

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 Davenport

FILED
STATE RECORDS

SEP 03 2015

DEPARTMENT OF STATE

Local Law No. 3 of the year 2015

A local law with respect to underground utilities in public rights-of-way
(Insert Title)

Be it enacted by the Town Board of the
(Name of Legislative Body)

County City Town Village
(Select one.)

of Davenport

as follows:

SECTION 1: TITLE & APPLICATION; FINDINGS – This Local Law shall be known as "Local Law Number 3 of 2015." Local Law Number 3 of 2015 hereby repeals any prior Local Law or resolution that is inconsistent herewith. This Local Law applies only within the Town of Davenport, Delaware County, New York. The Town of Davenport (the "Town") hereby finds and declares that the general public necessity, convenience, health, safety, and welfare require that utility service cables be installed underground in public rights-of-way in an orderly manner in accordance with the requirements specified in this chapter. Thus, based thereupon, and upon the authority granted to the Town of Davenport under and pursuant to Town Law §§ 64 and 130(7), and §§ 10(1)(a)(6) and 10(1)(a)(12) of the Municipal Home Rule Law, the Town of Davenport adopts this Local Law to preserve and protect highways and related rights-of-way, and to ensure the safety of the general public.

SECTION 2: APPLICATION – This law shall apply to any person or entity that installs service cables, conduits or lines, including but not limited to electric, telephone, fiber and cable television services, within the Town limits.

SECTION 3: DEFINITIONS

A. BURIED LINE INSTALLATION – "Buried Line Installation" shall mean any procedure using specialized equipment which, in a linked sequence of operations, opens soils to the desired depth, and places or lays in a cable, conduit or line for any purpose, including but not limited to electric, telephone, fiber and/or cable television services.

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

A. CONSTRUCTION - "Construction" means the building, installation, repair, or replacement of any utility service cable, that proposes to or does alter the surface of any Public Right-of-Way, or which affects the soils under or next to any Highway, including, but not limited to, all underground cable/and or conduit, telephone lines, high-speed internet, television cable lines, transformers, and other associated equipment.

B. CONTRACTOR - "Contractor" shall mean any person or entity, including any landowner or private citizen that proposes any Buried Line Installation or Construction under, in or upon any Public Right-of-Way or Highway.

C. HIGHWAY - "Highway" shall mean each, every, and all public streets, public sidewalks, public roads, public alleys, and public highways within the Town of Davenport that are highways by use, highways by dedication, and/or highways by implication, including the paved or finished surfaces thereof, all signage, all ditches, culverts, drains and drainage ways, all utility and similar structures and appurtenances, and all land, improved or otherwise, within the bounds of the highway rights-of-way.

D. HIGHWAY SUPERINTENDENT - "Highway Superintendent" shall mean the elected or appointed Highway Superintendent of the Town of Davenport, as applicable, together with the designees of each such person who are given specific written authorization to act for such Highway Superintendent under this Local Law.

E. PUBLIC RIGHT-OF-WAY - "Public Right-of-Way" shall mean the area within the territorial limits of any street, avenue, road or way that is for any highway purpose under the jurisdiction of the Town of Davenport, that is open to public use and that may be used for the placement of utility facilities.

SECTION 4: UNDERGROUND REQUIREMENTS - Any and all Buried Line Installations or construction of any such cable, conduit or line, located in a public right-of-way, must be buried at a minimal required depth of at least thirty six inches (36").

SECTION 5: VARIANCE PROCEDURES -)

A. All applications for variances from the foregoing underground requirements shall first be filed with the Superintendent of Highways. If the Superintendent of Highways shall deny such variance request, the applicant shall have the right to appeal such ruling to the Town Zoning Board of Appeals.

B. Underground requirements shall be waived by a variance only if the owner of any utility service cables, the user thereof or any other affected person

can demonstrate that it would be an undue hardship to construct such facilities underground. The term undue hardship shall mean either:

1. There is a technological difficulty associated with such facilities or with the real property involved;
2. The cost of the underground construction outweighs the general welfare consideration in requiring underground construction; or
3. The growth pattern in the geographical area has not been sufficiently established to determine the ultimate service requirements or major service routes.

SECTION 6: ENFORCEMENT OFFICER - The Highway Superintendent is hereby authorized, directed and designated to enforce the provisions of this Local Law.

SECTION 7: OFFENSES; PENALTIES; ENFORCEMENT - Any violation of this Local Law shall subject any Contractor, person or other party to a civil penalty of not less than \$100.00 and not more than \$500.00 for any first violation, and to a civil penalty of not less than \$250.00 and not more than \$1,000.00 for any subsequent violations, with such penalties to be recovered in a civil action in the name of the Town of Davenport. The application of any penalty shall not preclude the enforced removal or prevention of any prohibited conditions or violations of this Local Law. Nothing in this Local Law shall prohibit the Town of Davenport from seeking any other relief as may be provided for or allowed by law or in equity, or be deemed to effect an election of remedies by the Town of Davenport. Any fine provided for in this Local Law is intended to be in addition to, and not in lieu of, any rights or remedies the Town of Davenport may have in such circumstances.

SECTION 8: ARTICLE 78 - The actions and determinations of the Town of Davenport, and its elected officials, employees, and agents shall each be deemed "final determinations" for purposes of Article 78 of the New York Civil Practice Laws and Rules ("CPLR"). Notwithstanding this, standing under said Article 78 of the CPLR shall only be appropriate after the exhaustion of any administrative appeals as provided for in this Local Law.

SECTION 9: LIABILITY AND INDEMNITY - The Contractor assumes sole responsibility for the worksite and all related or adjacent areas and lands and agrees to assume all responsibility for any injury or damage that may or does occur as a result of any Buried Line Installation or Construction and any related work. The Contractor, to the fullest extent permitted by law, shall indemnify and hold the Town of Davenport harmless from and against any, each, and all losses, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity (all together

hereafter, "Claim"), including, but not limited to, reimbursement to the Town of Davenport any amount expended for any and all experts', consultants', attorneys' and engineering fees and expenses arising from or in relation to any Claim. The Town of Davenport shall not be liable or responsible for any injury to persons or damage to property due to any acts or failures to act under or pursuant to this Local Law unless it is proven to a reasonable degree of certainty that such injury or damage was solely caused by a willful or intentional act of the Town of Davenport.

SECTION 10: CONSTRUCTION WITH OTHER LAWS - The provisions of this Local Law shall not diminish or impair the right of any other governmental agency or body to require that any act be taken or avoided. No variance, permit, grandfather rights, law, code, resolution, procedure, or rule pertaining to zoning or land use shall supersede the requirements of this Local Law. This Local Law is intended to supplement and augment the requirements of zoning and land use regulations and rules, as well as the rules of other governmental bodies and agencies, relating to Buried Line Installations in public rights-of-way, and to ensure their continued safe operating condition.

SECTION 11: SEVERABILITY; INTERPRETATION - If the provisions of any article, section, subsection, paragraph, subdivision, or clause of this Local Law shall be adjudged invalid by a court or other tribunal of competent jurisdiction, such order or judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this Local Law. Any such invalidity shall be confined in its operation to the clause, sentence, paragraph, section or article thereof directly involved in the controversy in which such order or judgment shall have been rendered. Section and other headings are for reference and convenience only and shall not be deemed or construed to limit or define the requirements of clauses set forth there under.

SECTION 12: EFFECTIVE DATE - This Local Law shall be and become effective immediately upon filing with the New York Secretary of 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. 3 of 2015 of the ~~(County)(City)(Town)(Village)~~ of Davenport was duly passed by the Town Board on August 18 2015, 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)(Village) 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)(Village) 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 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) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. Such local *(Elective Chief Executive Officer*)* 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 _____ above.

Zinda J. Adam

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

Date: 08.26.2015

(Seal)