroneck*, 17 N.Y.3d 125, 128 (2011) (extending prior written notice protection to a parking lot because it served the functional equivalent of a highway); *Hinton v. Pulaski*, 33 N.Y.3d 931, 932-933 (2019) (stairs from a public road leading down to a local fishing hole); *Walker v. County of Nassau*, 147 A.D.3d 806, 807-08 (2d Dep't 2017) ("landing on the exterior steps of the building where accident occurred provided the public with a general right of passage, and thus served the same functional purpose as a sidewalk, which is one of the locations specifically enumerated in General Municipal Law § 50-e(4)").

Second, while New York State Law requires counties to provide a constructive notice exception with regard to defects or dangerous conditions on highways, bridges, and culverts (except those involving snow and ice), the County's law goes further and has its constructive notice exception apply to streets, sidewalks, and crosswalks as well. (*Compare* LWC § 780.01 *with* HL § 139(2))

As a consequence, the County is and has been needlessly liable over the last thirty years for damages as a result of claims that would otherwise be dismissed for lack of prior written notice, if the constructive notice exception in LWC § 780.01 did not apply so broadly. *See, for example, Sundack v. County of Westchester*, 2019 N.Y. Misc. LEXIS 24350, *1, 3-5, 2019 NY Slip Op. 34666(UJ) (Sup. Ct., West. Cty. Dec. 13, 2019) (constructive notice saved the plaintiff's claims that she tripped and fell on a branch while running on a pathway in a park, which claim would have been dismissed for lack of prior written notice); *Smith v. County of Westchester*, 2021 NY Slip Op. 32929(U), 2021 N.Y. Misc. LEXIS 7328, *3-8 (Sup. Ct., West. Cty. Oct. 15, 2021) (No prior written notice, but lawsuit maintained based on constructive notice of a pothole or divot in a parking lot).


The proposed amendments incorporate the Court of Appeals' expansion of prior written notice protection in *Woodson*, *Groninger*, and *Hinton* to cover stairways, parks, and parking lots, as well as any encumbrances thereon or attachments thereto that are necessary for the functioning of a building, structure, or encumbrance or attachment under the jurisdiction of the County. The proposed amendments also eliminate the constructive notice exception for streets sidewalks, and crosswalks since it is not required by New York State law.

The proposed amendments further eliminate the constructive notice exception language for highways and roadways because it is not necessary to have such a provision since the Courts have routinely read the exception into local municipal laws that do not expressly provide it. *Tanner W. by Leone v. County of Onondaga*, 225 A.D.2d 1074, 1074 (4th Dep't 1996) ("the local law, however, must be interpreted in conjunction with Highway Law § 139 (2) to permit an action against the County based on constructive notice of a dangerous highway condition"); *Bernardo v. County of Nassau*, 150 A.D.2d 320, 320 (2d Dep't 1989) ("the Supreme Court correctly found that Nassau County Administrative Code § 12-4.0 (e) should be construed in accord with Highway Law § 139 (2), which allows for tort recovery based on constructive notice where written notice is lacking"); *Carlino v. Albany*, 118 A.D.2d 928, 930 (3d Dep't 1986) ("there is no clear inconsistency between the statute

and the county's local law; the county's local law does not expressly prohibit civil actions which have their provenance in constructive notice. Accordingly, rather than invalidate the county's local law, we interpret it as providing for constructive notice"). As such, it is recommended that constructive notice be removed from the County's law since it is already a requirement of New York State law for highways and roadways.

These amendments would help to preserve taxpayer dollars and county resources from having to be spent on defending the County against certain personal injury claims. Therefore, I respectfully request that your Honorable Board adopt the attached "A Local Law amending Chapter 780 of the LWC relating to the requirement that the County receive prior written notice of a defective condition to maintain a civil action."

Sincerely,



John M. Nonna
County Attorney

JN/nn

Enclosures

TO: BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee recommends the adoption of “A LOCAL LAW amending Chapters 780 of the Laws of Westchester County relating to the requirement that the County receive prior written notice of a defective condition to maintain a civil action.”

Your Committee is advised that New York State Law provides that the county is liable for damages or injuries to a person or property as a result of property that is “defective, out of repair, unsafe, or dangerous . . . in [a county’s] actual physical possession, control or operation” (New York State County Law (County Law) § 53(2)), but every local government is empowered to adopt and amend local laws in regards to the “presentation, ascertainment, disposition, and discharge of claims against it” (New York State Municipal Home Rule Law (MHRL) § 10(1)(ii)(a)(5)).

Your Committee is further advised that, in an exercise of their home rule power, local governments may choose to limit their liability in regards to “any street, highway, bridge, culvert, sidewalk or crosswalk” in their charge and control by requiring that they receive “prior written notice” of a defective condition within a reasonable time, in order for a claimant to maintain a lawsuit for personal injuries against the municipality. New York State General Municipal Law (GML) § 50-e(4). New York State Law requires, however, that where there is no prior written notice of a defective condition, a local municipality may nevertheless be held liable if it had constructive notice of the defect, but only in regards to highways, bridges, and culverts. New York State Highway Law (HL) § 139(2)).

Your Committee is informed that, in 1992, pursuant its home rule power, Westchester County enacted Chapter 780 of the Laws of Westchester County (LWC) to require prior written notice as a condition precedent to any lawsuit against the County for any defect, unsafe or dangerous condition,

including the existence of snow or ice, on any “road, street, highway, bridge, culvert, sidewalk or crosswalk.” LWC §§ 780.01. The County’s prior written notice law also provides a constructive notice exception to the prior notice limitation as required by New York State Law, but the exception was expanded beyond New York State law to include streets, sidewalks, and crosswalks. *Id.*

Your Committee is further informed that the County’s prior written notice law is expansive and outdated and should be amended to incorporate favorable developments in decisional law, in addition to placing limitations on the application of constructive notice not mandated by New York State Law. The New York State Court of Appeals has expanded prior written notice protection to include that which is the “functional equivalent” of those categories allowed under New York State Law. While New York State Law requires that counties must provide for constructive notice with regard to defects or dangerous conditions on highways, bridges, and culverts (except those involving snow and ice), the County’s law goes further and makes its constructive notice exception apply to streets, sidewalks, and crosswalks as well. (*Compare* LWC § 780.01 with HL § 139(2)).

Your Committee notes that, as a consequence, the County is and has been needlessly liable over the last thirty years for damages as a result of claims that would otherwise be dismissed for lack of prior written notice, if the constructive notice exception in LWC § 780.01 did not apply so broadly.

Your Committee is further notes that the proposed amendments incorporate the Court of Appeals’ expansion of prior written notice protection to cover stairways, parks, and parking lots, as well as any encumbrances thereon or attachments thereto that are necessary for the functioning of a building, structure, encumbrance or attachment under the jurisdiction of the County. The proposed amendments also eliminate the constructive notice exception for streets sidewalks, and crosswalks since it is not required by New York State law.

Your Committee is further informed that the proposed amendments also eliminate the constructive notice exception language because it is not necessary to have such a provision since the Courts have routinely read the exception into local municipal laws that do not expressly provide it. As such, it is recommended that constructive notice be removed from the County's law since it is already a requirement of New York State law.

Your Committee is further informed that the proposed amendments do not meet the definition of an action under New York State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617. Please refer to the memorandum from the Department of Planning dated January 8, 2024, which is on file with the Clerk of the Board of Legislators.

Your Committee, after careful consideration, recommends adoption of this Local Law.

Dated: _____, 2024
White Plains, New York

COMMITTEE ON

RESOLUTION NO. ____ - 2024

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. ____ - 2024, entitled, "A LOCAL LAW amending Chapter 780 of the Laws of Westchester County relating to the requirement that the County receive prior written notice of a defective condition to maintain a civil action." The public hearing will be held at __.m. on the _____ day of _____, 2024 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

LOCAL LAW INTRO. NO. 2024

A LOCAL LAW a Local Law amending Chapter 780 of the Laws of Westchester County relating to the requirement that the County receive prior written notice of a defective condition to maintain a civil action.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Chapter 780 of the Laws of Westchester County is hereby amended to read as follows:

Chapter 780

Sec. 780.01. - Notice of defective condition required prior to maintenance of civil action.

- a. No civil action shall be maintained against the County or any of its departments, agencies, offices, boards, commissions, subdivisions, its officers or employees for damages or injuries to person or property sustained ~~in consequences~~ by reason of any road, street, parking lot and parking field, highway, guide rail, bridge, viaduct or overpass, culvert, sidewalk, ~~or~~ crosswalk, walkway, pathway, boardwalk, step, stairs, or stairway, crosswalk, underpass, ramp, runway or taxiway, tree, tree limb, bush, or vegetation, or building or other property and land, or any part or portion of any of the foregoing including any encumbrances thereon or attachments thereto, under the jurisdiction of the County, allegedly being defective, out of repair, unsafe, dangerous, or obstructed, or in consequence of the existence of snow or ice thereon, unless the County received prior written notice within a reasonable time before said injury or property damage was sustained, of such defective, unsafe, dangerous, or obstructed condition, or that snow or ice existed on or around the items identified above, specifying the particular place and nature of the alleged condition, ~~was actually given to the Clerk of the Board of Legislators or the Commissioner of Public~~

~~Works and Transportation and 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, or snow or ice complained of or to make the place otherwise reasonably safe, in the absence of such notice, unless 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; nor shall any civil action be maintained against the County, its officers or employees for damages or injuries to person or property sustained solely in consequence of the existence of snow or ice upon any road, street, highway, bridge, culvert, sidewalk or crosswalk, unless prior written notice thereof, specifying the particular place, was actually given to the Clerk of the Board of Legislators or Commissioner of Public Works and Transportation and there was a failure or neglect to cause such snow or ice to be removed or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.~~

- b. “Reasonable time” shall mean (i) at least 30 days for conditions other than ice and snow, and (ii) at least 72 hours for conditions caused by snow or ice prior to an incident, in which damages or injuries to a person or property occurred.
- c. Prior written notice shall be made in writing by certified or registered mail to the Clerk of the Board of Legislators or Commissioner of Public Works and Transportation.

Sec. 780.11. - Submission of notices to Clerk.

The Commissioner of Public Works and Transportation shall transmit in writing to the Clerk of the Board of Legislators, within ten days after receipt thereof, all written notices received by him or her pursuant to section 780.01.

Sec. 780.21. – Record of notices.

The Clerk of the Board of Legislators shall keep an indexed record, in a separate book, of all written notices which he or she shall receive pursuant to section 780.01 or section 780.11 of the existence of such defective, unsafe, dangerous, ~~or~~ obstructed condition, or snow or ice which record shall set forth the date of receipt of such notice, the nature and locations of the condition stated to exist and the name and address of the person from whom the notice is received. The record of each notice shall be preserved for a period of five years after the date it is received.

Sec. 780.31. – Other duties not affected.

Nothing set forth in this chapter shall relieve a claimant from compliance with any other provision of law, including but not limited to timely service of a notice of claim in accordance with law.

Section 3. Effective Date. This Local Law shall take effect immediately after enactment.

jsw-2-8-2024