

ROAD PRESERVATION AND SAFETY

ADOPTION OF LOCAL LAW

RES. #181/2010 Motion by Bullis, Second by Levy

A LOCAL LAW TO ADD A NEW CHAPTER 103 ENTITLED ROAD PRESERVATION AND SAFETY REGULATING THE USE OF TOWN ROADS BY VEHICLE, THE WEIGHTS OR DIMENSIONS OF WHICH EXCEED THE LIMITATIONS OF VEHICLE AND TRAFFIC LAW SECTION 385.

§ 103-1. Authority.

This Chapter is enacted pursuant to the authority of the New York Municipal Home Rule Law, the general police power of the Town Board to protect the public and promote public safety, and Vehicle and Traffic Law § 385(15) (b), which authorizes a town to issue permits to operate or move vehicles, the weights or dimensions of which exceed the limitations provided in said section 385, on town roads and town highways.

§ 103-2. Purpose.

The purpose of this Chapter is to maintain the safety and general welfare of Town of Lysander residents by regulating commercial activities that have the potential to adversely affect road right-of-ways and the safety of the public. Well maintained roads are important to the economic well being of the Town. Accidents involving oversize or overweight vehicles present special risks, and advance notice of potentially dangerous cargo being transported over town roads in overweight or oversize vehicles can enhance the safety of accident response. Commercial endeavors, such as timber harvesting, mining, and natural gas drilling, are also economically beneficial. This Chapter is not intended to regulate such business, but rather to protect the public, and to protect public roads and road rights-of-way from damage.

§ 103-3. Permit issuing authority.

The Town Supervisor is hereby designated as the authority to receive applications for permits to operate or move a vehicle, or a combination of connected vehicles [e.g., tractor and trailer(s)], the weights or dimensions of which exceed the limitations provided in Vehicle and Traffic Law Section 385 on town roads or highways (hereinafter the "Permit"), and to receive notices required by this Chapter. Such permit can only be issued to applicants who are holders of valid New York State Hauling or Divisible Load Permits issued pursuant to Subpart 154-2 of Title 17 (Transportation) of New York Code of Rules and Regulations. A valid permit must be issued prior to anyone operating such heavy vehicles in the Town.

§ 103-4. Permit application, notice and fees.

A. The Town Supervisor is hereby authorized to promulgate form(s) for an application requesting a permit, the renewal thereof, and the permit to be issued upon review and approval applications. Permits shall be issued for a period of one year and may be renewed upon review and approval of a renewal application.

B. A permit shall be issued at least ten (10) business days in advance of the first operation of oversize or overweight vehicles on Town roads. In addition to any other information required on the permit application, the applicant shall provide, either on or attached to the permit application, (1) the identity of the town roads to be utilized and routing, (2) the estimated starting and ending dates for use of Town roads, and the estimated number of vehicles to be operated under the permit, and (3) a complete description of the loads to be carried by each oversize or overweight vehicles, including, without limitation, the size and weight of each loaded vehicle and the chemical compound (content) of any liquid cargo. In the event any hazardous chemicals are to be transported, the permit may require that the Town be provided with a separate advance notice of five (5) business days for each oversize or overweight vehicle carrying such cargo. Hazardous chemicals, for the purpose of this subsection, shall be as defined in 29 CFR 1910.1200 (OSHA Hazardous Communication Standard)

C. Town Supervisor, with the assistance of the Town Highway Superintendent and Town Engineer, if necessary, will produce a pavement evaluation of the Town roads named in the permit application to be used as a baseline for determining damage.

D. The Town Board may, by resolution, designate and impose such fees as it deems reasonable and appropriate in relation to the issuance of permits under this Chapter. After any such fees are imposed, the manner of implementation and collection shall be by regulation of the Town Board or its designee not inconsistent with the terms of the resolution imposing such fees. Fees shall be paid by the applicant at the time of application.

§ 103-5. Damage to Town roads.

With the exception of normal wear and tear, vehicle owners, lessees, operators, and the permittee are responsible for all damages done to the roadways, bridges, ditches, curbs, sidewalks or other improvements and to public utilities in the right-of-way as determined by the Town Supervisor. There shall be a presumption that the operation of a vehicle or combination of vehicles in excess of the maximum weight limits set by Vehicle and Traffic Law Section 385 is the proximate cause of any such roadway and related damage, whether or not a permit to exceed such weight limits was issued. Upon due notice being given to a permittee and at the Town's option, the Town may allow a permittee to repair all damages, or the Town may arrange the necessary repairs and charge the vehicle owner, lessees, operators, and permittee for all labor and materials at the prevailing rates. The highway shall be restored and maintained for a period of one year from the date of any repairs at the expense of the vehicle owner, lessees, operators and permittee responsible for the damage.

§ 103-6. Insurance.

A. The permittee shall present to the Town, as a prerequisite to the issuance of a permit hereunder, certificates of insurance evidencing the acquisition of 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, \$3,000,000.00 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 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 are to be covered by Workmen's Compensation Insurance and Disability Benefits insurances as required by New York law, and certificates evidencing the existence of such coverage shall be provided to the Town.

§ 103-7. Maintenance bond.

The permittee shall present to the Town a maintenance bond in the amount of \$100,000.00 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. The maintenance bond shall be maintained by the permittee for the duration of the permit period. At such time, if ever, that said letter of credit is expended, the permittee shall replace the same within 5 days written notice of the Town, failing which the permit shall be subject to revocation.

§ 103-8. Indemnity and save harmless.

The permittee, to the fullest extent permitted by law, will be required to agree to indemnify, defend, save and hold harmless the Town of Lysander, and all of its departments, bureaus, divisions, boards, officers and employees, including, without limitation, the Town Supervisor, Highway Superintendent, and Engineer, 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 any permit issued under this Chapter.

§ 103-9. Stop work orders.

The Town Supervisor and Code Enforcement Officer 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.

§ 103-10. Revocation of permit.

Upon the violation of any provisions of this permit, the Town may suspend any permit issued hereunder for no more than thirty (30) days, and following a public hearing by the Town

Board at which the permittee shall have the right to appear and be heard upon five (5) days notice, may revoke any permit on notice to the permittee.

§ 103-11. Special conditions.

A. The permit shall not be assigned or transferred without the written consent of the Town Supervisor.

B. The Town shall be given one week's notice by said permittee of the date when it intends to begin the activity authorized by the permit, and prompt notice of its completion. Upon notice of completion the Town roads designated in the permit will be assessed for damage.

C. The permit shall remain valid only for so long as the permittee continues to hold a valid New York State Hauling or Divisible Load Permit issued pursuant to Subpart 154-2 of Title 17 (Transportation) of New York Code of Rules and Regulations, and for so long as the permittee complies with all conditions of the Town permit.

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

§ 103-12. Violation of chapter; penalties.

Any person who shall operate or move a vehicle or a combination of vehicles, the weights or dimensions of which exceed the limitations provided in Vehicle and Traffic Law § 385 on Town roads or highways without obtaining the permit required hereunder, or who shall refuse to make the repairs or pay the charges referenced in Section 148-5 herein, shall be guilty of a Class A misdemeanor, which shall be punishable by a fine not exceeding One Thousand (\$1,000.00) Dollars for each day of such violation.

§ 103-13. Severability.

If any part or provision of this Chapter 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 Chapter.

Section 2. This Chapter shall take effect immediately upon filing in the office of the Secretary of State.

VOTE:

Supervisor Bullis	Yes
Councilor May	Yes
Councilor Krisanda	Yes
Councilor Levy	Yes