

**TOWN OF TAGHKANIC  
LOCAL LAW 5 OF 2012**

**A LOCAL LAW ENTITLED: "Town of Taghkanic Road Use and Preservation Law"**

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

Section 1. Title

This local law shall be known and cited as "Town of Taghkanic Road Use and Preservation Law"

Section 2. Authority

The Town Board of the Town of Taghkanic enacts this local law under the authority granted by Section 10 of the New York State Municipal Home Rule Law, New York State Constitution Article IX § 2(c)6, Town Law, subsection 1(ii)(a)(6), subdivision 2 of section 23-0303 of the Environmental Conservation Law, Highway Law Section 140, Highway Law section 320, Town Law section 130, and Vehicle and Traffic law section 1660.

Section 3 Intent and Purpose

The purpose of this Law is to maintain the safety and general welfare of Town residents and others using Town highways by regulating high impact commercial activities that have the potential to adversely impact roads and property. The intent is to protect the Town roads and property from damage from endeavors that typically require high frequency use of heavy equipment with heavy loads. It is the intent of this law to insure that the Town's roads are not damaged or harmed to the overall detriment of the Town by a few individual users who utilize the roads in a manner that causes extraordinary deterioration to the roads.

It is not the intent of this Law to interfere with the rights and operations of farming or the agricultural industry inside or outside of the Town and nothing contained in this Law shall be deemed to limit the right to farm as set forth in the New York State Agricultural and Markets Law.

It is not the intent of this Law to interfere with interstate commerce and nothing contained in this Chapter shall be deemed to unlawfully interfere with Interstate Commerce.

Section 4 Definitions

For purposes of this Law:

Blanket Permit: A permit that covers more than one vehicle or truck; which would be subject to the permitting process. Vehicles or trucks that are owned, used,

rented, leased, hired (including independent contractors) or in any way utilized for a specific project, site or work location shall be considered related vehicles and should be subject of a blanket permit.

Bond: A commercial bond to ensure that the condition of the Town roads and/or property impacted by Highway Frequency Truck Traffic is left in a good or better condition at the completion of the project as they were at the start of the project.

Code Enforcement Officer: The building and code inspector of the Town, Town code enforcement officer, or such other Town official who exercises similar building, code and enforcement powers.

Escrow: Money put into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.

High Frequency Truck Traffic: Traffic to and from a site that generates more than ten (10) Overweight Motor Vehicle trips per day for more than three (3) consecutive days.

Highway Superintendent: The Highway Superintendent of the Town.

Local Delivery: Delivery or pickup of merchandise or other property along the Town Roads by High Frequency Truck Traffic.

Other Town Property: Any real property (including any improvements therein, thereon or thereunder) or personal property owned by, or leased to, the Town.

Overweight Motor Vehicles: Every Motor Vehicle (as that term is defined below) or combination of Motor Vehicle and machinery/cargo it has in tow which exceeds the gross weight of five (5) tons.

Motor Vehicles: Every vehicle operated or driven upon a public highway which is propelled by any power other than human or animal power, except (a) electrically-driven mobility assistance devices operated or driven by a person with a disability, (b) vehicles which run only upon rails or tracks, (c) snowmobiles, (d) all-terrain vehicles, (e) fire, police vehicles, ambulances, EMT vehicles, and other similar emergency vehicles, (f) farm type tractors, all-terrain type vehicles used exclusively for agricultural purposes or for snow plowing (other than for hire), farm equipment, including self-propelled machines and trucks used exclusively in growing, harvesting, handling or transporting farm produce, (g) self-propelled caterpillar or crawlertype equipment while being operated on the contract site (h) maintenance, repair, service or other vehicles owned and operated by municipalities, governmental agencies, fire companies/district, law enforcement agencies or emergency responders, and (i) maintenance, repair and service vehicles owned and operated by a utility company or authority and on official utility business.

Permit: Approval of an application for a Road Preservation Permit Application. This includes Blanket permits, which are preferred, where there are multiple related vehicles.

Permitee: Shall mean the holder of a "Road Preservation Vehicle Permit" issued pursuant to this Local Law. Under a Blanket Permit, this shall include the holder's contractors, sub contractors, employees and agents.

Related Vehicles: More than one vehicle; including those that are owned, used, rented, leased, hired (including independent contractors) or in any way utilized for a specific project, site or work location. When calculating if related vehicles meet the definition of High Frequency Truck Traffic, the number of axles shall be counted in each vehicle separately; however, the number of miles shall be the combination of all vehicles with 3 or more axles.

Town: Town of Taghkanic, a municipality located in the County of Columbia, State of New York.

Town Board: The Town Board of the Town of Taghkanic.

Town Clerk: The duly elected Town Clerk of the Town of Taghkanic.

Town Road: Any Town highway, road, street, avenue, boulevard, parkway, shoulder guard rail, concourse, driveway, easement, right of way, bridge, culvert, sluice pipe, ditch, dock, tunnel, sidewalk, or any utilities or improvements therein, thereon or there under owned and/or maintained by the Town.

## Section 5. Permanent Weight Restriction and Truck Route.

A. All Overweight Motor Vehicles are excluded from all Town Roads in the Town of Taghkanic unless otherwise permitted by the Town, except that Overweight Motor Vehicles operated in the Town of Taghkanic may operate upon as restricted (except as expressly hereinafter permitted) to the following designated "Town of Taghkanic Truck Route System":

1. The designated "Town of Taghkanic Truck Route" shall be limited to consist of routes on, over and along any and all Federal, State and County owned/maintained roadways lying within the boundaries of the Town of Taghkanic.

B. There shall be signs installed at all major highways entering Town, indicating that Overweight Motor Vehicles must use the truck route system or local delivery by permit.

## Section 6. Permit Issuing Authority and Enforcement Authority.

A. The Town Board is hereby authorized to promulgate an application form requesting a Permit and the Permit to be issued upon review and approval of said application.

B. The Town Clerk is hereby designated as the authority to receive applications for permits to operate or move an Overweight Motor Vehicles or a combination of vehicles, the weights and frequency of which exceed the limitations provided herein. The Town Clerk must submit a copy of the applications and any approved permit to the Town Code Enforcement Officer and the Highway Superintendent.

C. The Town Board is hereby designated as the authority to approve applications for a Permit to operate, transport, or move Overweight Motor Vehicles, as defined above, on, over or across a designated Town Road or other Town property.

D. This Law shall be administered and jointly enforced by the Town enforcement officers and the police agencies of Columbia County and New York State or officials authorized by the Town Board.

#### Section 7      Application and Permit Form.

A. At the time of initial application and continuing thereafter, the person requesting the permit shall provide the following:

- 1) a proposed road map that the Overweight Motor Vehicles will travel on;
- 2) a video or photographic documentation demonstrating the condition of the proposed road and/or described in the permit;
- 3) Copies of valid New York State Vehicle Registrations for each vehicle and copies of valid New York State Special Hauling Permits, if any, for each vehicle;
- 4) The name of a responsible individual person who would be subject to prosecution and civil penalties pursuant to provisions of this Law. The responsible person must sign or join in signing the permit application and his/her signature must be acknowledged by a notary public. If the applicant is a corporation, limited liability company, partnership, or other entity, the responsible party must be an officer (or director), member (or manger), general partner, or principal of the entity, as the case may be, signing in his/her personal and individual, not representative, capacity;
- 5) Proof of Insurance as required herein;
- 6) Permit fee of \$25.00 per permit and \$100.00 per blanket permit, per year or portion thereof;
- 7) Any other documents, maps, sketches, and plans, which the Town Board may require; and
- 8) All other requirements of this Law, including an escrow account, bond, etc., must be satisfied prior to approval of any permit application.

B. Information shall be provided with the application on each individual vehicle owned,

used, rented, leased, hired (including independent contractors) or in any way utilized for a specific project, site or work location. Whenever possible, the permittee must request a blanket Permit covering all of the vehicles, which such permittee plans to use on town roads or highways. If such a blanket Permit is thereafter issued all of the vehicles specifically listed on such Permit shall be deemed to be covered by such Permit.

C. Additionally, after issuance of the Permit, the Applicant must provide updated information including but not limited to changes in: truck routes, project, site or work location, etc. if in the opinion of the Town Board, the changes are significant, then the Permittee must file a new Permit application; including new relevant fees, bonds, escrows, insurances, etc.

D. Every permit or blank permit shall be carried on the vehicle to which it refers and shall be open to inspection of any authorized enforcement officer, peace officer or police agencies of Columbia County, State of New York or other officials authorized by the Town Board.

E. After issuance of the Permit, the Permittee will arrange for video or photographic documentation of condition of roads, shoulders, and all structures (culverts, bridges, etc.) that will be traversed by the permitted traffic on monthly basis and within two weeks after the conclusion of the permitted work. All video or photographic documentation will be submitted to the Town Board within one week of recording. Failure to submit the required video or photographic documentation will result in immediate revocation of the Work Permit.

#### Section 8     Alternative to Permit: Road Use Agreement

A Permittee with more than one vehicle which qualifies as Overweight Motor Vehicles, may request that the Town enter into a town-wide Road Maintenance Agreement in lieu of separate permits for each vehicle(s) or even a blanket permit. Said Road Maintenance Agreement shall conform to the minimum requirements of this Law, would be executed by the Town and the Permittee and shall include such additional terms as are reasonably required by the Town, including but not limited to insurance, maintenance bond, truck traffic routes, traffic schedules, inspections and road surveys. All of the vehicles specifically listed in such agreement, including those owned by the holder, its agents and sub contractors, shall be deemed to be covered by such agreement, and upon execution of the agreement the Town Clerk shall issue a blanket permit.

#### Section 9.     Damage to Town Roads

With the exception of normal wear and tear, the Permittee is responsible for all damages, injuries discharges or spills that occur on or to the Town Roads, other Town property, ditches, curbs, sidewalks or other improvements and to public utilities of the Town in the roadway.

Upon due notice being given to the Permittee and at the Town's option, the Town may allow the Permittee to repair all damages or the Town may arrange the necessary repairs and charge the Permittee for all labor and materials at the prevailing rates. The highway shall be



restored and the integrity of the repair maintained for a period of one year from the date of any repairs. Particular attention is called to the necessity of thoroughly compacting the back fill, which will be required by the Town. If the Town requests the Permittee to repair the damages, such repair will be promptly done to the specifications, time line and any and all other requirements of the Town.

#### Section 10. Insurance

A. The Permittee shall present to the Town certificates of insurance evidencing the acquisition of liability insurance coverage naming the Town as an additional insured on a noncontributory basis with the minimum limits of coverage for bodily injury equal to \$1,000,000.00 for each person injured, \$2,000,000.00 for aggregate bodily injury resulting from each occurrence, and \$500,000.00 property damage.

B. Said insurance shall be maintained throughout the term of the permit, at the cost and expense of the Permittee, and the aforementioned certificates shall provide for thirty (30) days' notice to the Town prior to cancellation of coverage.

C. All persons performing work under this permit and whom are required to be covered by Workmen's Compensation Insurance and Disability Benefits insurance under New York law; shall be covered at the cost and expense of the Permittee.

#### Section 11 Maintenance Bond and Letter of Credit

The Permittee shall present to the Town a maintenance bond in a dollar amount per mile as determined by the Town's Highway Superintendent sufficient to cover the actual cost of repair, reconstruction, and/or any other reasonable and necessary action. In determining the dollar amount per mile, the Highway Superintendent shall take into account the type of road (such as gravel, oil and stone, or paved), the width, the existence of culverts, drainage pipes bridges, or other features, and such other factors as he maintains are appropriate. The Permittee shall also present to the Town a bank letter of credit in the amount of \$10,000.00 in favor of the Town guaranteeing compliance with the provisions of the permit. The Permittee shall immediately notify the Town of any change, threatened cancellation, actual cancellation, or expending of the maintenance bond or the letter of credit. Prior to the said letter of credit and/or maintenance bond being changed, cancelled or expended, the Permittee shall renew, extend, or replace the same on the same terms and conditions as originally and immediately provide proof thereof to the Town, and upon the Permittee's failure to do so, the Town, at its option may revoke the permit.

By accepting the maintenance bond and letter of credit, the Town in no way gives up its rights to proceed directly against the Permittee for any damages that the Town incurs.

Such Maintenance Bond shall be maintained for a least a period of one year after repairs have been approved by the Town. The highway shall be restored and the integrity of the repair maintained for a period of one year from the date of any repairs.

#### Section 12 Indemnity and Save Harmless.

The Permittee will be required to agree to fully indemnify, defend, save and hold harmless the Town and all of its departments, bureaus, divisions, boards, officers and employees from and against any and all claims, costs, damages, expenses, charges, risks, losses, lawsuits, judgments, executions, penalties, fines, assessments or any other liability of any type arising out of, occurring in connection with, or resulting from any type and all activity to be performed by Permittee pursuant to this permit.

By accepting the Permit, the Permittee shall be deemed to have agreed to all of the defense, indemnity and save harmless provisions of this Local Law and all other provisions of this Law.

### Section 13    Extent of Permittee's Liability and Obligations Hereunder

The Permittee's obligations hereunder to repair and restore, the Permittee's obligations hereunder to defend, indemnify and hold harmless, and the Permittee's other liability and obligations hereunder shall not be limited by the limits of any applicable insurance coverage, highway permit bond, maintenance bond, letter of credit, comparable bond, escrow account, cash deposit, or rights of the Town under any New York State or Federal law, rule, regulation or statute, including subdivision 3 of section 23-0303 of the Environmental Conservation law of the State of New York. The Permittee's obligations hereunder to repair and restore, the Permittee's obligation hereunder to defend, indemnify, and hold harmless, and the Permittee's other liability and obligations hereunder shall survive any termination or revocation of the Permit.

### Section 14    Stop Work Orders

The Highway Superintendent shall have the right and authority to issue stop work orders to those operating in violation of the terms of this permit, or contrary to the Permittee's application or conditions upon which its permit was issued or in violation of this Local Law, in violation of applicable provisions of law.

### Section 15    Revocation of Permit

Upon the violation of any provisions of this permit, or violation of any provisions of this Local Law, or violation of applicable provisions of law, or violations of any conditions, the Town Board may suspend any such permit issued hereunder for no more than thirty (30) days, and following a public hearing at which the Permittee shall have the right to appear and be heard, the Town Board may permanently revoke any permit on written notice to the Permittee.

### Section 16    Special Conditions and Exclusions

A. The permit shall not be assigned or transferred without the written consent of the Town Board. A change of ownership or business identity shall also require Board approval.

B. The Town Clerk shall be given three business days written notice by said Permittee of the date when it intends to begin the activity authorized by the permit, and prompt notice of its completion.

C. The permit shall remain valid only for so long as the Permittee continues to hold a valid New York State hauling Permit or Divisible Load Permit, where necessary.

D. The permit shall not authorize the holder to exceed the maximum gross weight limit authorized for crossing an R-Posted bridge or culvert.

E. Valid insurance, maintenance bonds and letters of credit shall be maintained as required by herein.

F. Traffic will be maintained in accordance with the all applicable laws regarding the same.

G. If any of these conditions are not met, the permit is automatically voided and all work shall cease.

#### Section 17 Penalties for Violations

A. Any person who violates any provision of this chapter shall be deemed guilty of a Violation and, upon conviction thereof, shall be subject to penalties in a fine of not less than \$1,000.00 per violation.

B. In addition to those penalties prescribed herein, any person who violates any provision of this chapter shall be liable for a civil penalty in an amount not to exceed \$5,000.00 for each day or part thereof during which such violation continues. The civil penalties provided by this subsection shall be recoverable in an action instituted in the name of the Town.

C. If the violation is of a continuing nature, each twenty-four hour period during which it occurs shall constitute an additional, separate and distinct offense.

D. An action or proceeding may be instituted in the name of the Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce any provision of this Law. In particular, but not by way of limitation, where there is a violation of this Law, an action or proceeding may be commenced in the name of the Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing abatement of the condition in violation of such provisions. The Town may seek restitution for costs incurred by the Town in remedying each violation, including but not limited to reasonable attorney's fees.

E. Remedies not exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation described in this Law. Any remedy specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section.



F. This section shall apply not only to the responsible person who signed the application for the permit but also all vehicle drivers, corporate officers or directors, limited liability members or managers, partners, and all other employees and other persons who are in violation, as well as the business entity itself.

#### Section 18    Reservation of Town's Rights

The Town hereby retains all rights it has now or may have hereafter, pursuant to the provisions of subdivision 3 of section 23-0303 of the Environmental Conservation Law, to request funds (by filing a request therefore with the New York State Commissioner of Environmental Conservation) from the oil and gas fund to reimburse or compensate the Town for costs related to repairing damages to any Town Road, or other Town property. The Town hereby retains and reserves all rights it has now or may have hereafter, pursuant to Navigation Law Article 12 to make a claim against the New York Environmental Protection and Spill Compensation Fund to reimburse or compensate the Town for cost related to repairing damages to any Town Road or other Town property.

The Town hereby retains and reserves all other rights it has now or may have hereafter, to seek reimbursement or compensation for costs related to repairing damages to any Town Road or other Town property.

#### Section 19    Escrow

The Board may hire any consultant and/or expert necessary to assist the Town Board in reviewing and evaluating the application.

1. The Town requires an applicant to deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town Board in connection with the review of any application. The initial deposit shall be the sum of \$5,000.00. However, the Town Board may, in its discretion reduce said fee upon good cause shown. These funds shall accompany the filing of an application and the Town shall maintain a separate escrow account for all such funds. The Town's consultants/experts shall, in accordance with an agreement between the Town and its consultants or experts, bill or invoice the Town not less frequently than monthly for its services in reviewing the application and performing its duties. If at any time during the review process this escrow account has a balance that shall not reasonably cover the cost of the remaining work of the Town's consultants/experts, the Town will require applicant to immediately replenish said escrow account in an amount set by the Town, but not to exceed \$2,500.00. Such additional escrow funds must be deposited with the Town before any further action or consideration is taken on the application. If, at the conclusion of the review process, the cost of such consultant/expert services is more than the amount escrowed pursuant hereto, the applicant shall pay the difference to the Town prior to the issuance of any Special Permit. In the event that the amount held in escrow by the Town is more than the amount of the actual billing or invoicing by the Town's consultants or experts, the difference shall be promptly refunded to the applicant.

2. A request may be made by the applicant to reduce or eliminate the funds needed for the consultant/expert escrow. After a recommendation by the Attorney for the Town, Engineer for the Town and/or any other consultant/expert engaged by the Town pursuant to this Law, the Town Board shall review the request and make a determination based upon the scope and complexity of the project, the completeness of the application and other information as may be needed by the Town Board or its consultant/expert to complete the necessary review and analysis. Additional escrow funds, as required and requested by the Town, shall be paid by the applicant. The initial amount of the escrow deposit may be established by the Town Board upon receipt of information sufficient to make such a determination.

3. As used in this section, the term "costs and expenses" shall be deemed to include the reasonable fees charged by engineers, consultants and/or experts hired, reasonable administrative costs and expenses incurred by the Town in connection with the permitting process and the repair, restoration and preservation of Town Roads and other Town property, and reasonable legal fees, accountants fees, engineers fees, costs, expenses, disbursements, expert witness fees, and other sums expended by the Town in pursuing any rights, remedies or claims to which the Town may be entitled under this Local Law or under applicable provisions of law, as against any Permittee, any person who has violated this Local Law, any insurance company, any bonding company, any issuer of a letter of credit, and/or any United States or State of New York agency, board, department, bureau, commission or official.

4. These funds shall accompany the filing of the application, and the Town shall maintain a separate escrow account for all such funds.

5. The Town is hereby authorized to withdraw funds from said escrow account (without prior notice to the Permittee) in order to promptly reimburse the Town for any costs and expenses (as defined herein). The Town must provide a monthly update as to monies expended from the escrow account.

6. In the event that there is any balance remaining in the escrow account as of the date that the Town Board determines that the Permit has expired and further determines that no damages or injuries have been caused to any Town Road or other Town property (and that no discharges or spills have occurred on any Town Road or other Town property) for which the Town has not been fully reimbursed, the Town shall pay to the Permittee the balance remaining in the escrow account.

## Section 20 Request for a Waiver

All requests for a waiver from the standards set forth in this Law shall be made to the Town Board in writing and shall, contain the grounds on which the requestor relies upon for requesting the waiver, including all allegations on any facts on which the requestor appellant will rely. Where the Town Board finds that due to the special circumstances of the particular case a waiver of certain requirements is justified, then a waiver may be granted. No waiver shall be granted, however, unless the Town Board finds and records in its minutes that:

- (a) granting the wavier would be in keeping with the intent and spirit of this Law and is in the best interests of the community,
- (b) there are special circumstances involved in the particular case;
- (c) denying the wavier would result in undue hardship to the applicant, provided that such hardship has not been self-imposed,
- (d) the waiver is the minimum necessary to accomplish the purpose.

#### Section 21 SEQRA.

When applicable, the Town shall at all times comply with applicable provisions of the Environmental Conservation law of the State of New York and applicable provisions of the state environmental quality review regulations (6 NYCRR Part 617) (hereinafter "SEQRA").

#### Section 22 Severability.

If any part or provision of this Local Law or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Taghkanic hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

#### Section 23 Repealer.

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

#### Section 24 Effective Date

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State.