

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
Village
of Lincoln
Town
City

Local Law No. 1 of the year 2021.

A local law requiring work permits with respect to Town of Lincoln roads and highways
(Insert Title)

Be it enacted by the Town Board of the

County
City
of Lincoln as follows:
Town
Village

Section 1. Purpose

Town highways and the rights-of-way associated with them represent substantial assets of the Town of Lincoln. The Town Board is the trustee for these public thoroughfares, and the Town Board recognizes its obligation to protect the public health, safety and welfare of its residents and the public in general by insisting that any work performed in these highways, including, but not limited to, the placement of utility poles, lines, wires, guy wires and appurtenant facilities, be performed in a professional manner, with the work being completed as safely and expeditiously as possible. In order to attain this goal, the Town Board finds that it is necessary to enact a local law requiring those performing work in Town highways to obtain permits from the Town so that the Town can adequately monitor the work performed and ensure that it is performed with as least disruption to the public as possible, in as safe a manner as possible and returned to the way it was before the construction began.

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

Section 2. Permits

Any person, institution or corporation desiring permanent or temporary access to a town highway shall obtain a town highway work permit from the Town Highway Superintendent prior to the commencement of construction. No person shall excavate in, under, over or through a Town Highway. Place any objects or facilities within a Town Highway, including, but not limited to utility poles, transmission and distribution wires, guy wires, transformers and switch boxes, or perform any construction within or otherwise interfere with a Town highway without first obtaining a permit for such work from the Highway Superintendent. Any such work performed shall fully comply with all conditions under which said permit is granted.

A. Application:

- (1) Applications for highway work permits shall be on such forms as determined and supplied by the Town Highway Superintendent and shall include such information as may be determined necessary by the Highway Superintendent to determine compliance with this local law and any other applicable codes, rules and regulations.
- (2) The applicant shall furnish with the application maps and plans detailing the work to be performed and the specific location of the work for which approval is requested. The Town Highway Superintendent may require such other additional documentation including but not limited to photographs, surveys or reports as the Highway Superintendent in his sole discretion shall deem appropriate.
- (3) All applicants for permits shall give at least two weeks' notice, in writing, to the Highway Superintendent, specifying the place, kind and approximate size of the excavation or work and the time required to do the work, except in cases of emergency, such as the sudden failure of a public utility pole or facility, in which case such notice shall be given to said Highway Superintendent as soon as possible and the applicant shall give prompt notice of the completion of its work to the Highway Superintendent.

- B. Issuance. At a reasonable time after the submission of a completed application, appropriate fee, as determined from time to time by resolution of the Town Board, and additional documentation, if necessary, the Town Highway Superintendent shall determine whether the application is in compliance with the provisions of this local law. Should compliance be determined, the Highway Superintendent shall issue a permit for the construction as specified on the application. An incomplete application or lack of sufficient information shall be cause for denial of the permit.

Section 3. Definitions

For the purposes of this local law, the following words, phrases and terms and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular, words used in the singular number include the plural, and words in the masculine include the feminine. The word "shall" is always mandatory and not merely directory.

HIGHWAY SUPERINTENDENT

The Highway Superintendent of the Town of Lincoln.

PERSON

Any person, firm, partnership, association, corporation, company or organization of any kind.

TOWN

The Town of Lincoln.

TOWN BOARD

The Board of the Town of Lincoln.

TOWN HIGHWAY

All the land, public fixtures, public improvements and public facilities used, maintained or held for highway purposes located within the boundary lines of any real property within, upon, over and/or under which the Town has a right or interest, whether pursuant to ownership in fee, by easement, by permission, by use, by possession or by statute, irrespective of whether such property has been formally conveyed or dedicated to the Town or offered for dedication but not yet accepted or laid out by the Highway Superintendent. The term "highway" includes a street, avenue, road, square, place, alley, lane, boulevard, concourse, parkway, driveway, overpass and underpass and also includes all items appurtenant thereto, including but not limited to bridges, culverts, ditches, shoulders, signs, signals and sidewalks.

UTILITY

Any corporation, authority, or other entity or individual that provides electric, telephone, cable television, internet or any other telecommunications services.

Section 4. Exceptions

This local law shall not apply to the following:

- A. Any construction or excavation which has been contracted for by the Town Board or approved by the Town Board pursuant to another local law, ordinance, regulation or resolution.
- B. Highway repairs and maintenance performed at the direction of the Highway Superintendent.
- C. The replacement in kind in the same location of any existing utility pole or facility that has been damaged or has otherwise failed and such replacement is required in order to restore or maintain utility service to existing customers.

Section 5. Insurance and Indemnification Requirements

- A. The permittee shall be responsible for all damages resulting in bodily injury, including death, and/or property damage liability due to the installation, maintenance, use or existence of any facility of the permittee, or which arises out of the activities of the permittee, its contractors, subcontractors of either or both, agents or employees, in connection with any act or omission hereunder, and the permittee does hereby expressly agree to indemnify and save harmless the Town of Lincoln and/or the Highway Superintendent of the Town of Lincoln, and his representatives and employees, from any claims, suits, actions, damages and costs of every name and nature and description, arising out of or resulting from any act or omission hereunder of either the permittee or

the Town of Lincoln and its agents and employees, and the permittee does hereby further expressly agree to pay any damages because of injury to or destruction of part or all of any Town Highway owned and maintained by the Town of Lincoln, or which may be caused, directly or indirectly by any occurrence and arising out of the existence, maintenance or use of any facility or the matter and contents thereof as such facility, matter and contents are authorized for the installation, connection, maintenance, transportation or transmission on and across any Town highway.

- B. The permittee shall obtain a protective liability insurance policy issued to and covering the liability of the Town of Lincoln, the Town of Lincoln Highway Department and the Highway Superintendent, with respect to all operations under this permit by the permittee or by anyone acting by, through or for the permittee, including omission and supervisory acts of the Town of Lincoln. The limit of liability in such policy shall be not less than \$1,000,000 for all damages arising out of bodily injury (including death) and property damage. Such policy shall state that it will not be changed or canceled until 30 days written notice has been given to the Highway Superintendent or his representative. Unless expressly waived, in writing, by the Highway Superintendent, or his representative, the permittee shall furnish with the application filed, in order to obtain this permit, a certificate of insurance verifying the amounts of protective liability insurance. The enumeration in this permit of this kind and amount of insurance shall not abridge, diminish or affect the permittee's legal responsibility for the consequences of accidents arising out of or resulting from the operations of the permittee under this permit.

Section 6. Fees and deposits.

- A. A cash undertaking or a certified check in an amount determined by the Highway Superintendent shall be deposited with the Supervisor of the Town of Lincoln at the time of the issuance of this permit, which shall be deemed, and shall be used as security so that the highway, or any part thereof, will be restored to its original condition where disturbed at the expense of the permittee, and as soon as the work has been completed, and the Highway Superintendent or his representative is hereby authorized to expend all or as much of such deposit as may be necessary for that purpose should the permittee neglect or refuse to perform the work.
- B. The permittee shall be responsible for any and all claims and damages arising out of operations by this permit which may result because of any dangerous conditions created by the existence of any debris or obstruction left on the pavement or roadside during the progress of the work which may be either within the highway, right-of-way or on adjacent property. Should the Highway Superintendent or his representative discover any hazardous condition so created, he may issue verbal instructions or written notice to the permittee to eliminate the cause. In the event that the permittee fails to take immediate action to remove such hazardous condition, the Highway Superintendent reserves the right to take such action as he may deem necessary to safeguard the public. All cost resulting therefrom shall be paid by the permittee and shall be deducted from any deposit on file or any surety given by the permittee. In the event that the expenses exceed the amount of any surety bond or deposit, the permittee shall promptly pay the balance due.

Section 7.

General rules and regulations.

The applicant shall comply with the following rules and regulations.

- A. Work authorized by this permit shall be commenced within 30 days from the date of permit and shall be performed in a workmanlike and expeditious manner without unreasonable delay or interference with public travel. The permittee shall provide all necessary and suitable safeguards so as to reduce to an absolute minimum any dangerous condition hazardous to life, limb or property.
- B. The permittee shall submit, with the application filed in order to obtain a permit to said Highway Superintendent, or his representative, a detailed plan of any structure(s) or facilities to be built, placed or installed, if any, with a description of the proposed method of construction before any work hereunder is started.
- C. Traffic shall be maintained and flagmen provided by the applicant and/or permittee during the period of time the work is in progress and until its final completion. The applicant and/or permittee assume full responsibility for all traffic control and are required to place adequate warning signs at least 300 feet on each side of the work site.
- D. The permittee expressly agrees that the rights of abutting property owners in fee to the center line of the Highway shall not be encroached upon, and that any utility and communications lines, wires and pipes, including drainage, sewer and/or water pipes or appurtenances which are laid under this permit shall be placed at least four feet below, and in such a manner as in no way to interfere with the pavement, shoulders or drainage ditches of the Highway. Upon the completion of the work, the highway shall be left in as good condition as before the work was performed and to the complete satisfaction of the Highway Superintendent.
- E. The applicant and permittee agree to keep in good repair all pipes, hydrants or appurtenances which may be placed within the bounds of the highway under the terms of this permit, and agrees to save the Town harmless from any and all damages which may accrue by reason of and location in the highway whether due to the negligence of said permittee or the negligence of the Town of Lincoln, its agents, servants and employees, and upon notice from the Highway Superintendent, said permittee agrees to make any and all repairs required for the protection and preservation of the highway; and said applicant and permittee further agrees that upon the failure of said applicant, and/or permittee to make such repairs, they may be made by the highway Superintendent at the sole expense of the applicant and such expense shall be a prior lien upon the land benefited by and from the use of the highway for such pipes, hydrants and appurtenances. It is further agreed by the applicant and permittee that any injury or disturbance of the paved portion of the highway, its shoulders or drainage ditches, which may occur hereafter by reason of the laying of any drainage, sewer or water pipes and their appurtenances, shall be repaired and at the expense of the applicant and permittee and to the complete satisfaction of the Highway Superintendent.
- F. Written permission to close a road to traffic must first be secured from the Highway Superintendent, and such permission shall only be valid for the time specified. Such

written approval may require the permittee to give notification of such closing to various public agencies and to the general public.

- G. All openings shall be covered or filled overnight unless permission is obtained from the Highway Superintendent and the opening is adequately protected. The applicant shall open no greater part of such road than shall be reasonably necessary.
- H. Any road, when opened and excavated, shall be promptly backfilled and restored to specifications approved by the Highway Superintendent.
- I. Where multiple openings are made, the applicant shall resurface with one strip to prevent a washboard effect.
- J. Any other requirement deemed necessary by the Highway Superintendent for the particular situation.

Section 8. Special Requirements for Utility Poles and Facilities

No new utility poles, guy wires, ground mounted transformers, switch boxes or other above ground facilities shall be constructed within the Town Highways unless the applicant has first obtained the written consent of the Town Highway Superintendent after demonstrating to the reasonable satisfaction of the Highway Superintendent that there is no practical physical access to place wires and/or other facilities on existing poles and that underground installation is not practicably feasible.

Section 9. Right to revoke permit.

The Highway Superintendent, or his duly authorized representative, shall have the right to revoke or annul a permit at any time without the necessity of a hearing or showing cause if he determines that false or inaccurate information was provided at the time of the application or thereafter, or in the event work is proceeding in violation of the provisions of this local law or the directives of the Highway Superintendent.

Section 10. Liability

The adoption of this local law is to provide a minimum procedure for the regulation of construction within town highways. Its adoption and enforcement is not intended to relieve persons carrying out such construction in the town from any obligation or responsibility to avoid the creation of dangerous conditions. Additionally, the adoption, administration or enforcement of this local law shall not act as the basis for any claim of any nature against the Town of Lincoln.

Section 11. Penalties for offenses.

Any person, firm or corporation violating any of the provisions of this local law shall, upon conviction thereof, be responsible for all fees that were due under the fee schedule of this chapter and be subject to a fine not exceeding \$250.00 or imprisonment for up to fifteen days, or both. Each day a violation exists shall constitute a separate offense.

Section 12. Severability.

If any paragraph, section, sentence or portion of a sentence of this local law shall be found and determined to be invalid, unlawful and/or unconstitutional, such determination shall not invalidate or void any other paragraph, section, sentence or portion thereof, and such other parts thereof shall remain in full force and effect unless and until legally revoked, modified and/or amended.

Section 13. Effective Date

This local law shall take effect immediately upon its filing with the Secretary of the State.

**(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. _____ of 2021 of the
(County)(City)(Town)(Village) of Lincoln was duly passed by the
Town Board on May 12, 2021, in accordance with the applicable provisions of law.
(Name of Legislative Body)

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)(City) of _____ was duly passed by the
_____ on _____ 20____, and was (approved)(not approved
(Name of Legislative Body)
(repassed after disapproval) by the _____ and was deemed duly adopted
(Elective Chief Executive Officer*)
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)(City) of _____ was duly passed by the
_____ on _____ 20____, and was (approved) (not approved
(Name of Legislative Body)
(repassed after disapproval) by the _____ on _____ 20____.
(Elective Chief Executive Officer*)
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 elector 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)(City) of _____ was duly passed by the
_____ on _____ 20____, and was (approved) (not approved
(Name of Legislative Body)
(repassed after disapproval) by the _____ on _____ 20____.
(Elective Chief Executive Officer*)
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 City, 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.)

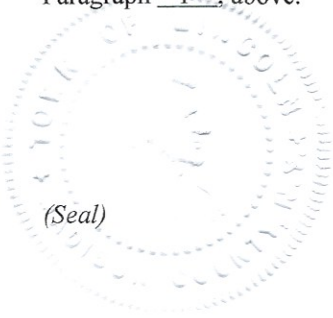
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36) (37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified 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 electors of 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 such 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.



Amy Beckus

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

Date: 5/12/2021

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF MADISON

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature

Attorney for the Town

Title

County
Village
of Lincoln

Town
City

Date: _____

