

# ROAD PRESERVATION LAW

Local Law No. 6 of the year 2012  
Adopted October 2, 2012

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

## **Section 1.**     **Title**

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

## **Section 2.**     **Authority for this Local Law**

The Town Board of the Town of Kirkwood 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 Section 2(c)6 and Town Law, specifically subsection 1(ii)(a)(6), which allows towns to adopt local laws regarding the acquisition, care, management and use of its highways, roads, streets, avenues and property.

This Local Law is also enacted pursuant to the authority of subdivision 2 of Section 23-0303 of the Environmental Conservation Law of the State of new York which provides that “The provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries, but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax law.”

This Local Law is enacted pursuant to the authority of Highway Law Section 140, wherein the Commissioner of Public Works must cause certain highways and bridges within the town, to be kept in repair, to bring an action in the name of the town, against any person or corporation, to sustain the rights of the public, in and to any town highway in the town, and to enforce the performance of any duty enjoined upon any person or corporation in relation thereto, and to recover any damages sustained or suffered, or expenses incurred by such town, in consequence of any act or omission of any such person or corporation, in violation of any law or contract in relation to such highway and other powers thereunder.

Additionally, this Local Law is enacted pursuant to the authority of Highway Law Section 320, which requires that those that injure any highway or bridge maintained at the public expense, by drawing or propelling over the same a load of such weight as to injure or destroy the culverts or bridges along the same, or of such weight that will destroy, break or injure the surface of any improved town highway, or by any other act, shall for every such offense forfeit treble damages.

This Local Law also relies upon Town Law Section 130, which allows towns to enact ordinances, rules and regulations not inconsistent with law, regulate the use of streets, highways, sidewalks and public places by motor and other vehicles and regulate the manner in which excavation may be made in or under the streets, highways, sidewalks or

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public places and requiring an indemnity bond as a condition precedent thereto or the Town Board may require as the condition precedent thereto, the deposit in cash of such an amount as the board may determine necessary to cover the probable expense to the town of the replacement by the town of the street, highway, sidewalk or public place, and the unexpended balance, if any, shall be refunded to the depositor.

Lastly, this Local Law is enacted pursuant to Vehicle and Traffic Law Section 1660, which allows towns to provide for the creation of truck routes, for the permanent and temporary exclusion of certain traffic and for the adoption of additional reasonable ordinances and local laws with respect to traffic as local conditions require.

### **Section 3. Purpose**

The purpose of this Local Law is to maintain the safety and general welfare of Town residents by regulating high impact commercial activities that have the potential to adversely impact roads and property. Well-maintained roads are important to the economic well being of the Town. Construction, maintenance, and operation of high impact commercial endeavors (e.g. timber harvesting, 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.

Heavier trucks deteriorate the pavement structure at an accelerated rate. A study at University of Texas found that one big rig pass causes the damage equivalent to 2,000 to 3,000 cars. That damage increases exponentially: A 95,000-pound truck does two to three times the damage of an 80,000-pound truck. One 80,000-pound truck can cause the same damage as 800 to 1,000 cars. Multiple passes exuberate the damage caused. As such, it is the intent of this law to protect town roads from the frequent passes of heavier trucks. In the U.S. Department of Transportation's 1998 Draft Comprehensive Truck Size and Weight Study, it was written that "pavement deterioration increases with axle weight and with the number of axle loadings a pavement experiences."

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.

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### **Section 4. Definitions**

The following terms shall have the following meaning in this Chapter.

**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 the subject of a blanket permit.

**Bond:** A commercial bond to ensure that the condition of the Town roads and/or property impacted by High 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:** A vehicle or related vehicles that have 3 or more axels and which traverses/travels over 50 miles or more of Town roads or other Town property during any 5 consecutive days. When calculating whether a vehicle or related vehicles meets the definition of high Frequency Traffic, 100 miles and 5 consecutive work days shall be used for both individual permits and Blanket Permits.

**Commissioner of Public Works:** The Commissioner of Public Works 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.

**Motor Vehicles:** Every vehicle operated or driven upon a public highway which is propelled by any power other than muscular 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 and police vehicles other than ambulances, (f) farm type tractors and all terrain type vehicles used exclusively for agricultural purposes, or for snow plowing, other than for hire, farm equipment, including self-propelled machines used exclusively in growing, harvesting or handling farm produce, and self-propelled caterpillar or crawler-type equipment while being operated on the contract site.

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

**Permittee:** 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, subcontractors, 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 axels shall be counted on each vehicle separately; however, the number of miles shall be the combination of all vehicles with 3 or more axels.

**Road Preservation Local Law Worksheet (Appendix A):** Worksheet to be completed by potential Permittee, summarizing the project, project location, start and completion dates, expected maximum gross vehicle weight used for the project, proposed truck routes, and any other items that the Town Board deems necessary.

**Town:** Town of Kirkwood, a municipality located in the County of Broome, State of New York.

**Town Board:** The Town Board of the Town of Kirkwood, which is comprised of the Councilpersons and Supervisor duly elected.

**Town Clerk:** The duly elected Town Clerk of the Town of Kirkwood.

**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 thereunder.

**Truck:** Every motor vehicle designed, used, or maintained primarily for the transportation of property.

**Vehicle:** Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

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

A. All trucks, commercial vehicles, tractors, tractor-trailer combinations, tractor-semitrailer combinations, tractor trailer-semitrailer combinations, or motor vehicles that are considered High Frequency Truck Traffic are excluded from all Town Roads in the Town of Kirkwood, except that High Frequency Truck Traffic operated in the Town of

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Kirkwood shall be restricted (except as expressly hereinafter permitted) to the following designated “truck route system” and Local Delivery as provided in Section 6 following:

1. The designated “Town of Kirkwood Truck Route” shall be limited to and consist of routes on, over and along any and all State and County owner/maintained roadways lying within the boundaries of the Town of Kirkwood.

B. The initial determination that the standards of High Frequency Truck Traffic have been met shall be made by the Town Board. However, if during the application process a Permittee alleges that they do not meet the threshold of High Frequency Truck Traffic, they may present such evidence to the Town Board for a review and determination.

C. There shall be signs installed at all major highways entering the Town, indicating that High Frequency Truck Traffic must use the truck route system or local delivery by permit.

### **Section 6. Requirement that a Vehicle Permit be Obtained by High Frequency Truck Traffic.**

Local Delivery by High Frequency Truck Traffic is allowed but only after compliance with this Chapter and after obtaining a Permit, a Blanket Permit, or after entering into a road use agreement (as provided for herein).

When there is High Frequency Truck Traffic that involves 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, the Permittee must apply for a Blanket Permit or (as permitted elsewhere) a road use agreement. Individual permits will not be allowed in such circumstances. The Permittee for a Blanket Permit or road use agreement shall be an individual or entity that controls or directs the specific project, site or work location, and that application must include all vehicles owned, used, rented, leased, hired (including independent contractors) or in any way utilized on that project, site or work location.

### **Section 7. 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 under this Local Law to operate or move a vehicle 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 to the Town Code Enforcement Officer and the Commissioner of Public Works for their review and recommendation to the Town Board.

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C. The Town Board is hereby designated as the authority to approve applications for a Permit to operate, transport, or move High Frequency Truck Traffic, as defined above, on, over or across a designated Town road or other Town property.

D. This chapter shall be administered and jointly enforced by the Town enforcement officers and the police agencies of Broome County and New York State Police or other officials authorized by the Town Board of the Town of Kirkwood. Violations may be reported by verbal or written complaint by at least one person, including the enforcement officer.

### **Section 8.      Application and Permit Form**

At the time of initial application and continuing thereafter, the person requesting the permit shall provide the following on an application form to be promulgated by the Town Clerk:

- 1) A proposed road map that the High Frequency Truck Traffic will travel on,
- 2) A video or photographic documentation demonstrating the condition of the proposed road and/or property described in the permit,
- 3) Copies of valid New York State Vehicle Registrations for each vehicle,
- 4) Copies of valid New York State Special Hauling Permits, if any, for each vehicle,
- 5) Proof of Insurance as required herein,
- 6) Permit fee of \$100 per permit and \$500 per blanket permit,
- 7) Any other documents, maps, sketches, and plans, which the Town Board may require, and
- 8) All other requirements of this Chapter, including an escrow account, bond, etc. which must be satisfied prior to approval of any permit application.

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 the applicant intends to use more than one vehicle on a specific project, site or work location, the Permittee must request a Blanket Permit covering all of the vehicles which such Permittee plans to use on Town roads or highways. If any such Blanket Permit is thereafter issued, all of the vehicles specifically listed on such Permit shall be deemed to be covered by such Permit.

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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 possible additional relevant fees, bonds, escrows, insurances, etc.

Every Permit or Blanket 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 Broome County or New York State or other officials authorized by the Town Board.

After issuance of the Permit, the Permittee will arrange for video or photographic documentation of condition of the roads, shoulders, and all structures (culverts, bridges, etc.) that will be traversed by the permitted traffic on a 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 shall be subject to immediate revocation by the town Board of the Permit issued under this local law.

### **Section 9.     Alternative to Permit: Road Use Agreement**

A. Permittee, whom has more than one vehicle, which qualifies as High Frequency Truck Traffic, 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 Local 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 subcontractors, shall be deemed to be covered by such agreement, and upon execution of the agreement the Commissioner shall issue a Blanket Permit.

### **Section 10.    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, culverts, sidewalks or other improvements and to public utilities of the Town in the roadway.

It is the Permittee's responsibility to obtain the permission of any railroad companies operating within the Town to schedule traffic across any railroad crossings located on Town roads so as to avoid or minimize delays to rail traffic, and to maintain and repair said railroad crossings, as necessary.

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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 wage rates established pursuant to the New York State Labor Law. 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 done to the specifications, time line and any and all other requirements of the Town.

### **Section 11. 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 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.

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 insurances under New York law, shall be covered at the cost and expense of the Permittee.

### **Section 12. 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. At such time, if ever, that said letter of credit and/or maintenance bond is expended, the Permittee shall replace the same within five (5) days written notice from the Town, failing which the Permit shall be subject to revocation.

Such maintenance bond and bank letter of credit shall be maintained for at least a period of one year after termination of the Permit or the time that repairs have been approved by the Town, whichever shall be longer. 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 13. Indemnity and Save Harmless**

The Permittee will be required to agree to fully indemnify, defend, save and hold harmless the Town of Kirkwood 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



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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 as evidenced by the signature of the Permittee on said Permit.

### **Section 14.    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 15.    Stop Work Orders**

The Commissioner of Public Works 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, or in violation of applicable provisions of law, which order shall be subject to appeal to the Town Board in the same manner as revocation of said Permit as set forth in Section 16 of this Local Law.

### **Section 16.    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 violation of any conditions, the Town Board may suspend any such Permit issued hereunder for not 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 17.    Special Conditions and Exclusions**

A. The Permit shall not be assigned or transferred without the written consent of the Town Board.

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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 on R-Posted bridge or culvert.

E. Due to the vital nature of the following vehicles in providing public services deemed necessary in preventing emergencies or in safeguarding the public health, safety and welfare, and since overweight vehicles may be required to perform these services, the following vehicles are granted exemptions from the permitting process of this Local Law:

(1) Maintenance, repair and service vehicles owned and operated by municipalities or fire companies on official municipal or fire fighting business or practice exercises of said fire companies.

(2) Maintenance, repair and service vehicles owned and operated by a utility company or authority and on official utility business.

(3) Emergency vehicles.

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

G. Traffic will be maintained in accordance with the Uniform Traffic Control Manual. Stacking of vehicles involved in delivery to any project site shall not be allowed on Town roads.

H. If any of these conditions are not met, the Permit is automatically voided and all work shall cease upon issuance of a Stop Work order, which shall be subject to the same provisions regarding revocation of a permit set forth in Section 16 of this Local Law.

I. Nothing contained in this Local Law 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.

### **Section 18. Violation of Local Law; Penalties Therefore**

A. Any person who violates any provision of this Local Law 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.

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B. In addition to those penalties prescribed herein, any person who violates any provision of this Local Law shall be liable for a civil penalty in an amount not to exceed \$5,000 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 Local Law. In particular, but not by way of limitation, where there is a violation of this Local 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 Local Law. 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 19.   Reservation of Town's Rights**

The Town hereby retains and reserves 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 thereafter, 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 costs 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 hereafter, to seek reimbursement or compensation for costs related to repairing damages to any Town road or other Town property.

### **Section 20.   Escrow**

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

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(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. 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. 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 Permit issued under this Local Law. 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 chapter, 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.

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(5) The Town is hereby authorized to withdraw funds from said escrow account (with 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.

In the event that there is any balance remaining in the escrow account one year after the date that the Town Board determines that the Permit has expired or has been terminated 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 21. Request For A Waiver**

All requests for a waiver from the standards set forth in this Local Law shall be made to the Town of Kirkwood Town Board in writing and shall contain the grounds on which the appellant relies for requesting the waiver, including all allegations on any facts on which the appellant will rely. Where the Town Board finds that due to 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 waiver would be keeping the intent and spirit of this Local Law and is in the best interests of the community, (b) there are special circumstances involved in the particular case, (c) denying the waiver 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 22. 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 23. 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 of Kirkwood hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

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### **Section 24. Repealer**

A Local Law Providing That a Permit be Required for Use of Town of Kirkwood Roads by Vehicles With Gross Weight in Excess of the Limitations Allowed in Section 385 of the Vehicle and Traffic Law of the State of New York, adopted on September 2, 2008, be and the same is hereby repealed. The repeal of said Local Law shall not affect or impair any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected.

### **Section 25. Effective Date**

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