

Local Law Filing
of State

New York State Dept

41 State Street
Albany, NY 12231

(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 of Avoca

Village

Local Law No.2 of the Year 2012

A local law in regards to the use and repair of Town roads.

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

Section 1. Finding and Purpose.

The Town Board of the Town of Avoca has determined that it is in the best interest of taxpayers and the general public to assign responsibility for the repair of damage to Town roads to a standard appropriate for high intensity use prior to the commencement of any activity, to those responsible for the damage rather than to all Town taxpayers. The purpose of this law is to maintain the safety and general welfare of Town residents by regulating heavy uses of Town roads that have the potential to adversely affect such roads. Well maintained roads are important to the safety and economic well-being of the Town and its residents. Endeavors, such as construction, timber harvesting, mining, natural gas drilling, and wind farms are also of economic interest. This law is not intended to regulate such businesses: the intent is to protect the public roads from damage.

Section 2. Definitions.

A. High frequency, high impact truck traffic: Traffic to and from a project site that generates more than 100 trips. For purposes of this law, a truck trip is a trip to or from the project site involving a truck with a gross weight of twenty (20) or more tons (truck and load combined). A single truck makes two truck trips if it meets the weight limit traveling to the project site and meets the weight limit traveling from the project site.

B. Bond: A commercial bond to ensure that the condition of the Town roads is not adversely impacted by high frequency, high impact truck traffic. The Town may accept an equivalent financial guarantee in lieu of bond.

C. Bond Release: A bond release given by the Town Highway Superintendent and the Town Board based on satisfactory road conditions at completion of the high frequency, high impact truck traffic.

D. Permitted: The permitted is the person responsible under this law to obtain a permit regardless of whether the person in fact obtains a permit. The permitted is the person responsible for the project generating the truck traffic. In any instance in which another permit is required, such as a building, drilling, or mining permit, any person who obtained any such permit or was required to obtain such other permit shall be deemed the permitted for purposes of this law. In the event no other permit is required, the owner of any property on which the activity is taking place shall be deemed the permitted for purposes of this law.

E. Person: Any individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.

F. Temporary Project: Any non-permanent activity that generates high frequency, high impact truck traffic on Town roads whether or not the project itself is located in the Town.

(1) Projects include, but are not limited to, construction projects, mining, drilling activities, and wind farms. With regard to projects that require another permit, such as building, drilling, or mining permit, all activities covered by that other permit are considered part of the temporary project for purposes of this law.

(2) Agricultural operations as defined by New York State Agricultural District Law and the movement of agricultural products are excluded. Also excluded are school buses, law enforcement vehicles, fire fighting vehicles, military vehicles, and municipal vehicles engaging in road work on behalf of municipalities.

Section 3. General Provisions.

A. The town determines the high frequency, high impact truck traffic associated with temporary projects would materially injure Town roads. Also the Town Board reserves the right to hire a project manager and the cost will be incurred by the Permitted.

B. Upon determination by the Town Highway Superintendent that a temporary project may generate high frequency truck traffic, the Permitted shall erect and pay for all signs on the appropriate sections of Town highways and the notice shall also be published in the official newspaper for the Town of Avoca.

C. Any such permit shall designate the route(s) to be traversed and contain other reasonable restrictions or conditions deemed necessary by the Town Highway Superintendent. The conditions may include, but not be limited to, requiring the permitted to make road improvements to ensure that the roads have the strength and capacity to handle the anticipated traffic. The permit shall be kept at the site serving the project and shall be open to inspection by Town Highway Superintendent acting pursuant to his duties, or police officer. Such permit shall be for the duration of the temporary project.

D. In order to obtain a permit the permitted must submit a permit application to the Town Highway Department, which shall include all information required by the Town Highway Superintendent, including but not limited to: vehicle identification and owners/operators, vehicle weights, load weights, materials carried, route(s) to be followed from Town Highway to site, duration of activity (beginning date and end date), frequency of trips and times of operation. The applicant shall pay a permit fee to be established by the Town Board, but in no event shall the fee be less than \$50.00.

E. The Town Highway Superintendent may require the permitted to submit documentation (including, but not limited to, photographs and videos) of the condition of the roads, shoulders, and all structures (culverts, bridges, etc.) that will be traversed by the permitted traffic as a condition of the permit.

F. In addition to the restrictions on routes and other reasonable restrictions, the Town Highway Superintendent will decide if the scope of work is such that a bond is required, and the amount of any such bond. The determination of the need and amount of any bond shall be based on a determination of potential damage to Town roads based on the truck route(s), weight of the vehicles, frequency of travel seasonal conditions and the type category (classification) of the roads on the approved route(s).

G. A permitted aggrieved by a determination of the Town Highway Superintendent regarding the need for or conditions of a permit may, within ten (10) days of the determination, appeal to the Town Board, allowing the Town Board 30 days to respond. No action inconsistent with the determination of the Town Highway Superintendent shall take place pending the determination of the Town Board.

H. The permitted shall be responsible for assuring that the high frequency,

high impact truck traffic does not prevent any impacted Town road from remaining in safe and useable condition for all legal uses of the road throughout the duration of the temporary project.

I. Upon completion of the high frequency, high impact truck traffic project, the permitted will apply to the Town Highway Superintendent for a bond release. Upon inspection of the traveled roads, as necessary, the Town Highway Superintendent may approve the release of the bond. If the release is not approved, the Town Highway Superintendent will specifically document the tasks that must be accomplished in order for the bond to be released, which may include, but not be limited to, the payment of money for the repair to damaged roads. The permitted must remedy the specified problems before the bond may be released.

J. If the permitted does not comply with this law and all the terms and conditions of the permit and operate within the parameters specified on the permit, the permit maybe revoked at the discretion of the Town Highway Superintendent.

K. In the event that high frequency, high impact truck traffic uses any Town roads without the required valid permit, the Town Highway Superintendent or any law enforcement officer has the authority to deny access to the roads, and in cases where the Town permit was required, to shut down the project. This relief is in addition to any and all damages and penalties.

L The permitted will be responsible for the repair of any damages that occur to any Town road when a project proceeds with or without proper permit, as well as for all fines and penalties specified in this law.

M. In lieu of obtaining a permit, any person who may be responsible to obtain a permit may enter into a road use agreement with the Town although the Town has no obligation to enter into a road use agreement. In such case, the requirements shall be governed by the agreement, rather than by permit conditions.

N. Payment for road repair and inspection done by Town forces, all material, labor inspections and equipment costs for repair shall be paid for by Permitted.

O. In the event that it is determined that seasonal roads need to be opened, payment for snow removal and sanding by Town forces, all material, labor and equipment costs shall be paid for by Permitted. Seasonal roads are defined and posted open between April 15 to Nov 15.

Interim and Emergency Repairs

A. The Town Highway Superintendent will perform periodic inspections of the specified haul route(s) designated by the Permitted. **The Town Highway Superintendent will determine if any repairs are required to maintain the safety of the traveling public. The Town of Avoca may deem necessary that the designated haul route(s) be restored to like new conditions before the project is complete.** The permitted will be expected to perform any emergency repairs to the haul roads, including the pavement, drainage structures, or any other highway related appurtenance that is damaged by the project and which the Town determines must be repaired. **The Town Highway Superintendent will inform the permitted of required emergency repairs and the repairs shall be accomplished within a minimum of twelve (12) hours. If more time is required, the permitted shall inform the Town Highway Superintendent of the status of the repair on a daily basis, but at no time shall the road become impassable or become dangerous to the traveling public.** Close communication will be required between the Town Highway Superintendent and the manager of the project. All cost of the repair shall be paid for by the permitted. Due to the constantly changing condition of gravel roads the condition of Gravel Haul routes will be monitored closely. All gravel haul routes shall be treated for dust control throughout the construction project. At a minimum two times between the months of May and September, the gravel haul routes shall be treated with Calcium Chloride or a suitable liquid asphalt prime coat. At the discretion of the Town Highway Superintendent, depending on road conditions more dust control treatments may be required. The Town Highway Superintendent will determine when re-grading and dust control treatments are required for gravel roads and shall direct the permitted when to do them.

B. Extreme Weather Conditions -Once construction begins on the Project the Town Designee shall be entitled, at any time, to notify the Permitted that use of a/the Designated Haul Road/s may result in excessive damage to a/the Designated Haul Road/s due to weather conditions that may pose a serious safety risk to the traveling public. The Permitted shall work with such Town Designee to develop a plan to mitigate or prevent the safety liabilities of such weather conditions. If the Parties are able to develop a plan to mitigate or present such safety liabilities, then the Permitted may continue to use such roads provided such mitigation is implemented. If the Parties are unable to develop such a plan, the Permitted may propose an alternate route to the Project site for approval by the Town (such approval not to be unreasonably withheld).

C. Permitted shall hire a qualified contractor of its choice, to be approved by the Town Board, to construct road repairs.

Section 5: Enforcement

The Town Highway Superintendent, in consultation with the Attorney for the Town, shall enforce the provisions of this law and all rules, regulations and designations made pursuant thereto. Such enforcement shall include, but not be limited to, legal or equitable proceedings, including without limitation an action for specific performance brought in the name of the Town.

Section 6: Penalties for Offenses.

A. Any person who violates this law shall be guilty of a violation and subject to a fine of not more than \$5000.00 per day/per violation and/or imprisonment for not more than fifteen(15) days. Each and every act committed that is prohibited by this law shall constitute a separate violation. Violations may be prosecuted by the Attorney for the Town or any other person with authority to prosecute violations within the Town.

B. Upon failure of any permitted to comply with the requirements of this law, the permit shall be subject to suspension, revocation or to the imposition of conditions.

Section 7. Invalid Segment.

Should any provision or conditions of this law be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the law as a whole or any part thereof other than the part declared to be invalid.

Section 8: Effective Date.

This local law shall take effect immediately upon filing with the Secretary of State.

Section 9: Multiple Users In the event that there are multiple users on any Designated Haul Routes;

- a) A list of all Permitted using the same Designated Haul Routes shall be distributed to each Permittee by the Town.
- b) All interim and emergency repair costs as well as all final road repair costs incurred **after** multiple Road Use Agreements are in place, shall be shared by the Permitted. Any costs incurred **before** multiple Road Use agreements and in place, shall be borne by the original Permitted.

Section 10.1 In the event that the Permitted fails substantially to perform each and every obligation and undertaking to be performed by it hereunder, and such default shall not be cured within thirty (30) days after notice from the Town, then the Town shall have the right to terminate this Agreement by giving ten (10) days' notice.

Section 10.2: The Town reserves the right at any time during the life of this Agreement to terminate the Agreement in its absolute discretion on thirty (30) days' notice in the event that,

- (a) Permitted becomes insolvent; or
- (b) Any voluntary or involuntary petition in bankruptcy or for corporate reorganization or for any similar relief is filed by or against the Permitted and, in the case of an involuntary petition, such petition is not dismissed with thirty (30) days after such filing; or

- © A liquidation proceeding is commenced by or against the Permitted, and, in the case of an involuntary proceeding, such proceeding is not dismissed within thirty (30) days after commencement thereof: or

- (d) All or substantially all of the business or assets of the Permitted are transferred to a third party (other than a parent or ASSOCIATED COMPANY of the Permitted by agreement, order of court, or otherwise, including, without limitation, by a merger or consolidation.

Section 10.3 Upon termination of this Agreement as hereinabove provided or by operation of law or otherwise, all rights and licenses granted and obligations assumed hereunder shall terminate forthwith, except;

- 1. The obligation to pay amounts accrued or to accrue as of the termination date as provided hereinabove.