

Powers & Duties of Highway Superintendent

Every town must have a town Superintendent of Highways (Town Law §20). A town Superintendent of Highways is a public official who must take and file an official oath of office (Public Officers Law §10) which must be filed with the Town Clerk (Town Law §25). The town Superintendent of Highways must be a resident of the town.

The Superintendent of Highways is an elected officer whose term of office is two years (Town Law §20; §24). The Town Board may change the office to an appointed office rather than an elective office, but such a change is subject to approval by the town's voters at a mandatory referendum. (Municipal Home Rule Law §23[2](e); 1976 Opn. Atty. Gen. [Informal] 312).

Duties

State law sets forth detailed and precise duties and responsibilities for a town Superintendent of Highways. (Highway Law §140) Some of the more important duties are:

1. Care, superintendence, repair and maintenance (including snow and ice control) of town highways and bridges (Subdivisions 1 and 2);
2. "Within the limits of appropriations employ such persons as may be necessary for the maintenance and repair of town highways and bridges, and the removal of obstructions caused by snow ... and provide for the supervision of such persons" (Subd. 4).
3. "Construct and keep in repair sluices and culverts and cause the waterways, bridges and culverts to be kept open" (Subd. 5).
4. "Cause loose stones lying in the beaten track of every town highway within the town to be removed at least three times each year between the first day of April and the first day of December" (Subd. 6).
5. "Cause briars, brush and noxious weeds growing within the bounds of town highways to be cut and removed between July 15 and August 15, and as many other times as may be deemed necessary, in each year" (Subd. 7).
6. "Cause such town highways as shall have been laid out, but not sufficiently described, and such as shall have been used for twenty years, but not recorded, to be ascertained, described and entered on record in the Town Clerk's office" (Subd. 8).
7. "Cause the monuments erected, or to be erected, as the boundaries of town highways, to be kept up and renewed so that the extent of such highway boundaries may be publicly known, and erect and establish such new monuments as may be required by the county Superintendent." (Subd. 11).
8. "Bring an action in the name of the town ... to sustain the rights of the public, in and to any town highway in the town ... and to recover any damages sustained or suffered, or expenses incurred by such town, in consequence of any act or omission of any ... person or corporation, in violation of any law or contract in relation to such highway." (Subd. 13).

9. "During the construction or improvement of a town highway, if such highway be closed to the traveling public and another existing highway is caused to be used in lieu of the closed highway ... provide, erect and maintain a sufficient number of detour signs so that the temporary route or detour shall be clearly indicated throughout its entire length..." (Subd. 14).
10. Collect all penalties prescribed by the Highway Law (Subd. 15).
11. "Maintain all sidewalks in the town constructed by the state adjacent to state highways and all sidewalks in the town constructed by the county adjacent to county roads and, when authorized by the Town Board, cause the removal of snow there from, and the cost thereof shall be paid from the miscellaneous or other town funds" (Subd. 18).
12. "Have the power to employ an engineer subject to approval of the Town Board" (Subd. 19).

Power to Hire and Fire

As long as the Highway Law §284 agreement has been entered into with the Town Board, a town Superintendent of Highways has the authority to employ persons to maintain and repair town highways and to "provide for the supervision of such persons" without further approval of the Town Board (*Hiscox v. Holmes*, 237 A.D. 240 (3rd Dept. 1932)).

Highway Law §140(4) states that the town Superintendent of Highways "within the limits of appropriations employ such persons as may be necessary for the maintenance and repair of town highways and bridges, and the removal of obstructions caused by snow, subject to the approval of the Town Board, and provide for the supervision of such persons."

"[T]he power to appoint officers and employees carries with it the power to discharge employees" (*Correia v. Incorporated Village of Northport*, 12 A.D. 3rd 599, 601 (2nd Dept. 2004)). The town Superintendent of Highways may discipline or dismiss employees subject to Civil Service Law protections. Those protections arise under Civil Service Law §75 or a collective bargaining agreement (union contract).

Both Civil Service Law §75 or a union contract may limit the power of the town Superintendent of Highways to dismiss or discipline an employee and may even subject his decisions to review and reversal by an independent arbitrator (see generally, 1977 Opn. State Comp. 142 [Opn. 77-697]; 1982 N.Y. Op. Atty. Gen. (Inf.) 132).

Source: [Powers & Duties of Local Highway Officials](#), *Cornell Local Roads Program* (p. 69-76)