

# **PUBLIC WORKS DEPARTMENT**

## **LOCAL LAW NO. 2 OF THE YEAR 1974**

### **A Local Law Establishing and Providing for a Department of Public Works of the Town of Kirkwood**

**Adopted December 6, 1974**

Be it enacted by the Town Board of the Town of Kirkwood as follows:

#### **SECTION 1**                   Definitions. As used in this local law:

- a.           Commissioner of public works shall mean commissioner of public works of the Town of Kirkwood, Broome County, New York;
- b.           Department of public works shall mean department of public works of the Town of Kirkwood, Broome County, New York;
- c.           Deputy commissioner of public works shall mean deputy commissioner of public works of the Town of Kirkwood, Broome County, New York;
- d.           The Town shall mean Town of Kirkwood, Broome County, New York;
- e.           The town board shall mean town board of the Town of Kirkwood, Broome County, New York;
- f.           Town clerk shall mean Town Clerk of the Town of Kirkwood, Broome County, New York;
- g.           Town supervisor shall mean town supervisor of the Town of Kirkwood, Broome County, New York.

#### **SECTION 2**                   Establishment of Department of Public Works

There is hereby created and established the department of public works of the Town of Kirkwood, Broome County, New York, hereinafter referred to as the department of public works, as a separate department of government of the town.

#### **SECTION 3**                   Functions of Department of Public Works

The department of public works shall be responsible for: the construction, repair, maintenance and cleaning of all town highways, town roads, town streets, town bridges and town parking facilities and the removal of snow therefrom; the construction, repair, maintenance and cleaning of all town buildings and facilities and the buildings and facilities of every improvement district or other district or agency thereof; the installation and maintenance of traffic signals, other traffic control devices and street signs on all town highways, town roads, town streets, town bridges and town parking facilities; the construction, repair, maintenance and cleaning of storm drainage systems under the jurisdiction of the town or any improvement district or agency thereof; the construction, repair, maintenance and cleaning of sanitary sewers owned, or under the sole jurisdiction of the town or any improvement district or other district or agency thereof; the operation, repair and maintenance of any sewage treatment plant owned by, or under the sole jurisdiction of, the town or any improvement district or other district or agency thereof; the construction, maintenance and operation of such other sanitation facilities to the extent the same be delegated to the department of public works by the town board; the construction, operation, repair and maintenance of water pumping facilities, water treatment plants and water distribution systems owned by, or under the sole jurisdiction of, the town or any improvement district or other district or agency thereof; the billing of consumers for use of water and/or sewer services supplied by the town or by any improvement district or other district or agency thereof; the operation and maintenance of park and other recreation facilities owned by, or under the sole jurisdiction of, the town or any district or agency thereof; and such other work and/or services as the town board may lawfully direct. Notwithstanding the foregoing, this local law shall not prohibit

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the town board from providing for construction of any public building, street, highway, road or other facility by public contract. In addition, the department of public works shall provide all services required or desirable in order to enable the commissioner of public works to fulfill any duty or responsibility imposed upon such official, whether or not in his capacity as town superintendent of highways, by this local law or by any other local law, ordinance or regulation of the town or by any lawful directive of the town board or by any statute of the state of New York.

### **SECTION 4                    Establishment of Office of Commissioner of Public Works**

There is hereby created the office of commissioner of public works of the Town of Kirkwood, Broome County, New York. Such office shall be in the unclassified civil service.

### **SECTION 5                    Town Superintendent of Highways to be Commissioner of Public Works**

The town superintendent of highways shall be the commissioner of public works and may be referred to by either title.

### **SECTION 6                    Term of Office of Commissioner of Public Works**

Each commissioner of public works shall hold office as such during his term of office as town superintendent of highways and until his successor as town superintendent of highways has been appointed and qualified unless sooner removed.

### **SECTION 7                    Duties and Powers of Commissioner of Public Works**

The commissioner of public works shall be the principal executive officer and the administrative head of the department of public works. The commissioner of public works, as town superintendent of highways, shall have all the powers and duties of a town superintendent of highways except to the extent that any power or duty of a town superintendent of highways is lawfully reserved by the local law to the town board.

### **SECTION 8                    Salary of Commissioner of Public Works**

The salary of the commissioner of public works shall be fixed annually by the town board and shall be paid out of the general funds of the town such moneys as the Town Board shall direct from any improvement or benefit district of the town pursuant to Town Law Section 202(a) (7), and shall not be a charge, in whole or in part, upon any item of the highway fund. Such commissioner shall not receive any additional compensation as town superintendent of highways but his salary may be shown in any budget or notice relating to such budget either under the classification of town superintendent of highways or commissioner of public works.

### **SECTION 9                    Division of Department of Public Works and Office of Administration**

a.            There shall be within the department of public works and there are hereby created in the department of public works, the following divisions:

1.    Highway division;
2.    Sanitation division;
3.    Water division; and
4.    Park division.

b.            The highway division shall be responsible for: the construction, repairs, maintenance, and cleaning of all town highways, town roads, town streets, town bridges, and town parking facilities and the removal of snow therefrom; the construction, repair, maintenance and cleaning of storm drainage systems under the jurisdiction of the town or any improvement district or other district or agency thereof; such other

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services as may be directed by the town board to be performed by the department of public works and assigned to the highway division by the commissioner of public works; and all services required by statute to be performed by town highway departments when such a department exists. This local law shall not prohibit the town board from providing for construction of any public building, street, highway, road or other facility by public contract or for the providing of other services, goods or construction by public contract.

c. The sanitation division shall be responsible for: the construction, repair, maintenance cleaning of sanitary sewers owned, or under the sole jurisdiction of, the town or any improvement district or other district thereof; the operation, repair and maintenance of any sewage treatment plant owned by, or under the sole jurisdiction of, the town or any improvement or other district or agency thereof; the construction, maintenance and operation of other public sanitation facilities to the extent the same be delegated to the department of public works by the town board; and such other services as may be directed by the town board to be performed by the department of public works and assigned to the sanitation division by the commissioner of public works. This local law shall not prohibit the town board from contracting with any person, firm, corporation or other entity for the providing of any such services.

d. The water division shall be responsible for the construction, operation, repair and maintenance of water pumping facilities, water treatment plants and water distribution systems owned by, or under the sole jurisdiction of, the town or any improvement district or other district or agency thereof. In addition the water division shall be responsible for such other services as may be directed by the town board to be performed by the department of public works and assigned to the water division by the commissioner of public works. This local law shall not prohibit the town board from contracting with any person, firm, corporation or other entity for the providing of such services.

e. The park division shall be responsible for the operation and maintenance of park and other recreation facilities owned by, or under the sole jurisdiction of, the town or any district or agency thereof as well as for such other services as may be directed by the town board to be performed by the department of public works and assigned to the park division by the commissioner of public works. This local law shall not prohibit the town board from contracting with any person, firm, corporation or other entity for the providing of any such services.

### **SECTION 10 Establishment of Offices of Deputy Commissioner of Public Works**

There is hereby created in the department of public works the office of deputy commissioner of public works of the town of Kirkwood, Broome County, New York.

### **SECTION 11 Appointment and Term of Office of Deputy Commissioner of Public Works**

The commissioner of public works shall appoint a deputy commissioner of public works. The term of office of a deputy commissioner of public works shall expire at midnight on the thirty-first day of December next succeeding the bi-annual town election following the appointment of such deputy commissioner. The deputy commissioner shall serve as such until the expiration of his term as such and until his successor has been appointed and qualified unless sooner removed from office. Anything herein to the contrary notwithstanding, the deputy commissioner of public works shall be removable at the pleasure of the commissioner of public works. The deputy commissioner of public works shall be in the exempt class of the civil service. A vacancy in the office of deputy commissioner of public works occurring other than by the expiration of term of office shall be filled only for the remainder of the unexpired term provided that a deputy commissioner of public works appointed to fill such a vacancy shall serve as such until the expiration of such term and until his successor has been appointed and qualified unless sooner removed.

### **SECTION 12 Duties and Powers of Deputy Commissioner of Public Works**

a. The deputy commissioner of public works shall be the administrative supervisor of the highway division subject to the supervision, direction and control of the commissioner of public works. In the event of the absence or disability of the commissioner of public works, or in the event of a vacancy in the office of commissioner of public works, the deputy commissioner of public works for highways shall be the acting

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commissioner of public works and shall have all of the authority and duties of the commissioner of public works, including the authority and duties of acting town superintendent of highways.

b. The deputy commissioner of public works shall be the administrative supervisor of the water division and of the sanitation division subject to the supervision, direction and control of the commissioner of public works.

c. The deputy commissioner of public works shall be the administrative supervisor of the park division subject to the supervision, direction and control of the commissioner of public works.

### **SECTION 13 Appointment of Employees**

All employees of the department of public works shall be appointed by the commissioner of public works within the budgetary appropriations thereof, and shall hold the position to which appointed at the pleasure of the commissioner of public works; provided, however, that any employee in the classified civil service may be removed only for cause. Employee as used in this section of this local law shall not include the commissioner of public works.

### **SECTION 14 Transfer of Employees**

The commissioner of public works may transfer any employee of the department of public works from one division or office thereof to another division or office thereof and such transfer may be on either a temporary or a permanent basis; provided, however, that the salary of any employee so transferred shall not be reduced by reason of such transfer and further provided that the salary of no employee so transferred shall be increased by reason of such transfer unless such salary increase be approved in advance by the town board provided that in an emergency designated as such by the town supervisor the salary of an employee of the department of public works transferred to a classification with a higher pay scale for a period of not to exceed three days in any one month without the approval of the town board. Employee as used in this section shall not include the commissioner of public works nor the deputy commissioner of public works.

### **SECTION 15 Highway Fund and Special Districts**

Except as in this local law expressly provided, this local law shall not in any manner change the present provisions of law in effect in the town, by reason of any provisions of any state statute or otherwise, relating to the parcels of real property presently responsible for the payment of highway items one, (1), two (2), three (3) and four (4) and these items shall continue to be charged in the same manner as if this local law had not been adopted. There shall be no change in the payment of real property taxes for maintenance, operation and capital cost of any improvement district or other district of the town. Except as herein expressly provided, all of the charges for the foregoing shall continue to be assessed in the same manner as if this local law had not been adopted and the bookkeeping procedures of the department of public works, and in the office of the town supervisor, shall be adjusted to accommodate the provisions for tax payments for such items in the same manner as if all of the items were being performed by individual departments, districts or agencies of the town. Except as otherwise specifically provided in this local law, all costs and expenses lawfully incurred by the department of public works on behalf of any special district or improvement or other district or agency of the town or on behalf of any special town project shall be charged against such districts or project and paid from the funds duly appropriated for the purpose of such district or project.

### **SECTION 16 Existing Departments, Districts and Employees**

All property, equipment and budgetary appropriations of, or for, the highway department of the town are hereby transferred to the department of public works. The employees of said highway department shall be continued as employees of the department of public works with the same classification, salary, benefits, pensions and retirement rights and privileges as they had immediately prior to such transfer provided, however, that nothing herein contained shall be construed to deprive the town board of any power it now has, or may under this local law or otherwise have, with respect to the hiring, firing, disciplining and fixing salaries of such employees. The employees of every water and sewer district of the town as well as any other employees of the town, performing functions which are hereby transferred to the

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department of public works with the same classification, salary, benefits, pensions and retirement rights and privileges as they had immediately prior to such transfer provided, however, that nothing herein contained shall be construed to deprive the town board of any power it now has with respect to the hiring, firing, disciplining and fixing salaries of such employees. The town superintendent of highways shall not be considered an employee of the highway department of the town for the purposes of this section of this local law.

### **SECTION 17 Powers of the Town Board**

Nothing herein contained shall be construed to delegate or transfer any power of the town board contained in sections fifty-one (51), sixty-four (64), twelve (12), fourteen (14) and fifteen (15) of the New York State Town Law or provided by the New York State Municipal Home Rule Law or other powers which may be lawfully exercised by said board. The commissioner of public works shall have the right to suspend, with pay, any employee, including the deputy commissioner, for a period of not more than two (2) weeks for cause and shall report such suspension to the town board within three (3) days of such suspension with his recommendations to the town board as to disciplinary action.

### **SECTION 18 Powers of the Town Supervisor**

Nothing herein contained shall be construed to delegate or transfer any power of the town supervisor contained in Sections twenty-nine (29), fifty-two (52) or one hundred and nineteen (119) of the New York State Town Law or any other powers which may be lawfully exercised by said supervisor.

### **SECTION 19 Qualification of Commissioner of Public Works and Deputy Commissioner of Public Works**

Before entering upon the duties of his office the commissioner of public works shall take and file with the town clerk an oath of office. The deputy commissioner of public works shall, before entering upon the duties of his office, take and file with the town clerk an oath of office. The town board may require the commissioner of public works to file a bond for the faithful performance of his duties and may require the deputy commissioner of public works to file such a bond.

### **SECTION 20 Severability**

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

### **SECTION 21 Title**

This local law shall be entitled "A local law of the Town of Kirkwood, Broome County, New York establishing and providing for a department of public works of the Town of Kirkwood, Broome County, New York." This local law may be cited accordingly. This local law may also be cited as a local law of the Town of Kirkwood, Broome County, New York by year and number of passage.

### **SECTION 22 Effective Date**

This local law shall take effect January 1, 1975.

\*\* See Collective Bargaining Agreement between the Town of Kirkwood and Teamsters Local #693 as to matters relating to hiring, firing, disciplining and fixing of salaries of Department of Public Works employees.