

Enacted 2010
Repealed 2011

AFTON ROAD USE LAW

SECTION ONE LEGISLATIVE PURPOSE AND INTENT

- 1.0 By this local law, it is the intent of the Town Board of Afton to ensure the general health, safety and traffic on the town roads. It is also the intent of the Town Board to encourage cooperation between the Town and developers and/or project sponsors whose activities shall involve a concentrated heavy traffic use of town roads, the ability to enter into a Road Use Agreement with the Town.

SECTION TWO, LEGISLATIVE AUTHORITY

- 2.0 This local law is enacted pursuant to the authority vested in the Town Board by Vehicle and Traffic Law 1660 (a) (25) and Municipal Home Rule Law 10 (1 (ii) (a) (6) and any other section that pertains.

SECTION THREE. DEFINITIONS.

- 3.0 The following words and phrases as used herein shall have the following definitions:
- 3.1 **TOWN.** The Town of Afton located in the County of Chenango, State of New York.
- 3.2 **CONCENTRATED HEAVY TRAFFIC.** Vehicular traffic to and from a single large construction or industrial activity site by a vehicle or vehicles having a gross weight of sixty thousand pounds (60,000) or more that travel over a town road or town roads more than fifty (50) vehicle trips per day for more than four (4) consecutive day, regardless of whether the vehicle trips are a single vehicle traveling multiple times or multiple vehicles traveling one or more times and/or 200 trips of 60,000 lbs. or more in any consecutive 7 day period during the length of the permitted work period.
- 3.3 **REGULATED VEHICLE, EQUIPMENT, MACHINERY.** Trucks, trailers, tractors and other equipment and machinery, both wheeled and tracked vehicles, machinery and equipment, whether self propelled or towed, whether loaded or unloaded, standing alone or in combination with an attached vehicle, equipment or machinery whose use and operation falls within the above definition of "concentrated heavy traffic".
- 3.4 **TOWN ROAD, TOWN HIGHWAY.** All roads and highways including seasonal limited use roads

designated as such pursuant to Highway Law 205-a, both paved and unpaved, open to travel by the public pursuant to easement or fee title vested in the Town of Afton, which said roads and highways are repaired and maintained by the Town of Afton and listed upon the town's official inventory of public highways for state aid purposes. Included within this definition are all components of a road or highway including the shoulders thereof, both paved and unpaved, ditches, culverts, drainage pipes, signage.

- 3.5 PERSON. Any person, partnership, company, corporation, limited liability company, voluntary unincorporated association, society, club or other legal entity.

SECTION FOUR. PROHIBITED CONDUCT

- 4.0 It shall be unlawful for any person at any time to either temporarily or permanently alter, modify, fill, obstruct, relocate any ditch, ditching, drainage flow, culvert, sluice or drainage pipe located within the right-of-way of any town road or highway or to install or construct same without the prior written consent of the Town Superintendent of Highways in connection with the carrying out of any large construction or industrial activity for which a road use permit is required hereunder. All such work shall be performed to the superintendent's specifications to the superintendent's reasonable satisfaction with the cost and expense thereof paid in advance by the road use permittee or otherwise as shall be determined by the Town Superintendent of Highways.

SECTION FIVE. APPLICATION FOR PERMIT AND PERMIT PROCESS

5.0 APPLICATION TO BE MADE TO TOWN CLERK.

Whenever a road use permit shall be required hereunder application shall be made to the Town Clerk upon a form to be supplied by the Town Clerk. A separate application shall be made for each separate site or locale within the town upon which large construction or industrial activity is to be conducted. In the event the site or locale shall not be located within the town but travel to and from such site or locale is required over a town road(s) by vehicles, equipment and machinery regulated hereunder, an application for a road use permit for such travel or passage over town roads is required hereunder.

5.1 APPLICATION FEE.

Each applicant shall submit to the Town Clerk together with the application a fee in the amount of five

hundred dollars (\$500.00) which fee may hereafter be modified by resolution of the Town Board.

5.2 **CONTENTS OF APPLICATION.**

This application for a road use permit shall contain the following information:

- A. The name, address and telephone number of the applicant. In the event a road use permit is granted the applicant shall be the named permittee on the road use permit.
- B. The name, address, phone number, title or official capacity, if applicable, of the individual who will have overall responsibility and authority for the industrial or commercial activity for which the road use permit is sought.
- C. The name and/or number designation of the town road(s) or town Highway(s), to be utilized by the applicant in conducting or engaging in the large construction or industrial activity for which the road use permit is sought. Such designation, if a road use permit is granted, shall constitute the "approved designated route of travel" which shall not be changed or deviated from by the permittee without the prior written approval of the Town Superintendent of Highways, which shall not be unreasonably withheld.
- D. The location of and a description of the lands upon which the industrial or commercial activities are to be conducted including the land owner's name, address, telephone number and the parcel's Chenango County Tax Map Parcel identification number(s). There shall be attached to the application a copy of the tax map parcel(s) which is the site where the industrial or commercial activity is to be carried out.
- E. A description of the industrial or commercial activity to be engaged in or carried out.
- F. The projected time frame during which the industrial or commercial activities will be carried out or engaged in,
- G. The applicant will be made aware of the time when school busses will be running so as to lessen his exposure to them. The school will be notified of the routes this company will be using.
- H. A description of any special needs or requirements including alterations, modification, excavations to town road(s) or highway(s) such as the need for the installation of, widening or lengthening of culvert, sluices, ditching, snow plowing, et. All special needs or requirement shall be subject to the prior approval, which shall not be unreasonably withheld, of the Town Superintendent of Highways and be at the sole cost of the applicant, or otherwise as determined by the Town Superintendent of Highways.

5.3 **REFERRAL TO INTERESTED AGENCIES (FLAMMABLE, EXPLOSIVE, CORROSIVE, TOXIC, POISONOUS AND HAZARDOUS CARGO)**

Whenever any such application for a road use permit required hereunder shall contain a disclosure that

any flammable, explosive, corrosive, toxic, hazardous or poisonous cargo or material, whether same be a solid, semi-solid, liquid, or gas shall be transported over a town road(s) or highway(s) the permit holder will provide to the Town Clerk any Material Safety Data Sheets (MSDS) as required by New York State, or, Department of Transportation (DOT), or the Environmental Protection Agency (EPA) or the Department of Environmental Conservation (DEC) or the Occupational Safety and Health Administration (OSHA). The Town Clerk shall maintain such files of MSDS for:

- (I) The Chief of the Afton Volunteer Fire Department
- (II) The Highway Superintendent

5.4 TIME FRAME FOR DECISION

- A. Not later than ten (10) business days from the date a completed application, together with the required fee, shall be submitted to the Town Clerk, the Town Clerk shall forward one copy of the completed application to the Town Superintendent of Highways and one copy to the Town supervisor.
- B. Not later than ten (10) business days from the receipt of the application from the Town Clerk, the Town Superintendent of Highways shall review the application and determine whether same is complete or whether more information is required. An application determined by the Town Superintendent of Highways to be incomplete shall be forthwith returned to the applicant by the Town Superintendent of Highways together with a written request for the required information. The applicant not later than ten (10) business days after receipt of the Town Superintendent's request for additional information shall resubmit the application to the Town Superintendent of Highways.
- C. Not later than ten (10) business days from the date of receipt back of all of the required recommendations by interested parties, if required, the Town Superintendent of Highways shall by regular U.S. mail forward to the applicant the Superintendent's written "notice of determination" granting the application, granting the application with special conditions or denying the application. Whenever the superintendent shall determine to deny the application the reason(s) therefore shall be set forth in the "notice of determination"

The Town Superintendent of Highways shall forthwith file with the Town Clerk one copy of his/her notice of determination together with one copy of any application having been required to be resubmitted due to incomplete information on the original application.

The Town Clerk and the Town Superintendent of Highways shall keep and maintain as part of each's

official town records all applications, resubmitted applications, correspondence, notices of determination, permits and subsequent correspondence and submittals generated in connection with each such application. As official town records all such documents shall be open and accessible to the public for viewing and copying pursuant to the statutes and FOIL (Freedom of Information Act) opinions of the State of New York regarding access to public records.

SECTION SIX. MONETARY ASSURANCE/ESCROW.

6.0 Whenever the Town Superintendent of Highways shall determine to grant an application or grant the application with special conditions, the applicant prior to utilizing a town road(s) or highway(s) pursuant to said road use permit shall:

- A. Meet all required special conditions, if any, and
- B. Furnish to the Town Clerk the monetary assurance as hereinafter specified.

6.1 AMOUNT OF MONETARY ASSURANCE/ESCROW.

- A. Whenever a road use permit shall issue pursuant to this local law, the permittee shall pay the sum of thirty thousand dollars (\$30,000.00), which the Town Clerk shall cause to be deposited in an interest bearing account at the Town's official depository bank and shall be kept separate and apart from all other Town monies and not co-mingled therewith. Said escrow fund shall be utilized solely by the Town for the purpose of making repairs or replacement of damage to or destruction of town roads and highways in excess of ordinary wear and tear caused by the road use permit holder, its employees, subcontractors, agents, assignees and others working in furtherance of the project or activity requiring concentrated heavy traffic. This escrow fund may also be used to pay the cost of clean up or remediation of any spills, leakage, release, discharge or placement of foreign substances on the road surface, ditches, drainage, etc. Including but not limited to chemicals, toxic, hazardous or pollutant type materials or substances. The escrow fund may also be used to pay any and all legal expenses incurred by the Town to remedy any actions needed to accomplish the intent of this law. The permittee shall also prior to the start of any large construction or industrial activity cause a bond to be delivered to the Town in an amount based on the mileage table (attachment A) available from the Town Clerk or Highway Superintendent.
- B. Whenever a permitted activity shall involve the use of more than one regulated vehicle, equipment or machinery, the monetary assurance requirements hereof shall be deemed to be applicable to the permitted activity and shall not require the furnishing of a separate monetary assurance for each

regulated vehicle, machinery utilized in the permitted activity.

6.2 **FORM OF MONETARY ASSURANCE.**

The monetary assurance shall be in the form of:

- A. Cash; or
- B. Bank check payable to the Town of Afton; or
- C. Certified check payable to the Town of Afton; or
- D. A wire transfer to the Town's designated bank account

6.3 **MONETARY ASSURANCE FUNDS TO BE HELD IN ESCROW.**

- A. Monetary assurance in the form of cash, bank checks or certified checks shall be deposited by the Town Clerk into a separate "Road Preservation Monetary Assurance Fund" account and held in escrow wholly separate and not co-mingled with other town funds or accounts. The depository bank shall be the same banking institution designated by the Town Board as the town's official banking institution. Fund balances in excess of FDIC insured limits shall be collateralized in accordance with the requirements of the General Municipal Law for all other town funds.
- B. Monetary assurance proceeds shall be returned to the permittee with interest upon completion of the permitted activities subject to the passing of an inspection of the affected town road(s) by Town Superintendent of Highways or by the Town Superintendent's designee. In the event such inspection discloses that the roadbed, surface, ditching, drainage, culverts, bridging of the affected town road(s) has been damaged during the course of the permitted activities by the permittee, its employees, agent, servants, contractors or subcontractors to the extent that such damage is in excess of the ordinary repairs, maintenance and upkeep the town annually performs on the affected town road(s), the town utilizing the monetary assurance funds shall cause same to be repaired to as good a condition as existed immediately prior to the commencement of the permitted activities. Monetary assurance funds in excess of the amount required to pay for the cost of repairs shall be returned to the permittee. In the event the cost of repairs exceeds the amount of the monetary assurance funds, the permittee shall be liable to pay the excess cost to the town not later than ten (10) days after invoicing for same by the town to the permittee. Failing which the town may resort to any legal remedy available to it for its collection, including but not limited to the immediate suspension of all other road use permits then in effect issued by the town to the permittee and the suspension of eligibility by the permittee for a future road use permit(s).

6.4 NECESSITY FOR IMMEDIATE REPAIRS.

In the event any permitted activity prior to its completion shall result in damage to any town road(s) to the extent that the making of immediate repairs thereto in the reasonable judgment of the Town Superintendent of Highways is required for the safe and uninterrupted travel there over by the public, the Town Superintendent of Highways shall cause such repairs to be immediately made and completed utilizing the monetary assurance funds to pay for same.

Whenever any such immediate repairs are made and monetary assurance funds utilized to pay for same the permittee shall be required to immediately deposit with the Town Clerk an additional monetary assurance amount to replace such expended monetary assurance funds such that at all times during the term of the permitted activity there shall be on deposit with the town the full amount of the required monetary assurance.

SECTION SEVEN.

7.0 ROAD USE AGREEMENT OPTION

The Town Supervisor and with consultation with the Highway Superintendent, is hereby authorized and empowered to negotiate and enter into a written Road Use Agreement on behalf of the Town with any large construction or industrial activity developer whose activity or project will have concentrated heavy traffic as defined above herein. Such Road Use Agreement shall conform to the requirements of this local law, shall bear the acknowledged signature of the Town Supervisor, the Town Superintendent of Highways and the road use permit seeker. Such Road Use Agreement shall include such terms or additional terms as are reasonably required by the Town Superintendent of Highways including but not limited to route designations, traffic schedules, inspections and road surveys. All the vehicles, equipment and machinery specifically listed in such Road Use Agreement shall be deemed to be covered by such Road Use Agreement and upon execution of the Road Use Agreement, the blanket road use permit shall issue. Upon the signing of such a Road Use Agreement, a Road Use Permit will be issued for the projected time frame during which the industrial or commercial activities will be carried out or engaged in.

SECTION EIGHT. DAMAGE TO TOWN ROADS

8.0 DAMAGE TO TOWN ROADS

The road use permit holder is responsible for all of the damages done to the related project route's roadways, ditches, curbs, culverts, or other improvements and to public utilities in, under, over and along the roadway. Notification of any such damage shall be by the permit holder or any of its employees or sub contractors, the Town Supervisor or the Town Highway Superintendent only. Repair will be done in a fashion that will protect the general health, safety and welfare of the public to be determined by the Town Highway Superintendent or Town Supervisor. The permit holder will have the first option to repair such damage at their expense.

-in failure to do so

- A. The Town may elect to repair the damaged roads themselves. Any and all repairs will be reimbursed by the permit holder within 10 (ten) business days of receipt of the invoice of repair or after 10 (ten) business days the Town may utilize the escrow fund for payment of said repairs.
- B. The permit holder and the Town Highway Superintendent may agree to have a complete repair or a portion of any repair done by a third party contractor. Such repair will:
 - I. Be paid for by the permit holder and not using public money.
 - II. Carry a 1 year performance guarantee from such third party contractor.
 - III. The performance guarantee will be binding on such third party contractor and enforceable by the Town Supervisor.
 - IV. If no performance guarantee is provided by the third party contractor, then the permit holder will be responsible for a 1 year performance guarantee.
- C. The Town may at its option contract with a third party for necessary repairs. All such third party contracts, if town funds are used, involving more than thirty-five thousand dollars (\$35,000.00) for labor and materials, shall be deemed to be a public works contract, advertised and awarded pursuant to the competitive bidding requirements of General Municipal Law Section 102 and the payment of the NYS Dept. of Labor published prevailing wage rates.

SECTION NINE. INSURANCE AND INDEMNIFICATION REQUIREMENTS

9.0 INSURANCE REQUIREMENTS.

A. VEHICLE LIABILITY INSURANCE.

In addition to the road use permit and monetary assurance requirements hereof no road use permittee shall engage in any permitted activity without first having tendered to the Town Clerk the following documentation:

- (1) an insurance binder issued by a company authorized to do business in the State of New York for each motor vehicle or truck to be operated over a town road in connection with the carrying out of the road use permitted activity, evidencing liability insurance in the minimum amount of one million dollars (\$1,000,000.00) per occurrence and two million (\$2,000,000.00) in the aggregate.

B. NON VEHICLE LIABILITY INSURANCE.

An insurance binder issued by a company authorized to do business in the State of New York evidencing liability coverage insuring against claims of third parties for death, personal injury and property damage suffered or incurred by a third party claimant or claimants arising out of or in connection with the road use permitted activity, whether occurring upon a town road(s) or otherwise, in the amount of at least five million dollars (\$5,000,000.00).

The road use permittee shall cause its insurer to name on the liability policy the "Town of Afton, New York" as an additional insured or as a covered party and the permittee shall cause all said required insurance coverage to remain in effect until completion or termination of the permitted activities.

C. HOLD HARMLESS, DEFENSE AND INDEMNIFICATION OF THE TOWN BY THE PERMITTEE.

Every road use permit issued by the town hereunder shall be conditioned upon the permittee agreeing to the following requirement which shall be in the form of a clause contained within each road use permit with the permittee's agreement thereto to be so indicated by the signature upon the permit of a duly authorized official of the road use permittee;

"As a condition for the issuance of this permit, permittee on behalf of itself, its successors, assigns and legal representatives, does hereby agree, absolutely, now and forever, to defend, indemnify, save and hold harmless the Town of Afton, its officials, officer, employees and servants, from and against any and all claims, suits, demands, bills of a third party or parties for death, personal injury or property damage, including any and all environmental type damage claims, whether in contract or tort, and at law or equity, suffered or incurred by a third party claimant, arising out of or in connection with the permitted activities, except any such claim due to the malicious, intentional or negligent acts or omissions of the Town of Afton, its officials, officers, employees and servants. Permittee's obligation hereunder shall survive the completion or termination of the permitted activity and shall continue until

such time as any such claim or liability shall be time barred by the applicable statute of limitations. Permittee's obligation hereunder shall include the payment of all reasonable attorney's fees, costs, and disbursements incurred by the Town of Afton in defense of any such third party claim of liability."

SECTION TEN. PERMIT SUBJECT TO SUSPENSION OR REVOCATION

10.0 During the course of the permitted activities the Town Superintendent of Highways or the Superintendent's designee shall have the right, but not the obligation, to periodically inspect the affected town road(s) including but not limited to the roadside, road surface, ditching, culverts, sluices, drainage, and bridges. In the event such inspection reveals excessive damage to, destruction of the roadbed, surface, culvert, ditching, sluicing, drainage, bridges or an unsafe accumulation of dirt, mud, debris or other substance upon the roadbed, or the spillage or leakage of transported liquids, solids, or semisolids upon the road bed, or the failure of the permittee to abide by any special terms or conditions of the road use permit, or in the event the permittee shall fail to cause to remain in effect all liability insurance coverages required hereunder or to fully abide by any term or provision of this local law on the part of the permittee to be performed, the Town Superintendent of Highways may suspend the permittee's road use permit until such time as all noted defects or defaults have been timely cured by the permittee to the reasonable satisfaction of the Superintendent of Highways. The Town Supervisor shall also have the authority to revoke permittee's road use permit and to revoke all other then existing permits issued by the Town to the permittee.

SECTION ELEVEN. PENALTIES

11.0 Any permit holder violating this local law shall be guilty of a violation punishable by a fine not in excess of two hundred fifty dollars (\$250.00) or by imprisonment not in excess of fifteen (15) days, or by both such fine and imprisonment. Each twenty four hour period or portion thereof during which a violation occurs shall be deemed a separate offense. In lieu of or in addition to said penalties, the town may initiate legal proceedings in a court of competent jurisdiction for injunctive relief, money damages or such other further relief as appropriate.

SECTION TWELVE. APPEALS

12.0 Any applicant aggrieved by the Town Supervisor or the Superintendent of Highways decision to deny an application or to grant same with conditions shall have the right to appeal such decision to the Town

Board by filing in letter form an appeal with the Town Clerk, either by personal delivery or by regular U.S. mail, not later than 30 days after receipt by the applicant of the Superintendent of Highway's or the Town Supervisor's decision. The Town Board shall schedule the appeal to be heard at the next regularly scheduled Town Board meeting or as soon thereafter as practical at which time the Town Board shall hear both the applicant and the Town Superintendent of Highways. The Town Board by a majority vote of the members present at such hearing shall decide the appeal.

The Town Board's decision may be appealed to the Supreme Court of the State of New York by means of a CPLR Article 78 Proceeding. For purposes of such appeal the venue shall be Chenango County, New York.

SECTION THIRTEEN. SEVERABILITY

13.0 In the event any term, clause or provision hereof shall be deemed by a court of competent jurisdiction to be invalid, illegal, null and void, such ruling shall not affect the validity of the remaining terms and provisions hereof which shall continue in full force and effect.

SECTION FOURTEEN. AMENDMENTS

14.0 This local law may be amended by the adoption by the town board of an amending local law.

SECTION FIFTEEN. EFFECTIVE DATE

15.0 This local law shall be effective upon its filing with the Secretary of State.