

# Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County  City  Town  Village  
(Select one:)

of NORTH DANVILLE

Local Law No. 4 of the year 20<sup>23</sup>

A local law

(Insert Title)

THE LOCAL HIGHWAY EXCAVATION LAW

Be it enacted by the TOWN BOARD of the  
(Name of Legislative Body)

County  City  Town  Village  
(Select one:)

of NORTH DANVILLE as follows:

SEE ATTACHED

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 4 of 2023 of the ~~(County)(City)(Town)(Village)~~ of NORTH DANSVILLE was duly passed by the TOWN BOARD on OCTOBER 10 2023, in accordance with the applicable provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_.

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

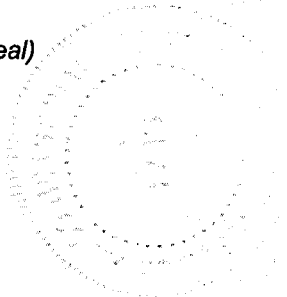
I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

*Lori Tyler*

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 10-16-23

(Seal)



LOCAL LAW # \_\_\_4\_\_\_ of the year 2023

BE IT ENACTED by the Town Board of the Town of North Dansville, New York as follows:

SECTION 1: TITLE

This Local Law shall be known as "The Local Highway Excavation Law."

SECTION 2: LEGISLATING FINDINGS AND PURPOSE

The Town Board has determined that there is a need to control all excavations of all Town highways and the land thereunder by all third parties other than the Town in order to preserve the condition and integrity of such highways. To do so, it is further determined that a permit process is required together with such conditions to insure that said excavations are done in such manner as to preserve the public welfare, and that the affected highways are returned to good condition thereafter. It is the purpose of this Local Law to establish such permit process and to prescribe the conditions therefor.

SECTION 3: AUTHORITY

This Local Law is enacted pursuant to New York State Municipal Home Rule Law Section 10, New York State Highway Law Sections 140, 320 and 326, and New York State Town Law Section 130(7).

SECTION 4: DEFINITIONS

1. HIGHWAY – Every street, road, highway and other public thoroughfare under the control of the Town of North Dansville Highway Superintendent, as more further defined in the New York State Highway Law definitions of "Highway" and "Town Highway."
2. EXCAVATION – Any digging or other disturbance into and/or under the surface of a highway.

SECTION 5: PERMIT PROCESS AND CONDITIONS THEREFORE

A. Except for the Town of North Dansville, its employees and agents, and except as otherwise provided by law, all persons and entities, public and/or private, must first obtain a permit from the Town Superintendent of Highways before any excavation of any Town Highway is commenced by any such person or entity. A true copy of the permit application form is attached hereto, all of the terms of which are made a part hereof.

B. Except in case of emergency, such permit shall be applied for and submitted to the said Town Highway Superintendent, either directly or through the Town Clerk, at least ten (10) business days before the excavation is to occur. In case of emergency, the application may be submitted to either said individual at any reasonable time.

C. The permit application shall include the following:

1. a. Entity Requesting Permit – The name and address of said entity and all contact information therefor.

b. Entity Performing the Excavation – If the actual entity performing the excavation is different than the applicant, then the name and address of the separate entity performing the excavation and all contact information therefor.

2. PURPOSE – The purpose for which the excavation is being performed.

3. LOCATION – The specific location of the excavation and a detailed, 3-dimensional, scaled diagram thereof.

4. DURATION – The duration of the excavation work, including date and time of commencement as well as the date and time that the affected highway area is expected to be completely restored to good condition.

5. TRAFFIC CONTROL – A detailed description of the methods by which traffic shall be controlled and/or diverted during said work.

6. COST OF REPAIR – The expected total cost to repair all damage to the surface and/or subsurface of the highway being excavated to bring said area into good condition.

7. INSURANCE – The applicant must provide for the application the following insurances in favor of the Town:

a. Insurance(s) indemnifying, defending and holding the Town harmless from all injury to person and damage to property associated or connected in any way with the excavation, in an amount of \$3,000,000 per person, \$6,000,000 aggregate per occurrence.

b. Proof of Workers' Compensation covering all of the excavator's employees and subcontractors, and their employees and agents.

c. A surety bond, or in lieu thereof a cash deposit, in an amount reasonably determined by the Town Highway Superintendent, to cover the probable expense to the Town to restore the highway and any adjoining public areas affected by said excavation, any unexpended balance to be refunded to the depositor.

d. Form and Content – All insurance policies and surety bonds shall be issued by companies authorized to do business in New York State and shall be in form and content acceptable to the Town's attorney.

8. CONDITIONS – The permit shall contain the following conditions and responsibilities of the applicant and excavators:

a. The excavation shall be done in such time and manner as agreed to by the Town Superintendent so as to be minimally invasive to the highway surface and subsurface, and to be as minimally disruptive to the traffic and the public welfare as possible.

b. All excavations shall be subject to the approval of the Town Highway Superintendent and may be halted or otherwise limited by said Superintendent at any time that he determines is in the best interest of the Town.

c. The applicant, actual excavators and subcontractors shall:

(1) Adhere at all times to all requirements imposed by the Town Highway Superintendent.

(2) Indemnify, defend and hold harmless the Town from all injury to person and damage to property arising out of or connected in any way with the excavation as well as to the restoration of the highway thereafter.

(3) Perform all work in a good, workmanlike manner, and complete all work and restoration of the highway as expeditiously as possible.

(4) Restore the surface and subsurface of the highway as well as any other public property disturbed by the excavations to good condition as determined by the Town Highway Superintendent in accordance with such specification as he determines. To the extent this is not fully completed, the Town can use the surety bond, or deposited amount, to complete said restoration. To the extent the bond or deposit does not cover the full restoration of the Town, the applicant, actual excavator and all subcontractors shall be individually and jointly liable for all expenses incurred by the Town to complete same.

9. SIGNATURES – The applicant, actual excavators and all subcontractors shall sign and be responsible for all requirements of this permit.

#### 10. PERMIT FEE AND CHARGES

a. The permit fee shall be \$25 for each excavation.

b. In addition, if any such excavation is required to be reviewed by the Town's Engineer, as determined in the sole discretion of the Town Highway Superintendent, all of the Engineer's fees shall be paid by applicant in advance and/or at such other times as Engineer requires.

#### SECTION 6: ENFORCEMENT AND PENALTIES

A. TREBLE DAMAGES – Any person or entity that excavates any Town highway without first obtaining a permit as required herein shall be liable to the Town for treble damages incurred by the Town pursuant to Highway Law Section 320 to enforce this Local Law, stop the excavation, and restore the highway and any other disturbed public surfaces to good condition, including all legal, engineering and other professional services to accomplish same.

## B. CRIMINAL PENALTY

1. Any person or persons convicted of violating any provision of this Local Law shall be guilty of a violation. A conviction of a first violation is punishable by a fine of not more than \$500 or imprisonment not to exceed three (3) months, or both. A conviction of a second violation occurring within a period of five (5) years is punishable by a fine of not less than \$500 nor more than \$800 or imprisonment not to exceed six (6) months, or both. A conviction of a subsequent violation occurring within a period of five (5) years is punishable by a fine of not less than \$800 nor more than \$1,000 or imprisonment not to exceed nine (9) months, or both. Each week that a violation continues uncorrected or is resumed shall constitute a separate additional violation.

2. The Town Highway Superintendent and County Sheriff are hereby authorized to issue and serve appearance tickets with respect to any violation of this Local Law. The Town Attorney shall prosecute all such violations.

C. In addition to the penalties prescribed herein, if any use of Town Highways is made or threatened in violation of the New York Highway Law, the New York Vehicle & Traffic Law, or other Local Law or ordinance of the Town, the Town Highway Superintendent may, in the name of and on behalf of the Town, at the Town Board's direction, seek all remedies allowed pursuant to such laws or ordinances.

D. In addition to the penalties and punishment herein, at the direction of the Town Board, the Town Attorney may maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or restrain any violation of this Local Law.

E. In all cases the violator(s) shall be liable for all of the Town's professional fees, including but not limited to all attorney's fees, court costs and disbursements incurred by the Town to enforce this Local Law and to recover all sums the Town is entitled to by this Local Law.

F. The Town shall also be entitled to seek any other legal remedies allowed to the Town by law.

## SECTION 7: INCONSISTENT PROVISIONS

To the extent, if any, that any provision(s) of this Local Law are inconsistent with any other of this Town's Local Laws or ordinances, the provisions of this Local Law shall prevail.

## SECTION 8: SEVERABILITY

If any part or provision of this Local Law or the application thereto to any Person or circumstance shall be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other Persons or circumstances.

## SECTION 9: EFFECTIVE DATE

**This Local Law shall take effect upon filing with the New York Secretary of State.**



**ATTACHMENT**  
**LOCAL LAW #4 2023**

TOWN OF NORTH DANVILLE

PERMIT APPLICATION FOR HIGHWAY EXCAVATION

1. DATE OF APPLICATION: \_\_\_\_\_
2. APPLICANT OR ENTITY REQUESTING PERMIT:
  - a. NAME: \_\_\_\_\_
  - b. ADDRESS: \_\_\_\_\_
  - c. EMAIL ADDRESS: \_\_\_\_\_
  - d. CONTACT PERSON SUPERVISING THE WORK
    - 1.) Name: \_\_\_\_\_
    - 2.) Direct Telephone Number: \_\_\_\_\_
    - 3.) Direct Email Address: \_\_\_\_\_
3. ALL ENTITIES, INCLUDING AGENTS AND SUBCONTRACTORS, PERFORMING THE EXCAVATION:  
For each such entity, attach a separate paper listing all information requested in paragraph 2 above.
4. PURPOSE FOR WHICH THE PROPOSED EXCAVATION IS SOUGHT TO BE MADE:  
\_\_\_\_\_  
\_\_\_\_\_
5. LOCATION AND DIAGRAM:
  - a. SET FOR THE SPECIFIC LOCATION OF THE EXCAVATION:  
\_\_\_\_\_  
\_\_\_\_\_
  - b. Attach a detailed three dimensional, scaled diagram of the excavation to be made at said location.
6. DURATION OF EXCAVATION WORK:
  - a. DATE AND TIME OF COMMENCEMENT: \_\_\_\_\_
  - b. DATE AND TIME AFFECTED HIGHWAY AREA IS EXPECTED TO BE RESTORED TO GOOD CONDITION: \_\_\_\_\_
7. TRAFFIC CONTROL PROCEDURES TO BE UTILIZED:  
Attach a detailed description of the methods by which vehicle and other traffic shall be controlled and/or diverted.
8. COST OF REPAIR:  
Attach a detailed, itemized estimate of the total cost, including labor and materials, to repair all damage to the highway surface and subsurface affected to bring said area into good condition.
9. INSURANCES, AND SURETY BONDS (OR CASH DEPOSIT)
  - a. Attach and provide insurance(s) indemnifying, defending, and holding the Town harmless from all injury to person and damage to property associated and/or connected in any way with the excavation project, in an amount of \$3,000,000 per person, \$6,000,000 per occurrence.
  - b. Attach and provide proof of Workers' Compensation insurance covering all of the excavators and subcontractors, and their employees and agents.
  - c. Attach and provide a surety bond, or in lieu thereof a cash deposit, in form acceptable to the Town, in an amount reasonably determined by the Town Highway Superintendent, to cover the probable expense to the Town to restore the highway and any adjoining public areas

affected by said excavation to good condition as determined by said Superintendent, any unexpended balance, without interest, to be refunded to the depositor.

NOTE: All insurance policies and surety bonds shall be issued by companies authorized to do business in New York State and shall be in form and content acceptable to the Town's attorney.

**10. PERMIT FEE:**

- a. A permit application fee of \$25.00 shall be submitted with this application, payable to the Town of North Dansville.
- b. In addition, if any such excavation is required to be reviewed or monitored by the Town's engineer, as determined in the sole discretion of the Town Highway Superintendent, all of the Engineer's fees shall be paid by applicant in advance and/or at such other times as Engineer requires.

**11. CONDITIONS AND RESPONSIBILITIES OF APPLICANT AND EXCAVATORS:**

The following terms and conditions shall be made part of the permit and shall be the joint and several obligations of the applicant, actual excavators and all subcontractors and their agents:

- a. The excavation shall be done in such time and manner as agreed to by the Town Highway Superintendent so as to be minimally invasive to the highway surface and subsurface, and to be as minimally disruptive to the traffic and public welfare as possible.
- b. All excavations shall be subject to the approval of the Town Highway Superintendent and may be halted or otherwise limited by said Superintendent at any time he determines is in the best interest of the Town.
- c. The applicant, actual excavators and subcontractors shall:
  - 1.) Adhere at all times to all requirements imposed by the Town Highway Superintendent. There shall be no deviation from the plans set forth in this application without the written permission from said Superintendent.
  - 2.) Indemnify, defend, and hold harmless the Town from all injury to person and damage to property arising out of or connected in any way with the excavation as well as the restoration of the highway thereafter.
  - 3.) Perform all work in a good, workmanlike manner, and complete all work and restoration of the highway as expeditiously as possible.
  - 4.) Restore the surface and subsurface of the highway as well as any other public property disturbed by the excavations to good condition as determined by the Town Highway Superintendent in accordance with such specifications as he determines. To the extent this is not fully completed in a timely manner as determined by said Superintendent, the Town can use the surety bond, or deposited amount, to complete said restoration. To the extent the bond or deposit does not cover the full restoration expenses incurred by the Town, the applicant, all excavators, and all subcontractors shall be jointly and severally liable for all expenses of the Town to complete same.
- d. The applicant, excavators and subcontractors have been provided a copy of the Town's Local Highway Excavation Law, a copy of which is attached hereto, and agree to be bound by all of the terms of said local law as well as the terms of this application, including but not limited to all of the terms of Section 6 of said Local Law entitled "Enforcement and Penalties".

**SIGNATURES**

**APPLICANT:** \_\_\_\_\_

**NAME OF PERSON SIGNING:** \_\_\_\_\_

**POSITION WITH APPLICANT:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**EXCAVATOR:** \_\_\_\_\_

**NAME OF PERSON SIGNING:** \_\_\_\_\_

**POSITION WITH EXCAVATOR:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**SUBCONTRACTOR # 1:** \_\_\_\_\_

**NAME OF PERSON SIGNING:** \_\_\_\_\_

**POSITION WITH SUBCONTRACTOR:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**SUBCONTRACTOR # 2:** \_\_\_\_\_

**NAME OF PERSON SIGNING:** \_\_\_\_\_

**POSITION WITH SUBCONTRACTOR:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**PERMIT**

**A PERMIT IS HEREBY ISSUED TO APPLICANT TO DO THE WORK SPECIFIED IN THE ABOVE APPLICATION, BASED ON ALL OF THE TERMS, REQUIREMENTS AND CONDITIONS SET FORTH IN SAID APPLICATION AND IN THE TOWN'S HIGHWAY EXCAVATION LOCAL LAW.**

\_\_\_\_\_  
Town Superintendent of Highways      Date

OR

**PERMIT DENIAL**

The aforesaid permit application is denied for the following reason(s):

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Town Superintendent of Highways      Date

**NOTE**

**If this permit application is denied, the applicant may APPEAL to the Town Board of the Town of North Dansville by filing a written, signed Notice of Appeal setting forth in full detail why the denial should be reversed and permit granted, said notice to be filed with the Town Clerk within ten (10) business days after the denial is made, TIME BEING MADE OF THE ESSENCE, otherwise the right to appeal is loss.**