

Sponsored by County Administration, Public Works & Transportation and Finance Committees

Seconded by

RESOLUTION ADOPTING LOCAL LAW INTRO. NO. 9 OF 2012, ENTITLED "A LOCAL LAW RESCINDING IN ITS ENTIRETY CHAPTER 100 OF THE BROOME COUNTY CHARTER AND CODE AND CREATING A NEW CHAPTER 100 ENTITLED 'BROOME COUNTY ROAD PRESERVATION LAW'"

RESOLVED, that Local Law Intro. No. 9 of 2012, entitled: "A Local Law Rescinding in its Entirety Chapter 100 of the Broome County Charter and Code and Creating a New Chapter 100 entitled 'Broome County Road Preservation Law'" be and the same hereby is adopted and approved in accordance with the Broome County Charter and Code and all the applicable statutes and laws pertaining thereto.

A LOCAL LAW ENTITLED “A LOCAL LAW RESCINDING IN ITS ENTIRETY CHAPTER 100 OF THE BROOME COUNTY CHARTER AND CODE AND CREATING A NEW CHAPTER 100 ENTITLED ‘BROOME COUNTY ROAD PRESERVATION LAW’”

Be it enacted by the County Legislature of the County of Broome as follows:

Section 1. Title

This local law may be cited as the “Broome County Road Preservation Law”.

Section 2. Purpose

The purpose of this local law is to maintain the safety and general welfare of County 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 County. 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 County 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 ensure that the County’s roads are not damaged or harmed to the overall detriment of the County 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 County 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.

Section 3. 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 County 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.

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 100 miles or more of County roads or other County 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 County.

Local Delivery: Delivery or pickup of merchandise or other property along the County Roads by High Frequency Truck Traffic.

Other County Property: Any real property (including any improvements therein, thereon or thereunder) or personal property owned by, or leased to, the County.

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.

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, sub contractors, 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: 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 County deems necessary

County: The County of Broome, State of New York.

County Legislature: The County Legislature of the County of Broome.

County Road: Any County 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 4. Permanent Weight Restriction and Truck Route

A. All trucks, tractors 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 County Roads in the County of Broome, except that High Frequency Truck Traffic operated in the County of Broome shall be restricted (except as expressly hereinafter permitted) to the following designated "truck route system":

1. The designated "County of Broome Truck Route" shall be limited to and consist of routes on, over and along any and all State owned/maintained roadways lying within the boundaries of the County of Broome. No High Frequency Truck Traffic shall use County Highways or roadways, except as hereinafter permitted.

B. The initial determination that the standards of High Frequency Truck Traffic have been met shall be made by the Commissioner of Public Works. 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 Commissioner of Public Works for a review and determination.

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

Section 5. 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.

Section 6. Permit Issuing Authority and Enforcement Authority

A. The Commissioner of Public Works 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 Commissioner of Public Works is hereby designated as the authority to receive applications for permits to operate or move a vehicle or a combination of vehicles, the weights and frequency of which exceed the limitations provided herein.

C. The Commissioner of Public Works 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 County Road or other County property.

D. This chapter shall be administered and jointly enforced by the County enforcement officers and the police agencies of Broome County and NYS or officials authorized by the County Legislature of the County of Broome. Violations may be reported by verbal or written complaint by at least one person, including the enforcement officer.

Section 7. Application and Permit Form

At time of initial application and continuing thereafter, the person requesting the permit shall provide the following:

- 1) a proposed road map that the High Frequency Truck Traffic will travel on,
- 2) the County or its designee will provide a video or photographic documentation demonstrating the condition of the proposed road and/or property described in the permit with the costs born by the applicant,
- 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 \$50 per permit and \$250 per blanket permit;
- 7) Any other documents, maps, sketches, and plans, which the County Legislature may require and
- 8) All other requirements of this Chapter; including an escrow account, bond, etc 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 possible, the permittee must request a Blanket Permit covering all of the vehicles, which such permittee plans to use on County 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.

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 Commissioner of Public Works, the changes are significant, then the Permittee must file a new Permit application; including new 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 other officials authorized by the County Legislature.

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 monthly basis and within two

weeks after the conclusion of the permitted work. All video or photographic documentation will be submitted to the Commissioner of Public Works within one week of recording. Failure to submit the required video or photographic documentation will result in immediate revocation of the Work Permit. Every permit or blanket permit shall be valid for one year from date of issuance.

Section 8. Alternative to Permit: Road Use Agreement

A Permittee, who has more than one vehicle, which qualifies as High Frequency Truck Traffic, may request that the County enter into a County-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 County and the Permittee and shall include such additional terms as are reasonably required by the County, 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 sub contractors, shall be deemed to be covered by such agreement, and upon execution of the agreement the Commissioner shall issue a blanket permit.

Section 9. Damage to County 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 County Roads, other County property, ditches, curbs, sidewalks or other improvements and to public utilities of the County in the roadway.

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

Upon due notice being given to the Permittee and at the County's option, the County may allow the Permittee to repair all damages or the County may arrange the necessary repairs and charge the Permittee for all labor and materials at the prevailing rates. The highway shall be restored and the integrity of the repair maintained for a period of one year from the date of any repairs. Particular attention is called to the necessity of thoroughly compacting the back fill, which will be required by the County. If the County 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 County.

Section 10. Insurance

A. The Permittee shall present to the County certificates of insurance evidencing the acquisition of liability insurance coverage naming the County 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 County prior to cancellation of coverage.

C. All persons performing work under this permit and whom are required to be covered by Worker's Compensation Insurance and Disability Benefits insurances under New York law; shall be covered at the cost and expense of the Permittee.

Section 11. Maintenance Bond and Letter of Credit

The Permittee shall present to the County a maintenance bond in the amount of \$500,000.00 and a bank letter of credit in the amount of \$10,000.00 in favor of the County 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 of written notice from the County, failing which the permit shall be subject to revocation.

Such Maintenance Bond shall be maintained for at least a period of one year after repairs have been approved by the County. 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 12. Indemnity and Save Harmless

The Permittee will be required to agree to fully indemnify, defend, save and hold harmless the County of Broome and all of its departments, bureaus, divisions, boards, officers and employees from and against any and all claims, costs, damages, expenses, charges, risks, losses, lawsuits, judgments, executions, penalties, fines, assessments or any other liability of any type arising out of, occurring in connection with, or resulting from any and all activity to be performed by the Permittee pursuant to this permit.

By accepting the Permit, the Permittee shall be deemed to have agreed to all of the defense, indemnity and save harmless provisions of this Local Law and all other provisions of this Local Law.

Section 13. 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 County 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 liabilities and obligations hereunder shall survive any termination or revocation of the Permit.

Section 14. Stop Work Orders

The Commissioner of Public Works shall have the right and authority to issue stop work orders to those operating in violation of the terms of this permit, or contrary to the permittee's application or conditions upon which its permit was issued or in violation of this Local Law, in violation of applicable provisions of law.

Section 15. 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 Commissioner of Public Works may suspend any such permit issued hereunder for no more than thirty (30) days, and following a public hearing at which the Permittee shall have the right to appear and be heard, the Commissioner of Public Works may permanently revoke any permit on written notice to the Permittee.

Section 16. Special Conditions and Exclusions

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

B. The Commissioner of Public Works 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 an 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.

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

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

G. Traffic will be maintained in accordance with the Uniform Traffic Control Manual.

H. If any of these conditions are not met, the permit is automatically voided and all work shall cease.

Section 17. Violation of Local Law: Penalties Therefore

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

B. In addition to those penalties prescribed herein, any person who violates any provision of this chapter shall be liable for a civil penalty in an amount not to exceed \$5,000.00 for each day or part 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 County.

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 County, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce any provision of this chapter. In particular, but not by way of limitation, where there is a violation of this chapter, an action or proceeding may be commenced in the name of the County, 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 County may seek restitution for costs incurred by the County 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 chapter. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section.

Section 18. Reservation of County's rights

The County 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 County for costs related to repairing damages to any County Road, or Other County Property.

The County hereby retains and reserves all rights it has now or may have hereafter, 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 County for cost related to repairing damages to any County Road or Other County Property.

The County 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 County Road or Other County Property.

Section 19. Escrow

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

(1) The County requires an applicant to deposit with the County funds sufficient to reimburse the County for all reasonable costs of consultant and expert evaluation and consultation to the County in connection with the review of any application. The initial deposit shall be the sum of \$5,000. However, the County Legislature may, in its discretion reduce said fee upon good cause shown. These funds shall accompany the filing of an application and the County shall maintain a separate escrow account for all such funds. The County's consultants/experts shall, in accordance with an agreement between the County and its consultants or experts, bill or invoice the County 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 County's consultants/experts, the County will require applicant to immediately replenish said escrow account in an amount set by the County, but not to exceed \$2,500. Such additional escrow funds must be deposited with the County 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 County prior to the issuance of any Special Permit. In the event that the amount held in escrow by the County is more than the amount of the actual billing or invoicing by the County'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 County Attorney, Commissioner of Public Works and/or any other consultant/expert engaged by the County pursuant to this chapter, the County Legislature 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 County Legislature or its consultant/expert to complete the necessary review and analysis. Additional escrow funds, as required and requested by the County, shall be paid by the applicant. The initial amount of the escrow deposit may be established by County Legislature 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 County in connection with the permitting process and the repair, restoration and preservation of County Roads and Other County Property; and reasonable legal fees, accountants fees, engineers fees, costs, expenses, disbursements, expert witness fees and other sums expended by the County in pursuing any rights, remedies or claims to which the County 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 County shall maintain a separate escrow account for all such funds.

(5) The County is hereby authorized to withdraw funds from said escrow account (without prior notice to the Permittee) in order to promptly reimburse the County for any costs and expenses (as defined herein). The County 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 as of the date that the County determines that the Permit has expired and further determines that no damages or injuries have been caused to any County Road or Other County Property (and that no discharges or spills have occurred on any County Road or Other County Property) for which the County has not been fully reimbursed, the County shall pay to the Permittee the balance remaining in the escrow account.

Section 20. Request For A Waiver

All requests for a waiver from the standards set forth in this Local Law shall be made to the full County Legislature 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 full County Legislature 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 full County Legislature 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 21. SEQRA

When applicable, the County 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 22. 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 County Legislature hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

Section 23. Repealer

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

Section 24. Effective Date

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State.