

LOCAL ROAD USE AND PRESERVATION LAW
TOWN OF DANBY, TOMPKINS COUNTY, STATE OF NEW YORK
LOCAL LAW NO. 4 OF THE YEAR 2011
Passed 14-Nov-2011

BE IT ENACTED by the Town Board of the Town of Danby, County of Tompkins, State of New York, as follows:

Section 1: Legislative Findings and Purpose.

The purpose of this local law is to maintain the safety and general welfare of Town residents by regulating high impact activities that have the potential to adversely impact roads and public and non-public property. Well-maintained roads are important to the economic well being of the Town, and while certain high impact construction and maintenance operations, and high impact commercial endeavors, can be economically beneficial, it is known and so found that heavier trucks and equipment, and heavy loads carried by such vehicles, deteriorate the pavement structure at an accelerated rate. A study at University of Texas found that one heavy truck causes damage equivalent to 2,000 to 3,000 cars per single trip route, and that the damage increases exponentially with the weight of the vehicle. For example, it was found that a 95,000-pound truck does two to three times the damage of an 80,000-pound truck, and that multiple passes over a single roadway exacerbate this damage. Further, in the U.S. Department of Transportation's 1998 Draft Comprehensive Truck Size and Weight Study, the Department determined that pavement deterioration increases with axle weight and with the number of axle loadings a pavement experiences. As such, it is the intent of this law to protect Town roads from excess damages caused by frequent passes of heavier trucks.

Accordingly, the Town Board has determined that certain high-intensity traffic associated with large construction or high impact projects, whether located within the Town of Danby or merely using Town Highways, can damage and significantly reduce the life of Town Highways, which must then be repaired at the expense of the Town's taxpayers. The Town Board has further determined that such damage can be reliably measured using recognized engineering standards. In addition, the Town Board has determined that the strength and capacity of Town Highways may in some cases be inadequate to meet the demands of traffic for large construction and high impact projects and that upgrades to Town Highways may be necessary to accommodate such traffic. The Town Board finds that it is in the best interest of the citizens and taxpayers of the Town to have the developers of such large construction and high impact projects bear responsibility for making any necessary upgrades and repairs to Town Highways caused by such projects.

Thus, the purpose of this local law is to establish a mechanism to ensure that such upgrades are made and such damage is repaired by the developers of large construction or high impact projects that generate traffic likely to require upgrades or cause damage to Town Highways. However, nothing in this local law shall be construed or applied to allow or permit any activity not otherwise allowed within the Town.

This local law is not intended to regulate the underlying commercial, construction, or maintenance project or endeavor; rather, the intent is to protect the Town roads and property from damage that typically results from the high frequency use of heavy trucks and equipment with heavy loads. It is the intent of this law to ensure that the Town’s roads are not damaged or harmed to the overall detriment of the Town and the general public by a few individual users who utilize the roads in a manner that causes extraordinary deterioration to the roads.

Nothing in this local law shall be interpreted, applied, or construed in a manner as to impair the requirements of Town of Danby local law #4 of 2010, pertaining to roadway construction and excavation, and in the event of any conflict between the approval or other requirements of this local law and said local law #4 of 2010, the more restrictive law or requirement shall apply. Similarly, nothing in this local law shall impair any existing roadway classifications or Town of Danby Roadway classification laws; nor any roadway construction or specifications for existing and different classes of Town Highways. Reference is hereby made to the Town of Danby local laws pertaining to roadway classification, including, without limitation, local law #2 of 2002, local law #3 of 2002, local law #1 of 2003, and local law #2 of 2003.

Finally, nothing contained in this local law shall be interpreted, applied, or construed in a manner as to unlawfully interfere with interstate commerce, including the right to lawfully perform services relating to the essential local pick-up and/or delivery of goods and property.

Section 2: Authority.

This local law is enacted pursuant to the New York State Constitution, Article IX, § 2(c)(6), the New York Vehicle & Traffic Law, § 1660, the New York Municipal Home Rule Law, § 10 (including specifically, but not exclusively, 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), the New York Statute of Local Governments, § 10, the New York Highway Law, §§ 320 & 326, Town Law § 130, and the New York Environmental Conservation Law, § 23-0303(2).

Section 3: Definitions.

As used in this local law, and unless the context thereof admits or otherwise requires, the following terms shall have the following meaning(s):

Baseline Traffic means recurring ambient traffic presented on an annualized basis. It includes typical daily activities on Town Highways (as hereinafter defined) such as passenger vehicles, school buses, delivery vehicles, garbage trucks, and normal commuter and business traffic. Baseline Traffic is the cause of normal wear and tear for which a Town Highway is constructed. Baseline Traffic does not include unusual heavy traffic occurring on a temporary basis for such things as Construction Activity (hereinafter defined), Concentrated Traffic (as hereinafter defined), or the use of Natural Gas Vehicles (as hereinafter defined) upon any Town property or upon any Town Highway (as hereinafter defined).

Concentrated Traffic means: (i) traffic intended to travel upon, or traveling upon, Town Highways to or from the site of Construction Activity which is not Baseline Traffic and which will exceed the predetermined normal wear and tear thresholds of one or more Town Highways or segments of Town Highways; (ii) traffic that is not Baseline Traffic that passes through the Town or utilizes Town Highways for land disturbances, construction projects, or other projects or activities, whether temporary or permanent, regardless of whether the land disturbance, construction project, or other project or activity is located within the Town; and (iii) the use or operation of any Natural Gas Vehicles upon any Town Highways that exceed any limitations set forth in Article 10 of the New York State Vehicle and Traffic Law, including, without limitation, § 385 therein.

Construction Activity means any activity occurring or to occur in the Town that results in land disturbance or the improvement of a parcel. Evidence of Construction Activity includes, without limitation, those activities which are also being undertaken subject to:

- A. Federal permits and approvals including, without limitation, approvals subject to the National Environmental Policy Act and/or activities subject to the following Nationwide Permits as amended and issued by the U.S. Army Corps of Engineers: Permit 8 (Oil and Gas Structures); Permit 12 (Utility Line Activities); Permit 13 (Bank Stabilization); Permit 16 (Return Water from Upland Contained Disposal Areas); Permit 17 (Hydropower Projects); Permit 21 (Surface Coal Mining Operations); Permit 29 (Residential Developments); Permit 33 (Temporary Construction, Access, and Dewatering); Permit 38 (Cleanup of Hazardous and Toxic Waste); Permit 39 (Commercial and Institutional Developments); and Permit 44 (Mining Activities); or
- B. State permits and approvals, including, without limitation, Highway Work Permits, Waste Transporter Permits, SPDES General Permit for Stormwater Discharges from Construction Activity, and other SPDES Discharge Permits, Oil, Natural Gas, and

Solution Mining Permits, and other Mining Permits, Overweight/Oversize Vehicle Permits, Authority to Transport Property (Except Household Goods), Divisible Load Overweight Permits, Special Hauling Trip and Annual Oversize/Overweight Loads Permits, LCV/Tandem Trailer Permits, and Special Hauling Permits; or

C. Local permits and approvals, if applicable, including, without limitation: excavation or construction permits issued under the Excavation Law (as hereinafter defined), aquifer protection permits, aquifer protection construction permits, variances or waivers issued for construction activities in Aquifer Protection Zones (if any and as now or hereafter may exist), sludge or waste disposal permits, flood plain construction and related permits, mining and gravel mining permits, building permits, septic system permits and county sewage treatment permits, stormwater permits and SWPPP approvals, overweight/oversize vehicle permits, zoning amendments, changes, and applications, including, without limitation, use variances, special use permits, and subdivision and site plan approvals.

“Construction Activity” shall not include land clearing activities or the improvement of a parcel related solely to “farm woodland” or “land used in agricultural production,” as those terms are defined and construed pursuant to and under the New York Agriculture and Markets Law, at § 301.

Costs and Expenses shall mean: (i) all allowable and reasonable attorneys’ fees, engineers’ fees, consulting and expert fees, reasonable administrative costs and expenses, permit fees, permit processing fees and expenses, and fees charged by the State of New York or any other governmental division or agency; (ii) all costs of materials, labor, permit compliance, and other expenditures relating to the examination, inspection, planning, maintenance, re-building, restoration, improvement, and repairs, temporary or permanent, of or to any Town Highway; and (iii) in relation to any violation of any environmental law and/or the costs of compliance with any judicial or regulatory order, consent, or mitigation order, or in relation to any spill, discharge, emission, or transmission of any hydrocarbon or toxic substance (whether of a “below-regulatory” level of concern or otherwise), all liabilities, claims, damages, penalties, expenditures, losses, or charges, including, but not limited to, all costs of investigation, monitoring, clean up, disposal, legal fees, fines, penalties, remedial responses, removals, restorations or permit acquisition fees and expenses.

Excavation Law means the Town of Danby local law #4 of 2010, entitled “Excavation and Construction in Municipal Roadways and Highway Rights-of-Way.”

Natural Gas Vehicle shall mean: (a) any vehicle (including off-road or non-registered production vehicles and machinery) that is used to: (i) transport or operate oil or gas drilling or solution mining machinery, rigs, pipes, supplies, pumps, materials, liquids or equipment; and/or (ii) mine, drill for, pump, fracture, store, extract, transport and/or produce gas or oil, and any related hydrocarbons; and/or (iii) locate, space, construct, drill, repair, enlarge, fracture, maintain, equip, operate or produce any oil or gas well, or any well which has as any primary objective the production, capture, transportation, or emission or transmission of any hydrocarbon; and/or (iv) transport, move, ship, deliver, pump, remove, or extract any water or any other liquid, gas, or solid to or from any oil or gas drilling or solution well or mine, whether the same is drilled, bored, or fractured; and/or (b) any vehicle used in conjunction with a “well permit,” including any permit issued by any governmental authority to drill, deepen, plug back, or convert wells pursuant to 6 NYCRR Part 552.

Person means any one or more persons, corporations, partnerships, limited liability companies, or other entities.

Program Manual means the “Road Use and Preservation Program Manual,” Version 1.0, as prepared by Delta Engineers, Architects, & Land Surveyors, P.C., a copy of which is on file in the Office of the Town Clerk of the Town of Danby.

Road Use Agreement (or “RUA”) means a contract between the Town and any Person that establishes a legally binding permitting process for road use and the compensation for costs and damages which occur as a result of increased traffic or Concentrated Traffic. RUAs are further defined and discussed in § 6, below.

Technical Manual means Road and Preservation Technical Manual, Version 1.0, as prepared by Delta Engineers, Architects, & Land Surveyors, P.C., a copy of which is on file in the Office of the Town Clerk of the Town of Danby.

Town shall mean the Town of Danby, in Tompkins County, New York.

Town Attorney shall mean the Town’s attorney or the attorney for the Town, whether retained upon a regular or special project basis.

Town Board shall mean the town board of the Town.

Town CEO shall mean the code enforcement officers of the Town.

Town Engineer shall mean an engineer employed by the Town, by contract or otherwise, or any town engineering consultant(s).

Town Highway shall mean the improved or unimproved lanes of travel of any roadway (excepting County and State roads and highways), plus all related improvements and appurtenances, including, but not limited to, ditches, swales, culverts, bridges, tunnels, shoulders, guard rails, signs, concourses, driveways, easements, rights of way, sluice pipes, sidewalks, and any utilities or improvements therein, thereon or thereunder, regardless of whether such roadway is a highway by use, by implication, or by dedication. Further, as to any dedicated roadway, the whole of the Town’s title in fee, including any improvements within, adjacent to, or benefitting the roadway, including trees, plants, and all lateral and subjacent rights in support, shall be deemed a part of the “Town Highway.”

Town Highway Superintendent means the Superintendent of Highways of the Town, or his or her designee.

Town Supervisor shall mean the supervisor of the Town.

Section 4: Applicability & Exemptions.

A. This local law shall apply to: (i) any Person who, individually or in concert with another Person, intends to or does undertake any Construction Activity that will or does result in Concentrated Traffic on Town Highways; (ii) any Person who, individually or in concert with another Person, engages in any activity that produces Concentrated Traffic on Town Highways; and/or (iii) any Person who, individually or in concert with another Person, operates any Natural Gas Vehicle upon any Town Highway.

B. This local law shall not apply to: (i) sound agricultural operations and practices as defined and construed in and by New York State Agricultural District Law, and the movement of agricultural products; (ii) school buses and related educational transportation vehicles; (iii) law enforcement vehicles; (iv) ambulances and fire trucks and vehicles owned and operated by municipalities or fire companies on emergency or official municipal or fire fighting business; (iv) military vehicles; (v) maintenance, repair, and service vehicles owned and operated by a utility company or authority while on official utility business, but excluding any pipeline transportation companies and similar entities that are not engaged in providing residential-type natural gas lines to residential and business structures; (vi) municipal and other governmental vehicles engaging in maintenance, repairs, and/or the provision or performance of any municipal service, together with those vehicles contracted for such services by any municipality or governmental unit; and (vii) any Person who obtains an exemption or waiver under the terms and provisions of this local law, except to the extent as may be set forth in any conditions applied to such exemption or waiver.

Section 5: Determination of Whether Proposed Use Constitutes Concentrated Traffic.

A. Any Person identified under Section 4(A) of this local law shall, prior to undertaking such Construction Activity or allowing, directing, or inducing Concentrated Traffic to travel upon Town Highways, submit a haul route application form and project traffic worksheet to the Town Highway Superintendent in accordance with the forms and procedures set forth in the Program Manual.

B. A filing fee in an amount as periodically set by the Town Board by resolution (see Section 10, below) shall accompany each application, and no application shall be deemed complete without the fee therefor being indefeasibly submitted to the Town.

C. The Town Highway Superintendent shall review such application and worksheet in accordance with the Program Manual and the Technical Manual. Within 30 days of receipt of a completed haul route application and project traffic worksheet, the Town Highway Superintendent shall notify the applicant whether the use of Town Highways will result in Concentrated Traffic.

(i) No Person shall use, park, operate, transport or move on, across, or over any Town Highway any Natural Gas Vehicle, or a combination of Natural Gas Vehicles, the weights or dimensions of which exceed the limitations provided in Vehicle and Traffic Law § 385, except in compliance with the requirements of this local law.

(ii) If the proposed use of Town Highways will not, and does not, result in Concentrated Traffic, the remaining provisions of this local law shall not be applicable to such applicant.

(iii) If the proposed use of Town Highways will result in Concentrated Traffic, the applicant must either: (a) modify the intended haul route and certify to the Town that no traffic generated by the applicant will travel over or upon a Town Highway so that such traffic will not constitute Concentrated Traffic; or (b) comply with the provisions of Section 6 and the other requirements of this local law.

Section 6: Requirements for Concentrated Traffic.

If the Town Highway Superintendent determines that traffic generated by an applicant will result in Concentrated Traffic, the applicant shall be required to comply with the following provisions of this local law:

- A. The applicant shall be required to set forth a haul route declaration as set forth in the Program Manual, and may be required to utilize any designated heavy haul route identified by the Town of Danby, the County of Tompkins, or the State of New York.
- B. The Town Engineer shall examine each segment of the proposed haul route in order to:
 - (i) Evaluate the Town Highways on the proposed haul route for design, geometric, or health and safety deficiencies, as those and other deficiencies are defined more fully by the Program Manual; and
 - (ii) Estimate the costs and procedures necessary to upgrade such Town Highways on the proposed haul route if the Town Engineer determines that the Town Highways on the proposed haul route must be upgraded to accommodate the applicant’s Concentrated Traffic; and
 - (iii) If available, propose an alternate haul route if required due to design deficiencies, to avoid any hazard or unnecessary impacts to residents of the Town and others using Town Highways, or, if desired by the applicant, to minimize estimated upgrade or repair costs to the haul route.
- C. The Town Engineer shall design or approve, in conjunction with the Town Highway Superintendent, all structural, geometric, and roadbed and road surface upgrades to Town Highways necessary to accommodate the applicant’s Concentrated Traffic, which upgrades shall be made at the applicant’s expense in accordance with the provisions of this local law.
- D. The Town Engineer shall conduct all pre-use testing and threshold evaluations of each segment of a haul route that is a Town Highway in accordance with the methods set forth in the Program Manual and the Technical Manual.
- E. If no upgrades have been required and/or made to the Town Highways on the proposed haul route and the Town Engineer determines that the applicant’s Concentrated Traffic is expected to cause damage to Town Highways, the Town Engineer shall provide the Town Highway Superintendent and the applicant with an estimate of the cost to repair such projected damage. Prior to the use of any haul route segment on Town Highways, the applicant shall agree to make all such repairs at the applicant’s expense in accordance with the provisions of this local law, including by the posting or payment of one or more

forms of appropriate security as required in or by this local law. If any haul route segment is on unpaved Town Highways, or any highway that, due to seasonal weaknesses or any deficiency in strength or design, is likely to suffer short-term damages that may impair safe travel and usage of such Town Highway, then the Town Highway Superintendent may require, upon the recommendation of the Town Engineer, that such Town Highway (s) be subject to weekly monitoring, and that any damage be repaired within 5 days at the applicant’s expense in accordance with the provisions of this local law.

F. The Town Engineer shall conduct all post-use testing and damage assessment(s) of each segment of a haul route that is a Town Highway in accordance with the methods set forth in the Program Manual and the Technical Manual. The Town Engineer shall provide an estimate of the cost of repairing any actual damage to Town Highways caused by the applicant’s Concentrated Traffic. Upon receiving the estimate, the applicant shall make all such repairs at the applicant’s expense in accordance with the provisions of this local law, and upon the satisfactory completion of the repairs, and the approval of such repairs by the Town Highway Superintendent, any unused security shall be returned to the applicant or otherwise released as herein required.

G. Any security for performance and/or payment required under this local law shall be in an amount set by the Town Board upon the recommendation of the Town Engineer. Any such security shall be provided pursuant to a written security agreement with the Town, approved by the Town Board and also approved by the Town Attorney as to form, sufficiency, and manner of execution. At the Town Board’s discretion, the security may be in the form of: (i) a performance or payment bond, as applicable; (ii) the deposit of funds with the Town; (iii) an irrevocable letter of credit from a bank authorized to do business in New York State; or (iv) another form of financial guarantee acceptable to the Town Board. No bond, however, shall be acceptable if, as part of the bond application, underwriting, or issuance process, the bond issuing Person requires or obtains any duty of defense or indemnity from the applicant, or the applicant’s agents or contractors, for any defense, costs of defense, or for any payments claimed or required under such bond.

H. An applicant shall be permitted to undertake upgrade or repair work only if the Town Highway Superintendent determines that the applicant, or a contractor hired by the applicant, has the capability and experience to make the necessary repairs or upgrades. All work shall be performed pursuant to one or more permits issued under the Excavation Law and an agreement in writing between the applicant and the Town, which shall require, among other things, the applicant or its contractor to: (i) complete the work in a timely fashion; (ii) post security in accordance with the requirements of this local law; (iii) indemnify the Town against all liability stemming from the applicant’s work or any breach of, or non-compliance with, the requirements of this local law; and (iv) provide

the Town with satisfactory evidence of insurance as determined by the Town Highway Superintendent, including liability insurance naming the Town as an additional insured. All repairs, restorations, and/or upgrades to Town Highways shall be made in accordance with the specifications established by the Town Highway Superintendent and must be approved by the Town Highway Superintendent (together with the approval of the Town Board, if herein also required). In addition, the applicant shall comply with all applicable laws and regulations, including, without limitation, the prevailing wage requirements of the New York Labor Law. The applicant or its contractor shall obtain all governmental permits and approvals and obtain any private land rights that are necessary to make any required repairs, restorations, or upgrades to Town Highways. If the applicant does not wish to make such repairs or upgrades to Town Highways, or if it is determined by the Town Highway Superintendent that the applicant (or its contractor(s)) does not to have the necessary capability to timely make such repairs or upgrades, then the applicant shall agree in writing to pay the Town for the cost of such repairs or upgrades to Town Highways and post security in accordance with the requirements of this local law.

I. The applicant shall pay the Town for all of the Town’s reasonable Costs and Expenses in implementing the requirements of this local law, including, without limitation, the fees of the Town Engineer in conducting all activities required hereunder and under the Program Manual and Technical Manual. The Town may in some cases provide the applicant with an estimate of such costs and expenses, and the Town Board may require the applicant to place funds in escrow to cover such costs and expenses before the Town incurs any such Costs and Expenses.

J. The applicant shall defend, indemnify, and hold the Town harmless from all losses resulting from injury or death of persons or damage to property arising from the applicant’s upgrades and repairs to Town Highways.

K. In order to comply with the requirements of this Section 6, an applicant shall have the option of entering into a Road Use Agreement with the Town; which agreement may impose terms beyond those imposed by this local law, including, but not limited to, additional or different insurance requirements, maintenance requirements, bond, escrow, or security requirements, seasonal restrictions, the designation of truck traffic routes, traffic schedules, and the imposition of inspection and reporting schedules and road surveys. The applicant may ask to modify such form or propose a different form of Road Use Agreement, and the Town may also modify such form, but any such agreement must be in a form approved by the Town Board and also approved by the Town Attorney as to form, sufficiency, and manner of execution.

Section 7: Updates to the Program Manual and the Technical Manual.

From time to time, updates and amendments to, and replacements of, the Program Manual and the Technical Manual may be published. Each such update, amendment, or replacement shall be made applicable to this local law, and binding upon all Persons subject to this local law, upon adoption of the same by the Town Board by resolution.

Section 8: Special and General Standards and Conditions.

- A. No approval issued under this local law, nor any permit issued under the Town’s Excavation Law, nor any rights, duties or obligations imposed under or pursuant to any Road Use Agreement, may be assigned, conveyed, pledged or transferred without the express prior written consent of the Town Highway Superintendent, which consent may be withheld for any or no reason, without recourse.
- B. After issuance of all necessary approvals, and any required permits from any governmental department or authority, an applicant shall give the Town Highway Superintendent one week’s advance written notice of the date that applicant, or any Person acting in concert with the applicant, intends to or does begin any activity that will or does cause any Concentrated Traffic. Applicant and each such Person shall also give prompt written notice of the completion or cessation of any activities that constitute Concentrated Traffic or that otherwise were subject to this local law.
- C. No consent, permit, or other agreement, including, but not limited to, any Road Use Agreement, shall be deemed or construed as an authorization to allow any Person to exceed the maximum gross weight limit authorized for crossing any bridge or culvert, including, but not limited to, any R-posted bridge, culvert, or other structure or conveyance.
- D. No Road Use Agreement, permit, or other approval or authorization issued under or in connection with this local law or the Excavation Law shall be deemed as permission or as an authorization, express or implied, to damage any Town Highway or any other public or private real or personal property.
- E. Every permit, agreement, or other approval shall require that Town Highways be kept passable at all times for all motor vehicles, including public safety vehicles. If any Concentrated Traffic causes damage to any Town Highway such that, in the opinion of the Town Highway Superintendent, such Town Highway is impassable or unsafe for use by the general or travelling public, then and in any such event, and regardless of any permit, approval, authorization, or agreement issued or to the contrary, the Town Highway Superintendent may close such Town Highway and/or require that the same be immediately repaired by the applicant or other Person whose use or abuse thereof caused

or contributed to the damages or events as gave rise, wholly or partially, to such Town Highway Superintendent’s determination as to closure, damage, safety, or need for repair.

F. To the extent any repair, improvement, construction or other activities undertaken in relation to this local law, the Excavation Law, or any road Use Agreement, or otherwise, may affect traffic or require signage or the installation or maintenance of any safety devices or lighting, the Uniform Traffic Control Manual and rules and regulations of the NYS Department of Transportation shall presumptively govern and control the safe and efficient flows of traffic and uses of any Town Highway.

G. Every applicant or other Person subject to this local law shall provide adequate proof that such applicant or Person has provided written notice to each other municipality that borders the Town, to Tompkins County, and to all municipalities within Tompkins County, including all towns, villages, cities, and counties, of the pending or then occurring Construction Activity and all data concerning Concentrated Traffic that may or will arise from and in connection with the use of the Town Highways or such other municipality’s roads. Where applicable, and, at the sole option of the Town prior to the approval of any Road Use Agreement or any final review under Section 6 of this local law, the applicant (or other Person) shall demonstrate to the reasonable satisfaction of the Town Highway Superintendent that appropriate road use agreements or compliance with any road use regulations had been obtained or achieved in relation to such other municipalities, or that, as applicable, such neighboring municipalities have duly issued any required roadway permits.

H. The Town Board may impose other conditions where reasonable, including, but not limited to, the documentation of road conditions, seasonal restrictions, and the imposition of conditions deemed reasonably necessary for the safe use of Town Highways by any Person.

I. In the event any applicant or Person makes any upgrades or improvements to any Town Highway, the Town reserves the right to require such improvements to be removed and the Town Highway to be restored to its original dimensions and specifications in a manner satisfactory to the Highway Superintendent, including, to the extent feasible, that such repairs or restoration must match the original Town Highway in type, color, structure, materials, grade, and texture, in compliance with the Excavation Law and the then current specifications for Town Highways of the type in question. All expenses of removal and restoration shall be paid by the applicant, or such other Person as had so improved any Town Highway, and a bond or escrow payment may be required for the same. Any such de-construction and re-construction work shall require a permit issued pursuant to the Town’s Excavation Law, and no such work shall be deemed completed until a final written approval is issued by the Town Highway Superintendent.

J. Any improvements, repairs, upgrades, and other changes to any Town Highway also require the approval of the Town Board where there is any variation or deviation from any existing Town roadway construction standards or specifications. Any proposed dedication of any land, structures, or improvements shall require the approval of the Town Board.

K. No right, remedy, or other obligation or remedy imposed or obtainable by or under this local law, or any Road Use Agreement, shall preclude any other legal or equitable right the Town may now or hereafter have or possess relative to the subject matter of this local law, including, but not limited to, the rights to separately enforce rules and rights pertaining to Town Highways, to utilize the provisions of Vehicle and Traffic Law § 1660, or to enforce the provision of the NYS Highway Law.

Section 9: Special Rules & Conditions for Bonds & Escrowed Funds.

A. Whenever Concentrated Traffic exists or is found likely to exist, escrow funds may be required as a part of the application process, and if so, the Town shall maintain a separate escrow account for such funds.

B. If, at any time, the Town Highway Superintendent determines that funds are needed to reimburse the Town for any Costs and Expenses, or for any emergency, immediate, or planned maintenance, repair, or restoration to or of any Town Highway, whether by the Town, its employees, or its agents and/or contractors, the Town may: (i) require an additional deposit of escrowed funds in an amount reasonably determined, with such amount being in addition to any other bond, posting, or undertaking required by this local law; and/or (ii) withdraw funds from any existing bond or other escrow account to so reimburse the Town or to fund any such maintenance, repair, or restoration project.

C. The Town is authorized to withdraw funds from said escrow account, without prior notice to any applicant, permittee, or Person, in order to reimburse the Town for any Costs and Expenses incurred. However, immediately following any such withdrawal, the Town shall provide the Person who posted such funds with a written notice of the amounts withdrawn and the basis for such withdrawal. If, at any time while the Construction Activity or Concentrated Traffic continues, the escrow account has a balance below \$5,000.00, or such other amount as may be hereafter determined for such applicant under or pursuant to this local law (and/or the Project Manual or Technical Manual) or by resolution of the Town Board, then the applicant or permittee shall immediately replenish such account by the amount of any withdrawals therefrom, and such payments and deposits shall be promptly made and completed upon notification from the Town, time being of the essence.

D. In the event that there is any balance remaining in the escrow account as of the date of completion or abandonment of the Construction Activity giving rise to such account, or the cessation of all Concentrated Traffic events, and upon the Town Highway Superintendent’s determination that there was no Town Highway damage, or upon the Town Highway Superintendent’s determination that adequate inspections, restorations, and repairs have been duly completed, the Town Highway Superintendent shall certify to the Town Board in writing that the escrow account is no longer necessary and the Town Board shall thereafter return the remaining balance in escrow according to the written instructions of the depositor of such funds.

E. If a bond (or letter of credit, or other security or undertaking, hereinafter all together a “bond”) has been delivered or posted by any Person, and there has been completion or an abandonment of the Construction Activity giving rise to such account, or all Concentrated Traffic events have ceased, then, upon the Town Highway Superintendent’s determination that there was no Town Highway damage, or upon the Town Highway Superintendent’s determination that adequate inspections, restorations, and repairs have been duly completed, such Person shall apply to the Highway Superintendent for a Preliminary Bond Release. Upon inspection of the worksite(s) and the applicable Town Highways, and upon the Town Highway Superintendent’s satisfaction that there are no damages (or that any damages have been suitably repaired and/or such Town Highways suitably restored), the Town Highway Superintendent shall recommend the release of the bond. In the event the Town Highway Superintendent does not recommend the release of the bond, the Town Highway Superintendent will document the specific tasks that must be accomplished in order for the bond to be released. After completion of such tasks, the Person seeking the release of the bond may re-apply for a preliminary bond release and the above steps shall again be followed. Any final bond release must be approved by the Town Board, but the Town Board may not release any bond without the approved preliminary bond release from the Town Highway Superintendent. No bond may be partially released.

Section 10: Application Fees.

The Town Board may by resolution establish, and may by resolution periodically update and amend, a schedule of fees relating to applications, approvals, inspections, and proceedings arising under or in relation to this local law.

Section 11: Waivers.

A. The Town Board may by resolution except an applicant from any one or more of the requirements of this local law by waiver. All requests for a waiver from any requirements set forth in this local law shall be made to the Town Board in writing and shall contain the grounds on which the applicant relies for requesting the waiver, including all allegations of any facts on which the applicant will rely. Where the Town Board finds that a waiver of certain requirements is justified then a waiver may be granted, provided, however, that no waiver shall be granted unless the following conditions are met:

(i) The Town Board finds and records in its Minutes that the Town Highways to be used by the applicant will be adequately protected, and any damage to Town Highways will be adequately repaired, by virtue of the requirements or conditions imposed upon the applicant in connection with any Federal, State, or local permit or approval, including, without limitation, mitigation measures imposed under the National Environmental Policy Act or the State Environmental Quality Review Act; and

(ii) The Town Board finds and records in its minutes that: (i) granting the waiver would be keeping the intent and spirit of this local law and is in the best interests of the community, (ii) there are special circumstances involved in the particular case; (iii) denying the waiver would result in undue hardship to the applicant, provided that such hardship has not been self-imposed; and (iv) the waiver is the minimum degree of variation from the requirements of this local law necessary to accomplish the relief found appropriate in connection with such waiver application.

B. The Town may condition the granting of any waiver upon any one or more reasonable conditions or requirements.

Section 12: SEQRA.

A. In implementing and enforcing this local law, and in relation to any approval of any Road Use Agreement, or the issuance of any permit under Vehicle and Traffic Law § 1660 or the Excavation Law, the Town shall at all times comply with applicable provisions of the Environmental Conservation Law of the State of New York, applicable provisions of the state environmental quality review regulations (6 NYCRR Part 617) (hereinafter, and together, “SEQRA”), and any statutory or regulatory requirements of the National Environmental Policy Act.

B. When required by the Town, an Environmental Assessment Form (“EAF”) shall be completed and submitted with any application, approval, process, or procedure under this local law or the Excavation Law.

Section 13: Enforcement and Penalties for Offenses.

A. In addition to any other right or remedy allowed by law or in equity, the Town Board may maintain actions or proceedings in the name of the Town in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of this local law. Any Construction Activity, events of Concentrated Traffic, or other activity or use of Town Highways that are commenced or conducted contrary to, in violation of, or in non-compliance with this local law may be restrained by injunction, or otherwise abated in any manner provided by law. In the event the Town seeks any equitable relief in the form of an temporary restraining order, a preliminary injunction, an injunction, or any similar order, whether to compel or prohibit, and regardless of whether in law or equity, or both, the Town shall have no obligation to prove any lack of an adequate remedy at law and shall not be required to post any bond or undertaking in relation to such relief.

B. All provisions of New York law generally applicable to misdemeanors shall apply to any criminal proceeding brought under this sub-section, and each and any violation of this local law be deemed and classified as an unclassified misdemeanor. The following civil and criminal fines and penalties shall apply to any violation of this local law:

(i) First Violation: Any Person that violates any of the provisions of this local law shall be (1) guilty of an unclassified misdemeanor and subject to a fine of not more than \$5,000.00, or (2) subject to a civil penalty of not more than \$5,000.00 to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate offense for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and/or be assessable for each week that such violation, disobedience, omission, neglect or refusal shall continue.

(ii) Second Violation: Any violation that is found to have occurred within 2 years of any prior civil or criminal determination of any other violation of this Local law shall be deemed a second violation. Any Person that commits or permits any second violation shall be (1) guilty of an unclassified misdemeanor and subject to a fine of not more than \$10,000.00, nor less than \$5,000.00, or (2) subject to a civil penalty of not more than \$10,000.00, nor less than \$5,000.00, to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate unclassified misdemeanor for each week that such violation, disobedience, omission, neglect, or refusal shall continue. Similarly, a separate civil penalty shall apply and/or be assessable for each week that such violation, disobedience, omission, neglect, or refusal shall continue.

(iii) Third and Subsequent Violations: Any violation that is found to have occurred within 2 years of any prior civil or criminal determination of any second violation of this local law shall be deemed a third or subsequent violation, as applicable. Any Person who commits or permits a third or subsequent violation shall be (1) guilty of an unclassified misdemeanor and subject to a fine not more than \$25,000.00, nor less than \$10,000.00, and/or a period of incarceration not to exceed 120 days, or both, or (2) subject to a civil penalty of not more than \$25,000.00, nor less than \$10,000.00, to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate unclassified misdemeanor for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and/or be assessable for each week that such violation, disobedience, omission, neglect, or refusal shall continue.

C. The Town Highway Superintendent, the Town CEO, and any New York State peace or police officers are hereby authorized to issue and serve appearance tickets with respect to any violation of this local law.

D. In addition to the penalties prescribed herein, if any use of Town Highways is made or threatened in violation of the New York Highway Law, the New York Vehicle and Traffic Law, or in violation of this local law, then the Town may seek each and any other remedies available in law, equity, or admiralty. The remedies provided for in and by this local law are cumulative and non-exclusive, and the listing of any particular remedy shall not be deemed or construed to limit the remedies of the Town to only those remedies or methodologies so listed.

E. In addition to any penalties or other remedies provided for or allowed herein, the Town Highway Superintendent and Town CEO shall each have the right and authority to issue stop work orders to those operating in violation of the terms and requirements of this local law, the terms and conditions of any Road Use Agreement, or the terms and

conditions of any approval or permit issued pursuant to the Town’s Excavation Law. Upon any such act(s) (or failures to act) as constitute such non-compliance with, or a violation of, this local law, such Road Use Agreement, or any approval or permit issued under this local law or the Excavation Law, the Town may suspend any approval or permit issued by the Town for no more than an initial period of 30 days. Within such 30-day period the Town shall hold a public hearing at which the permittee (or other Person in violation) shall have the right to appear and be heard. After such hearing, the Town Highway Superintendent may reinstate such approval or permit, extend any approval or permit suspension until such violations or non-compliance cease, or revoke any such approval or permit, or any waiver previously granted under this local law. The Town Highway Superintendent shall deliver a written notice of such determination to such Person or permittee within 10 days of the close of such public hearing.

F. Should the Town be required to commence any proceedings to enforce this local law, the Excavation Law, or any Road Use Agreement, and any Person or applicant be deemed or held to have been in violation of or in non-compliance with this local law, the Excavation Law, or such Road Use Agreement, then such Person shall, in addition to any other obligation imposed, be required to reimburse the Town for the costs of enforcement, including, but not limited to, reasonable attorneys’ and experts’ fees, each and all in an amount as determined or declared by the court or tribunal of competent jurisdiction hearing any such matter.

G. Should the Town’s right to collect against any bond or other undertaking be contested where the Town prevails and where it is determined by the court or other tribunal of competent jurisdiction that there was no good faith factual basis for such contest or that the insurer, underwriter, or other Person issuing such bond or other undertaking had an underlying indemnity agreement with the applicant or other Person in violation or non-compliance with this local law, then the said court or tribunal shall award the Town an amount sufficient to reimburse the Town for its costs and expenses of the proceeding, including its reasonable attorneys’ and experts’ fees.

Section 14: Limitation upon Town Liability.

The Town shall not be liable or responsible for any injury to persons or damage to property due to the Town’s actions, or failures to act, under or pursuant to this local law, unless it is proven to a reasonable degree of certainty that such injury or damage was solely caused by a willful or intentional act of the Town. This limitation of liability provision shall be construed and applied to the maximum extent permitted by law.

Section 15: Appeals and Article 78.

If an applicant disagrees with any decision of the Town, whether made by the Town Board, the Town Highway Superintendent, the Town CEO, or the Town Engineer in the administration of this local law, including, without limitation, the extent or method of a proposed highway upgrade, restoration, or repair, any cost or fee imposed upon the applicant, or an estimate of the amount of security to be held by the Town, and the applicant and the Town are unable to resolve their dispute through negotiation, the applicant may make a written request to the Town Board appealing such decision and requesting a public hearing at which the applicant shall have the right to appear and be heard. The Town Board shall hold such public hearing no fewer than 5 days, nor more than 30 days, after the receipt of such written request. The Town Board may reverse, modify, or affirm, wholly or partly, the decision appealed from and shall make such decision as in its opinion ought to have been made in the matter and, to that end, shall have all the powers of the board, official, or Person from whose decision the appeal is taken. The Town Board shall issue a determination on the applicant’s request within 15 days of the close of the public hearing. Such determination of the Town Board shall be a final determination for purposes of CPLR Article 78, but no such claim or petition shall be filed or be ripe for review until the administrative remedy herein provided for shall have first been exhausted. This section does not create any theory or claim of liability where none exists at law or in equity.

Section 16: Time to Act.

The time periods prescribed herein in which the Town Board, the Town Highway Superintendent, the Town Engineer, or other Town official shall act are not of the essence and shall not be construed as imposing a limitation on the time to act or as a presumption of approval or acceptance.

Section 17: Indemnification & Hold Harmless.

In addition to any indemnity required under this local law, an applicant shall be required (and, as applicable, deemed to agree) to fully indemnify, defend, save and hold harmless the Town and all of its departments, bureaus, divisions, boards, officers, employees and agents, from and against any and all claims, suits, costs, damages, expenses, charges, risks, losses, lawsuits, causes of action, judgments, executions, penalties, fines, assessments, and/or any other liability of any type arising out of, occurring in connection with, or resulting from, any or all actions or activities conducted by any Person pursuant to, in furtherance of, or in violation of the terms, conditions, and requirements of this local law, or in violation of the applicable provisions of any other law, or of any conditions or requirements set forth in any approval or permit issued by any governmental authority, including, but not limited to, any approval issued under this local law, any approval or permit issued under the Excavation Law, or any mining-related permit issued by the New York State Department of Environmental Conservation. By accepting any such approval or permit, or by the signing of any Road Use Agreement, such Person shall have automatically agreed, and shall be deemed and construed to have so agreed, to the defense, indemnity and save harmless provisions of this local law, as well as all other provisions of this local law. This provision shall be construed and applied to the maximum extent permitted by law, and does not create any theory or claim of liability where none exists at law or in equity.

Section 18: Inconsistent Provisions & Severability.

- A. In the event of any inconsistency between the provisions of this local law and the provisions of the Program Manual and the Technical Manual, the provisions of this local law shall control.
- B. If any word, phrase, sentence, part, section, subsection, or other portion of this local law, or the application hereof to any Person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this local law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this local law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed, and the Town Board hereby declares that it would have enacted this local law, or the remainder hereof, even if, as to particular provisions and persons or circumstances, such portion is severed or declared invalid or unenforceable.

Section 19: Construction.

The term "shall" is mandatory, and the term "may" is permissive. Any word that is gender-referenced shall be construed to include all genders and the neuter. Capitalized words shall have the meanings ascribed to them whenever the meaning or context thereof so admits or requires. Defined words and phrases that are not capitalized shall be presumed to be capitalized and deemed defined words and phrases, unless the context thereof admits or requires otherwise.

Section 20: Reservation of Rights as to New York Oil & Gas Fund.

The Town hereby retains and reserves all rights it has now or may hereafter have or possess pursuant to the provisions of subdivision 3 of Section 23-0303 of the Environmental Conservation Law (as now exists or as hereafter amended or re-codified), to request funds (by filing a request therefor with the New York State Commissioner of Environmental Conservation) from the oil and gas fund to reimburse the Town for costs incurred in repairing damages to any Town Highway. No collection or other action or provision of this local law shall be construed as prohibiting any application by the Town for reimbursement from such fund, and no right of collection, enforcement, or indemnity contained in this local law shall be deemed waived, unenforceable, or inapplicable by virtue of the existence of such fund or any application thereto.

Section 21: Effective Date.

This local law shall take effect upon January 1, 2012.