

Town of Virgil Local Law #4 for the year 2010

A LOCAL LAW REQUIRING A PERMIT PRIOR TO ANY ALTERATION OF A TOWN ROAD AND REQUIRING A PERMIT FOR USE OF TOWN ROADS BY VEHICLES WITH A GROSS WEIGHT IN EXCESS OF THE LIMITATIONS IN SECTION 385 OF THE NEW YORK STATE VEHICLE AND TRAFFIC LAW

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

Section 1. Authority for this Law.

This Local Law is enacted pursuant to Municipal Home Rule Law Section 10 and Vehicle and Traffic Law Section 385(15) authorizing a town to require the issuance of a permit to operate or move a vehicle or a combination of vehicles, the weights or dimensions of which exceed the limitations provided in section 385 on town roads or roadways, similar to that issued by the State of New York relating to the state system of highways.

Section 2. Damage to town roads prohibited.

No person shall alter or disturb a town road or the area within the road right of way without a permit issued pursuant to this local law. No person shall operate an oversized vehicle or an overweight vehicle on a town road without a permit issued pursuant to this local law.

Section 3. Permit Issuing Authority.

The Town Supervisor (hereinafter the “Supervisor”) of the Town of Virgil (hereinafter the “Town”) is hereby designated as the authority to receive applications for permits to operate or move a vehicle or a combination of vehicles, the weights or dimensions of which exceed the limitations provided in section 385 on town roads or highways (hereinafter the “permit”.) Such permit can only be issued by a majority vote of the town board to applicants who hold a valid New York State Hauling or Divisible Load Permit issued pursuant to 17 NYCRR Subpart 154-2.

The town board may grant a permit waiver to applicants who use a road 2 times per day or less, and to applicants who have been granted a town franchise agreement.

Section 4. Application Form, Permit Form and Application Fee.

The Supervisor is hereby authorized to promulgate application and permit forms. The application must specify all roads and adjacent driveways that are proposed to be used. Detailed plans and specifications shall be required for any new construction within a road right of way. An application shall be accompanied by maps of all proposed routes, and plans for all construction in a road right of way, including proposed pipelines. An application shall also include an environmental assessment form. Permit issuance shall be subject to Article 8 of the New York State Environmental Conservation Law – State Environmental Quality Review (“SEQR”). An application fee and a maintenance fee shall be established by Town Board resolution. The application fee shall be separate and in addition to the maintenance fee which shall be adequate to reimburse the town for all related expenses, including consultants’ fees.

Section 5. Damage to Town Roads.

The permittee shall be responsible for the repair of all damages done to the roadways, bridges, driveways, culverts, ditches, curbs, sidewalks or other improvements and to the public utilities in the roadway and easement area. Upon due notice being given to the permittee, and at the Town’s option, the Town may require the permittee to repair all damages or the Town may arrange for the necessary repairs and charge the permittee for all labor and materials at the prevailing rates. The Town shall have the authority to specify a deadline by which time all repairs shall have been completed. The highway shall be restored and maintained for a period of one year from the date of any repairs. Particular attention is called to the necessity of thoroughly compacting the back fill, which will be required by the Town. The Town shall have the authority

to assess damages and to collect said damages from the responsible party. The Town shall also have the authority to require the applicant to arrange for and pay for the cost of videotaping or otherwise documenting the condition of a road before the applicant uses the road.

Section 6. Insurance.

A. The permittee shall present to the Town certificates of insurance evidencing the acquisition of liability insurance coverage naming the Town as an additional insured on a non-contributory basis with the minimum limits of coverage for bodily injury equal to \$2,000,000.00 for each person injured, \$5,000,000.00 for aggregate bodily injury resulting from each occurrence, and \$5,000,000.00 property damage.

B. Said insurance shall be maintained throughout the term of the permit and the aforementioned certificates shall provide for thirty (30) days' notice to the Town prior to cancellation of coverage. Expiration of insurance coverage shall automatically operate to revoke any permit issued pursuant to this local law.

C. All persons performing work under this permit are to be covered by Worker's Compensation Insurance and Disability Benefits insurances as required by New York law.

Section 7. Maintenance bond.

The permittee shall present to the Town a maintenance bond in the amount of \$500,000.00 and a bank letter of credit in the amount of \$50,000.00 in favor of the Town guaranteeing compliance with the provisions of the permit. At such time, if ever, that said letter of credit is expended, the permittee shall replace the same within 5 days written notice by the Town, failing which the permit shall be subject to revocation.

Section 8. Indemnity and Save Harmless.

The permittee will be required to agree to fully indemnify, defend, save and hold harmless the Town and all of its departments, 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 with, or resulting from any and all activity to be performed by permittee pursuant to this permit.

Section 9. Stop work orders.

The Town Supervisor or Code Enforcement Officer shall have the right and authority to issue stop work orders to those operating in violation of the terms of a permit, or contrary to the permittee's application or conditions upon which a permit was issued pursuant to this local law.

Section 10. Revocation of permit.

Upon violation of any provisions of a permit, the Town Supervisor or Code Enforcement Officer may suspend the permit issued hereunder, for no more than forty five (45) days. Upon permit suspension, a permittee shall have the right to appear and be heard at a hearing. The Town Board may permanently revoke any permit for due cause following said hearing.

Section 11. Special Conditions.

- A. A permit shall not be assigned or transferred without the written consent of the Supervisor.
- B. The Supervisor shall be given one week's notice by the permittee of the date it intends to begin the activity authorized by the permit, and prompt notice of its completion.
- C. A permit for an overweight or oversized vehicle shall remain valid only for so long as the permittee continues to hold a valid New York State Hauling or Divisible Load Permit issued pursuant to 17 NYCRR Subpart 154-2.
- D. The permit shall not authorize the holder to exceed the maximum gross weight limit authorized for crossing an R-Posted bridge.

E. Every permit shall require that the roads be kept passable at all times for all motor vehicles, including public safety vehicles, unless otherwise approved by the town highway superintendent.

F. The town highway superintendent may require that a road be improved prior to use so that it will withstand the proposed use without significant damage.

G. The town board may impose other conditions where reasonable, including a requirement to fund engineering studies, videotaping or other documentation of a road, and seasonal restrictions.

Section 12. Violation of local law; penalties therefore.

Any person who shall operate or move a vehicle or a combination of vehicles, the weights or dimensions of which exceed the limitations provided in section 385 on town roads or highways without obtaining the permit required hereunder shall be guilty of a Class A misdemeanor, which shall be punishable by a fine not exceeding one thousand (\$1,000.00) dollars, per day of violation.

Section 13. Severability.

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application provision been apparent.

Section 14. Repealer.

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

Section 15. Effective Date.

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

Adopted: April 8, 2010

Effective date: April 21, 2010