

LOCAL LAW FILING

NYS Department of State
Division of Corporations, State Records
and Uniform Commercial Code
One Commerce Plaza, 99 Washington
Street, Albany, NY 12231.

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

**TOWN OF HERKIMER
LOCAL LAW NO. 2 OF 2024
CURB CUT PROCEDURES AND STANDARDS ACT OF THE
TOWN OF HERKIMER**

BE IT ENACTED by the Herkimer Town Board as follows:

SECTION 1: LEGISLATIVE FINDINGS AND INTENT

The Town Board of the Town of Herkimer finds that the regulation of driveway access to Town Highways is necessary to provide safe access and to protect the health and safety of users of such highways and to protect the property of the town and others in the right of way. The town board further finds that an excessive number of driveways or misplaced driveways increases the risk of accidents as well as interfering with safe traffic movements along with the performance of maintenance including snow removal and that the passage of such regulations are consistent with Town Law Section 130 (7)a which provides that the town board may by ordinance regulate the location and manner in which driveways and exits may be constructed by ordinance and occupants on town highways and Highway Law Section 213 which provides that the construction and repair of approaches to private lands adjoining town highways is under the direction of the Town Superintendent of Highways.

SECTION 2: TITLE

The title of this Law shall be "CURB CUT PROCEDURES AND STANDARDS ACT OF THE TOWN OF HERKIMER."

SECTION 3: APPLICATION FOR PERMIT

Any person desiring to construct a driveway approach or recessed parking area across any curbing, sidewalk or shoulder on a town highway shall first make application for a permit therefor to the Town Superintendent of Highways; said application shall be in writing upon a form to be provided for the Superintendent of Highways for that purpose and made available at his office. Such application shall contain information showing the type and estimated cost of construction; the location and dimensions of the proposed driveway approach or recessed parking area, together with the lot and block number as well as the street and house number, together with a small plot plan showing the proposed location in regard to the area and such other information as may be required by the Superintendent of Highways. The application shall be filed by the property owner desiring to construct said driveway approach or by their duly authorized agent.

The application shall also include the appropriate non-refundable application fee, payable to the Town of Herkimer, to be established by the Town Board in its Schedule of Fees.

SECTION 4: STANDARDS FOR ISSUANCE OF A PERMIT

A permit required by this section shall be issued by the Superintendent of Highways only when the work conforms to the following standards unless the Superintendent of Highways for good cause waives any such requirements:

- (1) There shall be no more than four (4) driveways giving access to any lot and no more than two (2) driveways on any single frontage of any lot,
- (2) Where there is only one (1) driveway giving access to a lot the curb may not be lowered for a distance greater than thirty (30) feet; where more than one driveway gives access to a lot, no curb may be lowered for a continuous distance greater than twenty-four (24) feet.
- (3) Between driveways on the same lot, there must be at least twenty (20) feet of full curb.
- (4) On a corner lot no curb shall be lowered within six (6) feet of the corner of the lot, or in case the lot line is curved at the corner, no curb shall be lowered on the curve or within ten (10) feet of the center of such curve.
- (5) The grade of the ramp to the sidewalk shall be subject to the approval of the Superintendent of Highways and in general should be within the park strip, if there is one, and where there is no park strip, the ramp should not exceed one-fourth (1/4) of the width of the sidewalk.
- (6) The curb shall not be cut lower than a point one (1) inch above the gutter.
- (7) Where the driveway is intended for a gasoline filling station, there shall be on the street line of the lot, opposite the full curb, a curb of at least six inches high. Such curb shall begin three (3) feet from the driveway.
- (8) No curb may be lowered or driveway constructed which may be in any way dangerous or hazardous to pedestrians or vehicular traffic.
- (9) All damage that occurs during the construction process, within the Town's right of way shall be repaired in accordance with the specifications and standards of the Town of Herkimer and New York State. These additional costs shall be incurred at the applicant's own expense. All repairs must be made within twenty-four (24) hours from the time of notification. Applicant shall keep the street clean and usable during the construction process.
- (10) Specifications and standards not addressed in this section must meet the current New York State Department of Transportation Standards and Specifications for construction and materials.
- (11) The work authorized by this permit shall be performed in a manner satisfactory to the Town Superintendent of Highways.
- (12) The applicant is to keep in good repair all pipes, hydrants or appurtenances which may be placed within the bounds of the highway under terms of this permit and is to save the town harmless from all claims and damages which may accrue by reason of their location in the highway and upon notice by the Town Superintendent to make any repairs required for the protection and preservation of the highway and that upon the failure to make such repairs they may be made by the Superintendent of Highways and such repairs may be

made by the Superintendent of Highways at the expense of the applicant and such expense shall be a prior lien upon the land benefited by the use of the highway for such pipes, hydrants or appurtenances.

- (13) If the work is performed is on a road that has been improved by state aide in no case shall the pavement be disturbed. Upon completion of the work the highway shall be left in as good a condition as before the work was performed and to the satisfaction of the Town Superintendent of Highways.
- (14) The applicant by virtue of the permit application shall agree to hold the Town of Herkimer harmless on account of any damages which may arise during the progress of the work authorized by this permit or by reason thereof the applicant shall certify that all persons concerned with the actual work under the curb-cut permit are duly covered by Workers Compensation Insurance and that the Town of Herkimer shall be held harmless on account thereof
- (15) Failure to comply with the above requirements will be considered a violation of this local law and the Curb-Cut permit and the Town Highway Superintendent upon the failure of the applicant to comply with any of the within requirements or other conditions may revoke the Curb-Cut Permit.
- (16) Permit and inspection is required for all types of curb
- (17) The applicant or builder shall notify the Superintendent of Highways at least twenty-four (24) hours before installing a driveway apron in the right of way.

SECTION 5: ABANDONMENT OF CURB-CUT USE

Where private property use has been modified so that the existing curb cut is no longer needed or where the provisions do not permit curb cuts at existing locations the Town Superintendent of Highways, for the promotion of traffic safety and public convenience, may require the abutting owner to replace the curb at his expense as follows:

- A. The Town Superintendent of Highways shall order the abutting property owner to replace the curb stating the reason.
- B. The owner shall either protest and show cause in writing why the curb should not be replaced within thirty (30) days or commence the work within sixty (60) days.
- C. The protest shall be reviewed by the Town Board who may uphold the Superintendent of Highways or revoke or modify his order.
- D. If the abutting owner fails to comply with the order, the town may do the work and bill the owner of the total charges of the work. The town may assess a lien of the subject property for the total of the charges including permit fees, inspection fees, attorney fees and court costs for any bill which remains unpaid for a period of thirty (30) days.

SECTION 5: SEVERABILITY

If any section, sentence or part of this Local Law is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the rest of this Local Law

SECTION 5: INCONSISTENCIES WITH OTHER TOWN CODE PROVISIONS

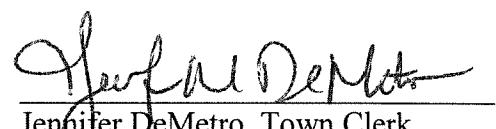
To the extent that other Town Code provisions such as the Subdivision Regulations, Building Code or Zoning Code may contain any provisions inconsistent with this section, such provisions shall prevail.

SECTION 6: EFFECTIVE DATE

This Local Law shall be effective immediately upon filing with the Secretary of State.

1. I hereby certify that the local law annexed hereto, designated as Local Law No. 2 of 2024 of the Town of Herkimer, was duly passed by the Town Board on February 19th, 2024 in accordance with the applicable provisions of law.
2. 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.

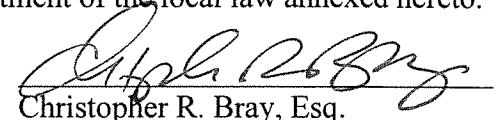
(SEAL)



Jennifer DeMetro, Town Clerk
Dated: 2/19/2024

STATE OF NEW YORK
COUNTY OF HERKIMER

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.



Christopher R. Bray, Esq.
Town Attorney
Town of Herkimer
Dated: 2/19/2024