

STATE OF NEW YORK
DEPARTMENT OF STATE

ONE COMMERCE PLAZA

KATHY HOCHUL

99 WASHINGTON AVENUE

GOVERNOR

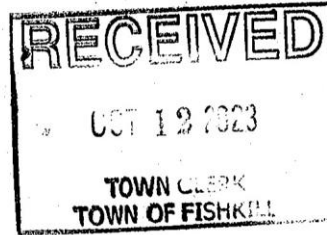
ALBANY, NY 12231-0001

ROBERT J. RODRIGUEZ [HTTPS://DOS.NY.GOV](https://dos.ny.gov)

SECRETARY OF STATE

October 2, 2023

Cooper M Leatherwood
Fishkill Deputy Town Clerk
807 Route 52
Fishkill NY 12524



cc

RE: Town of Fishkill, Local Law 4 2023, filed on September 12 2023

Dear Sir/Madam:

The above referenced material was filed by this office as indicated. Additional local law filing forms can be obtained from our website, www.dos.ny.gov.

Sincerely,
State Records and Law Bureau
(518) 473-2492



Town of Fishkill



Office of the Town Clerk 807
Route 52

Fishkill, NY 12524

845-831-7800 ext. 3338 | cleatherwood@fishkill-ny.gov

www.fishkill-ny.gov

Cooper M. Leatherwood

Deputy Town Clerk/Deputy Receiver of Taxes/Registrar of Vital Statistics

September 7, 2023

New York State Department of State
Divisions of Corporations
State Records and Uniform Commercial Code
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231

Re: Town of Fishkill Proposed Local Law No. 4 of 2023

Local Law No. 4 of 2023 A local law amending the Town Code of the Town of Fishkill, Chapter 65, "Explosives and Combustibles", to repeal and re-enact the Chapter to revise certain provisions therein regarding the terms and conditions under which blasting activity is conducted in the Town.

Dear Sir/Madam:

Enclosed please find the original, fully executed Local Law Filing Form with regard to the above-referenced Local Law for filing with your office.

Please provide written confirmation of receipt and filing to the undersigned.

If you have any questions, or need anything further, please do not hesitate to contact me.

Thank you in advance.

Respectfully,

Cooper M. Leatherwood
Deputy Town Clerk

bt enclosures cc:
Steven Gaba,
esq..

**PLEASE OBSERVE THESE INSTRUCTIONS
FOR FILING LOCAL LAWS WITH THE SECRETARY OF STATE**

1. Each local law shall be filed with the Secretary of State within 20 days after its final adoption or approval as required by section 27 of the Municipal Home Rule Law. The cited statute provides that a local law shall not become effective before it is filed in the office of the Secretary of State.
2. Each local law to be filed with the Secretary of State shall be an original certified copy.
3. Each local law shall be filed on a form provided by the Department of State. If additional pages are required, they must be the same size as the form. Typewritten copies of the text may be attached to the form. Only legible copies will be accepted.
4. File only the number, title and text of the local law.
5. In the case of a local law amending a previously enacted local law, the text must be that of the law as amended. Do not include any matter in brackets, with a line through it, italicized or underscored to indicate the changes made. The printed number of the bill and explanatory matter must be omitted.
6. For the purpose of filing a local law with the Department of State, number each local law consecutively, beginning with the number one for the first local law filed in each calendar year. The next number in sequence should be applied to each local law when it is submitted for filing, regardless of its date of introduction or adoption. The date of filing of a local law is the date on which the local law is placed on file by the Department.

It is suggested that municipalities use introductory identifying bill numbers for proposed local laws. After the local law is enacted (and approved by the voters, if required), the local law should then be numbered with the next consecutive local law number, as described above, and then submitted to the Department for filing.

7. Each copy of a local law filed with the Secretary of State shall have affixed to it a certification by the Clerk of the County legislative body or the City, Town or Village Clerk or other officer designated by the local legislative body. Certification forms are provided herewith.
8. A copy of each local law may be mailed or delivered to:
NYS Department of State
Division of Corporations, State Records and Uniform Commercial
Code One Commerce Plaza, 99 Washington Avenue Albany, NY
12231.

(DO NOT FILE THIS INSTRUCTION SHEET WITH THE LOCAL LAW.)

New York State Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue

Local Law Filing Albany, NY 12231-0001
www.dos.ny.gov

(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
FISHKILL

Local Law No. 4 of the year 2023

A local law Amending the Town Code of the Town Of Fishkill, Chapter 65, "Explosives & Combustibles"

(Insert Title)

, to repeal and re-enact the Chapter to revise certain provisions therein regarding the terms

and conditions under which blasting activity is conducted in the Town

TOWN BOARD

Be it enacted by the of the

(Name of Legislative Body)

County City Town Village

(Select one:) of FISHKILL as follows:

SEE ATTACHED LOCAL LAW

(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 ~~FISHKILL~~ _____, was duly passed by the _____ Town Board of the Town of Fishkill on September 6 20 23, in accordance with the applicable (Name of Legislative Body) 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)

(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 1 above.

Clerk of the county legislative body, City, Town or Village

Clerk or officer designated by local legislative body (Seal) Date: _____-q / 7 zzzz}_____

TOWN OF FISHKILL
LOCAL LAW NO. 4 OF THE YEAR 2023

A local law amending the Town Code of the Town of Fishkill, Chapter 65, "Explosives and Combustibles", to repeal and re-enact the Chapter to revise certain provisions therein regarding the terms and conditions under which blasting activity is conducted in the Town.

SECTION 1. PURPOSE

The purpose of this Local Law is to promote the public health, safety and welfare by amending the Town Code of the Town of Fishkill, Chapter 65, "Explosives and Combustibles", to repeal and re-enact the Chapter to revise certain provisions therein regarding the terms and conditions under which blasting activity is conducted in the Town.

SECTION 2. MUNICIPAL HOME RULE LAW:

This law is adopted pursuant to the provisions of the Municipal Home Rule Law (ii)(a)(1) which grants local governments the authority to enact local laws regarding the public health, safety and welfare. To the extent the provisions of this Local Law are in conflict with State law, the Town Board hereby asserts its intention to supersede same pursuant to the Municipal Home Rule.

SECTION 3. AMENDMENT OF TOWN CODE:

Chapter 65, "Explosives and Combustibles", is hereby repealed and re-enacted to read as follows:

"Chapter 65 Blasting and Explosives

65-1 Title.

This chapter shall be known as "A Local Law Regulating Blasting and Explosives."
"

§ 65-2 Legislative intent.

A. This chapter is enacted pursuant to the powers vested in the Town of Fishkill by the Municipal Home Rule Law and 130 of the New York State Town Law. The Town Board finds that the regulation of the use and storage of explosives and blasting activity within the Town of Fishkill must exist to protect the public from personal and property damage. Licensing of specific blasting operations will permit the Town, through the Fire Inspector, to monitor blasting operations for the protection of the public. Insurance requirements will also

assure the public that damages sustained from blasting will be redressable. Provisions for minimum effective charges, barricades, watchmen, containment of the blast and notice to nearby homeowners will protect the public from careless blasting practices. A criminal penalty for violations is established in addition to establishing a civil penalty of up to \$2,500 per day of violation of a stop-work order.

B. The Town Board intends to supplement the provisions of Micle 16 of the Labor Law by providing for local regulation of blasting.

c. The Town Board intends to expand upon 2.10 and 140.27 of the Criminal Procedure Law by authorizing the Fire Inspector to issue appearance tickets for violations of stop-work orders.

D. The Town Board intends to supplement Title 27 of Article 23 of the Environmental Conservation Law by imposing the requirements of this chapter on persons who will employ blasting as part of a soil mining operation that is regulated by the New York State Department of Environmental Conservation.

65-3 Definitions.

As used in this chapter, the following terms shall have the meanings ascribed to them:

BLAST and BLASTING. Includes any activity whereby earth or rock is dislodged or torn apart by the use of any explosive, and includes the sudden displacement of any vegetation, ground cover, earth, man-made material or rock by the explosion or detonation of an explosive material.

EXPLOSIVE. As defined at 451 of the Labor Law of New York State.

FIRE INSPECTOR. The duly appointed Fire Inspector of the Town of Fishkill, or the Town Building Inspector in such cases where the Fire Inspector is incapacitated or temporarily unable to discharge his duties as described herein.

PERSON. Includes a natural person, business, partnership, limited partnership, corporation or other legal entity.

SOIL MINING OPERATIONS. Any operation or activity which requires a permit in accordance with Chapter 128, Extraction of Topsoil and Natural Resources, of the Fishkill Town Code or by Title 27 of Article 23 of the Environmental Conservation Law, the New York State Mined Land Reclamation Law.

§ 65-4 License or permit required.

No person shall possess, transport or use explosives in the Town of Fishkill unless a license or permit shall have first been issued as provided under the New York State Labor Law and under this or other applicable laws in force in this Town.

§ 65-5 Exemptions.

A. The provisions of this chapter shall not apply to agencies of the United States, including its armed services, the state and its political and civil subdivisions.

B. Soil mining operations conducted under a Department of Environmental Conservation permit are exempt from the daily fee charge only.

§ 65-6 Hours of blasting.

It shall be unlawful to blast or carry on any blasting operation after 5:00 p.m. or before 8:00 a.m., nor shall any blasting be done on Saturday, Sunday or legal holidays unless expressly permitted, in writing, by the Fire Inspector.

§ 65-7 Application for blasting permit.

A. Applications for blasting permits shall be in writing to the Fire Inspector.

B. Upon receipt of an application for a blasting permit, the Fire Inspector shall provide a copy of the application to the Town's Engineering Consultants as well as the Town's Water & Sewer Providers for review and comment.

C. At a minimum, an application for a blasting permit shall contain the following information:

- (1) The name, street address, and contact information of the applicant.
- (2) The street address, including Tax Map Section, Block and Lot information, of the property on which the blasting operations are proposed to take place.
- (3) Satisfactory evidence that the blaster responsible for any proposed blasting work and in whose name the permit will be issued is a licensed blaster in New York State. Such evidence shall include, at a minimum, the name, address, current license number and expiration date of the licensed blaster. The Fire Inspector may require additional information about the licensed blaster's

qualifications and previous blasting activities, as deemed necessary.

- (4) A list of the names and addresses of the owner or owners of any parcel located within 1,000 feet of the blasting site, as shown on the most recent tax rolls of the Town of Fishkill, and a statement of the improvements upon such properties. The description of improvements shall include all structures and utilities, such as buildings, accessory buildings, swimming pools, tennis courts, roads, driveways, utility poles and lines, water and sewer facilities (i.e., wells, septic fields, water and sewer lines).

§ 65-8 Notice of Application for blasting permit to neighboring property owners.

A. Upon filing an application for a permit, the applicant shall mail written notice of said application, including the location of the subject property, the name of the applicant, and the nature and duration of the proposed blasting, via certified mail return receipt requested, to all property owners within 1,000 feet of the land involved in the application, as the names of such owners appear on the last completed assessment roll of the Town.

B. The applicant shall submit a duly executed and notarized affidavit of mailing to the Fire Inspector regarding the said notice.

c. The Fire Inspector shall not issue any permit under this Chapter until at least ten (10) days have elapsed from mailing of the aforesaid notice, and in issuing permits the Fire Inspector shall give such consideration to comments received from adjoining property owners as the comments shall warrant." § 65-9 Permit requirements; fees.

A. No person may use explosives in the Town of Fishkill without first obtaining a permit from the Fire Inspector.

B. Permits for blasting shall only be issued to persons holding a New York State blaster's license, or to contractors who have in their employ persons holding such licenses.

c. The permit shall state the location for which it is approved, the date issued, the name of the person(s) authorized to do the blasting and such other information as the Fire Inspector may require.

D. The permit shall be valid only for the location designated on the permit, shall not be transferable or assignable and shall expire at the completion of the specified job, but not more than one year from the date of issuance.

E. The applicant shall also satisfy the Fire Inspector that any magazine to be used for the storage of explosives on the work location for which a blasting permit is desired has been duly licensed by the Industrial Commissioner of the State of New York as provided in Article 16, 458, of the Labor Law.

F. The permit shall not be issued until the applicant shall submit to the Town of Fishkill a valid, fully prepaid liability insurance policy providing liability coverage in the amount of \$1 for each person injured, \$3,000,000 for each occurrence and \$1,500,000 for property damage, together with a certificate of insurance executed by the insurer that said policy will not be cancelled except on 10 days' notice, in writing, to the Town Fire Inspector of the Town of Fishkill. Such liability insurance policy shall be issued by an insurance company authorized to do business in New York State and shall be approved as to form, content and amount by the Town Attorney, and after such approval a copy of said policy shall be filed with the Town Clerk.

G. The Fire Inspector may determine that the extent of the blasting operations in a particular case requires liability insurance coverage in greater amounts than above specified. In such a case the Fire Inspector shall enter the amount of additional coverage required on the permit.

H. Application for a permit shall be accompanied by an application fee in accordance with the Town Fee Schedule. A permit may not be issued until the fee is paid by the applicant, proof of insurance is provided and approved by the Town Attorney and all other conditions of issuance of the permit and of this chapter have been satisfied by the applicant.

§ 65-10 Pre-Blasting Investigation of neighboring properties and continued monitoring.

A. At least fourteen (14) days prior to commencement of blasting activity, the permit holder shall contact all record owners of within 1,000 feet of the blasting site and offer to enter their properties to photograph or otherwise record the preblasting condition of the interior and exterior of all structures on the said properties.

B. For every property which the permit holder is able to access, the permit holder shall prepare and maintain a detailed report of the physical condition of

the interior and exterior of all structures, including foundation walls, sidewalks, utilities and facilities.

c. Prior to commencing blasting activity, the permit holder shall submit to the Fire Inspector a copy of all property condition reports prepared under this section along with a duly notarized affidavit stating that the structures on all properties within 1,000 feet of the blasting site have been inspected and photographed as provided in paragraph "A" hereof, or that the owners of such properties have refused to provide access for this purpose. A claim of a denial of access shall be reasonably documented by written denial from the property owner or detailed recitation of the facts upon which the permit holder relies to establish denial of access.

D. A complaint from a property owner within 1,000 feet of the blast site that blasting has caused property damage which the Fire Inspector is able to verify shall be grounds for issuance of a stop work order.

65-11 Records.

A. The blaster shall each day deliver to the Fire Inspector before 10:00 a.m. the records of all the blasting done on the previous day.

B. The Fire Inspector is authorized to designate a specific date or dates to receive blasting records for multiple days of blasting operations.

C. Such records shall contain at a minimum the following information for each blast:

- (1) The name and address of the person, firm or corporation responsible for the detonation of the blast.
- (2) The date and time.
- (3) The location.
- (4) Spacing.
- (5) Burden (feet).
- (6) Depth (feet).

- (7) Subdrilling (feet).
- (8) Stemming (feet).
- (9) Number of holes (diameter in inches).
- (10) Maximum poundage of explosives per delay.
- (11) Weather conditions.
- (12) Wind direction and speed.
- (13) Make and type of explosive (pounds).
- (14) Total explosives used for each blast.
- (15) Delay system.
- (16) Delay manufacturer.
- (17) Delay cap numbers.
- (18) Minimum interval.
- (19) The name of the blaster.
- (20) Other specific data as requested by the Fire Inspector.

§ 65-12 Blasting procedure.

The holder of a blaster's permit issued pursuant to this chapter shall perform blasting operations in accordance with the provisions, regulations and requirements of the New York State Labor Law (including but not limited to Industrial Code Rule No. 23, entitled "Protection in Construction, Demolition and Excavation Operations") and the New York State Uniform Fire Prevention and Building Code and all amendments thereto^[1] and, in addition, shall perform such blasting operations in accordance with accepted practices generally employed in the industry.

¹Regulations.

It shall be unlawful for any person, firm or corporation to engage in the use of explosives or combustibles for blasting purposes within the Town of Fishkill without complying with the following procedures:

- A. Minimum effective charge. Blasts shall be made with the minimum charge sufficient to break and move rock in a safe manner. The Fire Inspector shall employ the standards set forth in the Appendix (included as an attachment to this chapter), Reference Books, to assist him to determine the minimum effective charge to be employed.
- B. Barricades. Barricades shall be erected around blasting areas at all times.
- C. Watchmen. Watchmen shall be posted in sufficient number to warn all persons of danger while blasting is in progress. Said watchmen shall not be fewer than two in number and shall carry red flags or other identifying features.
- D. Containment. Charges shall be covered with interwoven steel rope mats to effectively prevent the spraying of stones, earth or other debris on the surrounding areas.
- E. Notice. All persons living within a radius of 1,000 feet of a point at which a blast is to be made shall be personally notified, in writing, by the blaster of the blasting schedule not less than seven (7) business days prior to commencement of blasting operations. Such notice shall include contact information for the Town Fire Inspector and a statement that any questions or complaints regarding the blasting should be directed to the Town Fire Inspector.
- F. Blasting shall be supervised by a New York State licensed blasting contractor.
- G. Before a charge is detonated, the person holding the blaster's permit shall cause to be sounded a horn loud enough to be heard 1/4 mile away in the following manner:
 - (1) One long warning blast one minute before detonation.
 - (2) Two short warning blasts 30 seconds before detonation.
 - (3) Three short blasts to indicate "all clear" after the detonation.
- I-I. No blasting shall be done except between the hours of 8:00 a.m. and 5:00 p.m. No blasting shall be done on Saturdays, Sundays or legal holidays, except as expressly approved by the Fire Inspector.

I. Storage magazines may be fenced if required by the Fire Inspector. The Fire Inspector shall have the authority to determine the appropriate height and type of temporary fencing and the area to be fenced in. If a fence is required by the Fire Inspector to be higher than Chapter 150, Zoning, would otherwise permit, such temporary fence may be erected without the requirement of a variance.

J. Seismograph readings by a qualified consultant may be ordered by the Fire Inspector at any time as the Inspector deems appropriate. The cost of such services shall be paid by the owner of the property or by the blaster on the owner's behalf.

K. The Fire Inspector may condition the issuance of a permit on the conduct of inspections of real property near the blasting site to determine the condition of such properties prior to commencement of blasting, said inspections to be made by the blasting permit holder or his representative.

L. The blaster shall reimburse the Town of Fishkill for the actual costs to the Town for extra police or emergency personnel that are employed by the Town as a result of the blasting operations. The Fire Inspector may require prepayment of such sum to the Town as a condition of issuance of the permit.

§ 65-14 Notification of Fire Inspector.

Twenty-four hours before any blast is scheduled to occur, the contractor and blaster shall give notice to the Fire Inspector, by telephone or in person, of the time and place that the explosion will take place.

§ 65-15 Shoring.

The blasting of rock adjacent to any structure shall be conducted as to not cause damage thereto. Weak walls or other supports shall be shored up, and rotten or decomposed rock shall be removed only by use of gads, picks or crowbars. When blasting in the vicinity of a weak structure is unavoidable, only lightface blasts with short lines of resistance and charges shall be used.

§ 65-16 Unexploded charge.

Immediately after firing a blast, the blaster shall cause all debris to be removed and shall thoroughly examine the rock and the drill holes to ascertain whether there remains any unexploded charge, and until this is done, no further drilling or blasting shall take place. In case a blast shall fail to carry away the entire drill hole, and leave the lower part intact, no further drilling shall be done in that hole.

7 Liability of blaster.

Engaging in blasting is an inherently dangerous activity for which the holder of a blasting permit as well as the person who engages the party conducting the blasting is absolutely liable for any damage caused thereby.

65-18 Penalties for offenses.

The violation of any of the provisions of this chapter, except 65-19, for which a separate penalty is imposed, or failure to comply therewith shall be a misdemeanor and punishable by a fine which shall not exceed \$1,000 per violation. Each day such violation shall continue shall constitute a separate offense. This penalty shall be in addition to, and not in place of, the authority of the Fire Inspector and the Town of Fishkill to apply for equitable relief to correct violations of this chapter.

§ 65-19 Stop-work order.

A. In the event that blasting is carried on in violation of this chapter, the Fire Inspector may issue a stop-work order.

B. No blasting shall be conducted in the Town of Fishkill which shall cause hazardous or destructive levels of vibration in structures on or in the vicinity of the blasting site. The sudden appearance of cracks in floors, walls or ceilings or the or the lengthening of the same or the cracking of windows or the implosion or explosion of windows shall be evidence of the use of excessive amounts of explosives, and the Fire Inspector may issue a stop-work order upon his observation of the same, and he may impose restrictions and conditions on the continuation of the blasting to minimize all such damage.

c. The Fire Inspector shall have the authority to vacate the stop-work order if he determines that continuation of blasting will comply with these regulations.

D. The Fire Inspector is empowered to limit the amount of explosives used, notwithstanding that such limitation may increase the cost to the permit holder of removing the rock and earth.

E. Failure to comply with the stop-work order shall be a misdemeanor punishable by a fine of not more than \$2,500 for each day such violation of law shall continue or by imprisonment for a term of not more than six months, or both. "

SECTION 4. SEVERABILITY

If any clause, sentence, paragraph, word, section or part of this local law shall be judged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, word, section or part thereof directly involved in the controversy in which judgment shall have been rendered.

SECTION 5. EFFECTIVE DATE

This local law will take effect immediately upon filing in the Office of the Secretary of State in Albany.