

LOCAL LAW NO. 2-2012

Section 1. Title:

This local law may be cited as the “Town of Tioga Road Preservation Law”.

Section 2. Authority for this Local Law:

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

Section 3. Purpose: The purpose of this local law is to maintain the safety and general welfare of Town residents by protecting roads. Well-maintained roads are important to the economic well being of the Town. Construction, maintenance, and operation of high impact commercial endeavors (e.g. mining, natural gas drilling, wind energy facilities and telecommunication facilities) can be economically beneficial. This Law is not intended to regulate such endeavors, but the intent is to protect the Town roads and property from damage from such 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.

Nothing contained in this Chapter shall be deemed to limit the right to farm as set forth in Article 25-AA of the New York State Agricultural and Markets Law. Nothing contained in this Chapter shall be deemed to unlawfully interfere with Interstate Commerce.

Section 4. Definitions

Blanket Permit: A Permit that covers more than one vehicle; which would be subject to the permitting process. Vehicles 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 a blanket permit must be used. Individual permits will not be allowed in such circumstances. The Permittee for a blanket permit shall be an individual or entity that controls or directs the specific project, site or work location.

High Frequency Truck Traffic: A vehicle or related vehicles that have 3 or more axels and which traverses/travels over 25 miles or more on Town roads or other town property during any five (5) days within any ten (10) day period. When calculating whether a vehicle or related vehicles meets the definition of High Frequency Traffic, 25 miles and 5 days within any 10 day period shall be used for both individual permits and Blanket Permits.

Local delivery: Delivery or pickup of merchandise or other property along the Town Roads.

Permit: Approval of an application for a Road Preservation Permit.

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 on each vehicle separately; however, the number of miles shall be the combination of all related vehicles with three or more axles.

Section 5. Permanent Weight Restriction and Truck Route:

High Frequency Truck Traffic is excluded from all Town Roads and is restricted to the "Town of Tioga Truck Route" which is defined as routes on, over and along any and all State and County owned/maintained roadways lying within the boundaries of the Town. No High Frequency Truck Traffic shall use Town Highways or roadways except and until a permit, blanket permit or road maintenance agreement is obtained.

The following vehicles are granted exemptions from this local law: Maintenance, repair and service vehicles owned and operated by municipalities or fire companies on official municipal or fire fighting business; Maintenance, repair and service vehicles owned and operated by a utility company/authority on official utility business; All Agricultural vehicles and local delivery.

Signs shall be installed on all major highways entering Town, referencing this local law.

Section 6. Permit Issuing Authority and Enforcement Authority

The Highway Superintendent is authorized to promulgate an application form, the Permit form and to review and approve/reject applications. The permit fees shall be set annually by the Town Board. The Highway Superintendent is authorized to require video or photographic documentation of the conditions of the Town's roads and property; both pre and post permit. The permit cannot be assigned /transferred without the written consent of the Highway Superintendent. 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.

The Town Clerk, the Highway Superintendent and the Code Enforcement Officer are authorized to receive applications for permits. The applications must be given to the Highway Superintendent, or his designee, who shall review and make all final determinations on the applications.

This chapter shall be administered and jointly enforced by the Town enforcement officers (including but limited to Highway Superintendent and Code Enforcement Officer), the police agencies of Tioga County and NYS and/or officials authorized by the Town Board of the Town.

Section 7. Alternative to Permit: Road maintenance Agreement

A Permittee may request the Town grant a Town wide road maintenance agreement in lieu of a permit. All road maintenance agreements shall be subject to final Town Board approval.

Section 8. 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 and other Town property.

At the Town's option, the Town may allow the Permittee to repair all damages or the Town may arrange the 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. If the Town requests the Permittee to repair the damages, such repair must be done to the specifications and all requirements of the Town.

Section 9. Insurance

The Permittee shall present to the Town certificates of insurance evidencing liability insurance coverage naming the Town as an additional insured on a non-contributory 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.

Section 10. Maintenance Bond and Letter of Credit

The Permittee shall present to the Town a maintenance bond in the amount of \$250,000.00 and 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. If the letter of credit and/or maintenance bond is expended, the Permittee shall replace the same within 5 days written notice from the Town, failing which the permit shall be revoked.

Such Maintenance Bond shall be maintained for at least a period of one year after repairs have been approved by the Town.

Section 11. 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 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 Local Law.

Section 12. Stop Work Orders, Revocation and Penalties

A. The Highway Superintendent and the Building and Code Inspector shall each 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.

B. 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 violation of any conditions, the Highway Superintendent may suspend such permit.

C. Any person who violates any provision of this chapter shall be deemed guilty of a Misdemeanor and, upon conviction thereof, shall be subject to penalties in a fine of not less than \$1,000 and imprisonment up to one year.

D. 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 therefore during which such violation continues. The civil penalties provide by this subsection shall be recoverable in an action instituted in the name of the Town.

E. 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.

F. 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 chapter. The Town may seek restitution for costs incurred by the Town in remedying each violation, including but not limited to reasonable attorney's fees.

G. No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation described in this chapter. Any remedy or penalty 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.

Section 13. Escrow

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. The Town may hire any consultant and/or expert necessary to assist the Town Board in reviewing and evaluating the application. The initial deposit shall be the sum of \$5,000. These funds shall accompany the filing of an application. 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. 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. 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.

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.

Section 14. Severability

If any part or provision of this Local Law or the application thereof to any person or circumstance 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 hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

Section 15. Repealer

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

Section 16. Effective Date

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.