

TOWN OF MIDDLEFIELD

LOCAL ROAD USE AND PRESERVATION LAW

LOCAL LAW NO. 1 OF THE YEAR 2013

Enacted March 12, 2013

BE IT ENACTED by the Town Board of the Town of Middlefield, County of Otsego, New York, as follows:

Section 1: Legislative Findings and Purpose.

The Town Board has determined that certain high-intensity traffic associated with Construction Activity, as defined herein, 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 Construction Activity, as defined herein, 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 Person responsible for such Construction Activity bear responsibility for making any necessary upgrades to Town highways and repairing any damage caused to Town highways at the expense of such Person. The purpose of this local law is to establish a mechanism by which the Person responsible for Construction Activity that will generate traffic likely to require upgrades or cause damage to Town highways shall ensure that such upgrades are made and such damage is repaired at the Person's own expense.

Section 2: Authority.

This local law is enacted pursuant to New York Vehicle & Traffic Law Section 1660, New York Municipal Home Rule Law Section 10, New York Statute of Local Governments Section 10, New York Highway Law Sections 320 & 326, and other applicable statutes.

Section 3: Definitions.

As used in this local law, the following terms shall have the meaning set forth herein:

Baseline Traffic means recurring ambient traffic presented on an annualized basis. It includes typical daily activities on Town Highways (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).

Construction Activity means any activity occurring or to occur 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:

Federal permits and approvals including, without limitation, approvals subject to the National Environmental Policy Act and 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

State permits and approvals, including, without limitation: Highway Work Permits, Waste Transporter Permits, SPDES General Permit for Stormwater Discharges from Construction Activity, Overweight/Oversize Vehicle Permit, Authority to Transport Property (Except Household Goods), Divisible Load Overweight Permit, Special Hauling Trip and Annual Oversize/Overweight Loads Permit, LCV/Tandem Trailer Permit, and Special Hauling Permit; or

Local permits and approvals, if applicable, including, without limitation: Aquifer Protection Permit, Sludge Disposal Permit, Mining Permit, Gravel Mining Permit, Permit for Well in Aquifer Area, Overweight/Oversize Vehicle Permit, Zoning Change, Special Use Permit, and site plan approval.

Construction Activity shall not include land clearing activity or the improvement of a parcel related solely to “farm woodland” or “land used in agricultural production,” as those terms are defined pursuant to New York Agriculture & Markets Law Section 301. Construction Activity shall not include local travel by any vehicle(s) or implement(s) or combination thereof when used solely for farm purposes.

Person means any person, persons, corporation, partnership, limited liability company, or other entity.

Concentrated Traffic means traffic intended to travel upon or traveling upon Town Highways to or from the site of Construction Activity which (i) is not Baseline Traffic, and (ii) which will exceed the predetermined normal wear and tear thresholds of one or more Town Highways or segments of Town Highways.

Program Manual means Road Protection Program Manual, Version 1.0, dated November 2011, prepared by Delta Engineers, Architects, & Land Surveyors, P.C., a copy of which is on file at the Town Hall.

Technical Manual means Road Protection Program Technical Manual, Version 1.0, dated November 2011, prepared by Delta Engineers, Architects, & Land Surveyors, P.C., a copy of which is on file at the Town Hall.

Town Highway, for purposes of this law, means those roads and highways and related appurtenances of the Town which are owned or maintained by the Town or otherwise exist as Town Highways by dedication or use and private roads in Town approved subdivisions, including without limitation, roadways, shoulders, guide rails, bridges, tunnels, culverts, sluices, ditches, swales, sidewalks, or any utilities or improvements therein, thereon, or thereunder. A map of all highways of the Town is and shall be maintained by the Town Highway Superintendent.

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

Road Repair means any repair to or replacement in kind of a Town Highway to fix damages caused by Construction Activity.

Road Upgrade means any improvement to a Town Highway necessary to support or safely accommodate a Construction Activity's Concentrated Traffic.

Structural considerations refer to Town Highway structures such as bridges, culverts, guard rails and signs.

Geometric considerations refer to road width, curve radii and/or grades of Town Highways.

Section 4: Applicability.

This local law shall apply to any Person who individually or in concert with another Person, intends to undertake Construction Activity that will result in Concentrated Traffic on Town Highways.

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

- A. Any Person identified under Section 4 of this local law shall, prior to undertaking Construction Activity that results in or may result in 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. The Town Highway Superintendent shall review such application and worksheet in accordance with the Program Manual and the Technical Manual. Within no more than thirty (30) days after receipt of a complete 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) If the proposed use of Town Highways will not result in Concentrated Traffic, the remaining provisions of this local law shall not be applicable to the applicant.
- (ii) 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's Construction Activity 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 of this local law.

Section 6: Requirements for Concentrated Traffic.

If the Town Highway Superintendent determines that traffic generated by an applicant's Construction Activity will result in Concentrated Traffic, the applicant shall be required to comply with the following provisions:

- A. The applicant shall be required to set forth a haul route declaration as set forth in the Program Manual.
- B. The Town's engineering consultant shall examine each segment of the proposed haul route in order to:
 - (i) evaluate the Town Highways on the proposed haul route for design, structural, geometric, or health and safety deficiencies, as those 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's engineering consultant 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 or if desired by the applicant to minimize estimated upgrade or repair costs to the haul route.
- C. The Town's engineering consultant shall design or approve, in conjunction with the Town Highway Superintendent or the Town's Engineer, all structural, geometric, health and safety, and roadbed 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 paragraph H of this Section 6.
- D. The Town's engineering consultant shall conduct all pre-use testing and threshold evaluation 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's engineering consultant determines that the applicant's Concentrated Traffic is expected to cause damage to Town Highways, the Town's engineering consultant shall provide the Town Highway Superintendent and the applicant with an estimate of the cost to repair such 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 paragraph H of this Section 6 (including the posting of appropriate security). If any haul route segment is on unpaved Town Highways, the Town Highway Superintendent may require, upon the recommendation of the Town's engineering consultant, that such Town Highways be subject to weekly monitoring and that any damage be repaired within five (5) days at the applicant's expense in accordance with the provisions of paragraph H of this Section 6.
- F. The Town's engineering consultant shall conduct all post-use testing and damage assessment 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's engineering consultant 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 paragraph H of this Section 6. 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.
- 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's engineering consultant. 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) other financial guarantee acceptable to the Town Board.
- 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 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 paragraph G of this Section 6, (iii) indemnify the Town against all liability stemming from the applicant's work, and (iv) provide the Town with satisfactory evidence of insurance as determined by the Town, including liability insurance naming the Town as additional insured. All repairs 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. In addition, the applicant shall comply with all applicable laws and regulations, including without limitation the

prevailing wage requirements of 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 or upgrades to Town Highways. If the applicant does not wish to make such repairs or upgrades to Town Highways, or is determined by the Town Highway Superintendent not to have the necessary capability to 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 paragraph G of this Section 6.

- I. The applicant shall pay the Town for all of the Town's reasonable costs, attorneys' fees, and expenses in implementing the requirements of this Section 6, including without limitation the fees of the Town's engineering consultant 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, attorney's fees, and expenses, and the Town Board may require the applicant to place funds in escrow to cover such costs, attorneys' fees, and expenses before the Town incurs any such costs, fees 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. If an applicant disagrees with any decision by the Town Board, the Town Highway Superintendent, or the Town's engineering consultant in the administration of this local law, including without limitation the extent or method of a proposed highway upgrade or repair, any cost 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 issue a public notice of hearing and shall hold such public hearing not fewer than five (5) days nor more than forty-five (45) days after such 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 consultant from whose decision the appeal is taken. The Town Board shall issue a determination on the applicant's request within thirty (30) days of the public hearing. In view of the Town's obligation to provide its residents with safe and properly maintained highways, the Town Board's determination shall be final.

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. A sample form of road use agreement is on file at the Town Hall. The sample form road use agreement may be amended from time to time by resolution of the Town Board, with any amended version replacing the prior version on file at the Town Hall. The applicant may ask to modify such form or propose a different form of road

use agreement, 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 to the Program Manual and the Technical Manual may be published. The Town Board may from time to time update or replace any manual referenced in this local law by adopting a local law referencing such new or updated manual, and thereafter, the new or updated manual shall be binding on all Persons subject to this local law.

Section 8: Application Fees.

The Town Board may establish a schedule of fees relating to applications, approvals, inspections, and enforcement under this local law.

Section 9: Enforcement and Penalties for Offenses.

- A. The Town Highway Superintendent, zoning and/or code enforcement officer, or law enforcement officials are hereby given the duty, power, and authority to administer and enforce this local law. Any Person may file a complaint with the Town Highway Superintendent alleging a violation of this local law, and the Town Highway Superintendent shall investigate and report on such complaint. If reasonable evidence of a violation exists, the Town Highway Superintendent, zoning and/or code enforcement officer, or law enforcement official may issue a notice of violation, an appearance ticket, and an order to cease and desist to the Person or Persons alleged to have violated this local law.
- B. Any Person or Persons or Person's agents, employees, contractors or sub-contractors convicted of violating any provision of this local law shall be subject to fines not exceeding \$1,000 for a first violation; not less than \$1,000 nor more than \$2,000 for the second violation occurring within a period of five years; and not less than \$2,000 nor more than \$5,000 for the third or subsequent violation occurring within a period of five years. Each week that a violation continues uncorrected or is resumed shall constitute a separate additional violation.
- C. The Justice Court of the Town shall have original and trial jurisdiction over all notices of violations and appearance tickets served charging violations of this local law. For the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this local law shall be deemed misdemeanors, and for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations.
- 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 & Traffic Law, or other local law or ordinance of the Town, the Town Highway Superintendent, zoning and/or code enforcement officer, or law enforcement official may, in the name of and on behalf of the Town,

seek all remedies allowed pursuant to such laws or ordinances and may institute an action or proceeding to restrain or enjoin such unlawful use.

- E. In lieu of or in addition to any fine or imprisonment, or both, imposed for a conviction of a violation of this local law, each such violation may be subject to a civil penalty not to exceed \$10,000 to be recovered in an action or proceeding in a court of competent jurisdiction. Each week that a violation continues uncorrected or is resumed shall constitute a separate additional violation.

- F. (1) In addition to any penalties or other remedies provided for or allowed herein, the Town Highway Superintendent, zoning and/or code enforcement officer, or law enforcement official shall have the right and authority to issue a stop-work order in order to halt any use of or work on one or more Town Highways that is determined by the Town Highway Superintendent to:
 - a. pose an unreasonable risk to the safety, health, or general welfare of the public, without regard to whether such use of or work on Town Highways has been authorized pursuant to this local law or by a road use agreement, or
 - b. pose a risk of imminent harm to Town Highways, without regard to whether such use of or work on Town Highways has been authorized pursuant to this local law or by a road use agreement, or
 - c. be contrary to any applicable provision of this local law.

- (2) All stop-work orders shall be in writing, be dated and signed by the Town Highway Superintendent, zoning and/or code enforcement officer, or law enforcement official state the reason or reasons for issuance, state with specificity the particular use of and/or work on Town Highways that must cease and the particular Town Highways for which the stop-work order is effective, and, where applicable, state the conditions that must be satisfied before the use of or work on such Town Highways shall be permitted to resume.

- (3) The Town Highway Superintendent, zoning and/or code enforcement officer, or law enforcement official shall cause the stop-work order, or a copy thereof, to be served personally or by certified mail on the following Persons, where applicable:
 - a. the Person who has submitted a haul route declaration to the Town and whose use of or work on Town Highways is the subject of the stop-work order, and
 - b. the Person who is a party to a road use agreement with the Town and whose use of or work on Town Highways is the subject of the stop-work order, and
 - c. any identifiable contractor, subcontractor, construction superintendent, hauler, or any of their agents, or any other Person taking part or assisting in the use of or work on Town Highways that is the subject of the stop-work order.

Notwithstanding the foregoing, the failure to serve any Person mentioned above shall not affect the validity or effectiveness of the stop-work order.

(4) Upon the issuance of a stop-work order, all Persons performing, taking part in, or assisting in the use of or work on Town Highways that is the subject of the stop-work order shall immediately cease all such use of or work on such Town Highways. The failure to comply with the terms and conditions of a stop-work order issued hereunder shall constitute a violation of this local law.

(5) A stop-work order may be rescinded only by the Town Highway Superintendent, zoning and/or code enforcement officer, or law enforcement official upon receipt of evidence that the conditions or actions that lead to the issuance of the stop-work order have been abated or adequately addressed.

Section 10: Time to Act.

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

Section 11: Inconsistent Provisions and Repealer.

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

Section 12: Severability.

If any part or provision of this local law or the application thereto to any Person or circumstance shall 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.

Section 13: Effective Date.

This local law shall take effect upon filing with the New York Secretary of State.