

TOWN OF MACHIAS

LOCAL LAW NO. ____-2024

**A LOCAL LAW TO ESTABLISH BONDING/FINANCIAL
SECURITY REQUIREMENTS FOR CERTAIN USERS
OF TOWN OF MACHIAS ROADWAYS**

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF MACHIAS AS FOLLOWS:

SECTION 1. TITLE.

This Chapter be hereafter be known, cited and referred to as “the Highway Bonding/Financial Security Law of the Town of Machias.”

SECTION 2. PURPOSE AND INTENT.

The Town Highway Superintendent has advised the Town of the necessity of requiring a bond or other financial security in order to hold individuals or entities whose vehicular traffic causes a disproportionate amount of wear and tear on Town roads to be financially responsible for repair of the same, as the Town has limited sources of funds to pay for such repair on its own.

SECTION 3. HIGHWAY SUPERINTENDENT AUTHORITY.

1. Pursuant to the provisions of Article 7 of the Highway Law, §140(13) the Town Highway Superintendent has the duty to bring an action, in the name of the Town, against any person or entity to sustain the rights of the public in and to any town highway in the Town and to enforce the performance of any duty enjoined on any person or entity in relation thereto and to recover any damages sustained or suffered at the expense of the Town and as a consequence of any act or omission of such person or entity, in violation of any law or contract in relation to such town highway.
2. Pursuant to Article 7 §140(17) the Town Highway Superintendent shall perform other duties and have such powers as may be imposed or conferred by law or the rules and regulations of the Department of Transportation, including the powers and duties heretofore exercised or performed by Highway Commissioners.

SECTION 4. TOWN AUTHORITY.

Pursuant to Vehicle & Traffic Law Title 8, Article 41, §1660(11), the Town Board has the authority to temporarily exclude any portion of any town highway to any vehicle of a gross weight of four (4) or more tons when, in the Town Board's opinion, such highway would be materially injured by the operation of any such vehicle thereon.

SECTION 5. BONDS AND FINANCIAL SECURITY AUTHORIZED.

1. The Highway Superintendent shall have the authority to require the posting of a bond or other financial security when the vehicle(s) have a gross weight of four (4) tons or more.
2. The Town Board hereby gives the Highway Superintendent the authority to issue permits allowing the use of an excluded road on the posting of a bond or other financial security.

SECTION 6. PERMIT REQUIREMENTS.

1. Bonds:
 - (a). To be eligible to receive a permit, an individual or entity must post a bond or other financial security. Said bond is to be reasonable and may be up to \$500,000.00 but not less than \$10,000.00. The bond is to be \$25,000.00 for every one mile of road. This \$25,000.00 figure may be adjusted annually in accord with inflation by annual Resolution by the Town Board.
 - (b). An individual or entity has the option to post an annual blanket bond in the amount of \$250,000.00 to cover all Town roads that may be used during a one-year period. This figure may be adjusted annually in accord with inflation by annual Resolution by the Town Board.
 - (c). All bonds must be provided sealed with the corporate seal of the bond underwriter and signed by the required corporate or individual authority for the bond holder.
 - i. In lieu of a Corporate Seal upon the bond, a Corporate Resolution authorizing the bond, which is sealed with the Corporate Seal and signed by the Corporate President along with a Certificate of Authorization (also sealed with the Corporate Seal), by the Corporate Security securing that the authorizing Resolution is a full, true and accurate copy.

- ii. The bond is to be for a period of one (1) year. If the operation requiring the road use is to be more than one year, the bond must be renewed and written notice thereof provided to the Town.
- iii. On all bonds the Town is to be named as the additional payee.
- iv. All bonds with their associated documents are to be kept by the Town Clerk in the town office until they are expired.
- v. All bonds must be verified for authenticity by the Town insurance agent.
- vi. All bonds must be obtained from an insurance carrier who is licensed to conduct insurance operations within the State of New York.
- vii. Upon completion of these requirements, the bonded entity or individual will then call upon the Town Highway Superintendent to sign the permit, which said permit shall state what roads the bonded entity or individual may use. Upon approval by the Highway Superintendent, the bonded entity or individual will be granted a permit which will state the amount of the bond (also called a Surety Bond). The Town Board shall then, upon completion of these requirements, grant the Highway Superintendent the authority to issue a permit providing appropriate exemption of such vehicle.
- viii. Upon completion of the project and following a reasonable inspection by the Highway Superintendent that determines that no damage occurred to the road, the Town may release the bond to the bonded entity or individual. Where an inspection determines that the bonded entity or individual permitted activity has caused damage to the roads named in the permit, the Town Highway Superintendent shall document this damage and cash the bond. The bond monies may only be used for the repairs of the damaged roads.
- ix. Where the bonded entity or individual disputes the Town Highway Superintendent's finding that the bond must be forfeited to the Town, either wholly or partially, in order to pay for the road repairs, the bond will not be released until the Town is ordered to do so by a Court of competent jurisdiction.

2. Other Financial Security:

(a) Joint Bank Account: In lieu of a bond an entity or individual may place an equivalent amount of money into a joint bank account with the Town.

- i. The account is to be an “and” account not an “or” account requiring the signature of the Town Supervisor for the second party to withdraw their funds upon completion of a road project that resulted in no damage to the Town roads. The Town will require that on any such account the individuals name be on it along with the Town’s name and that nobody will withdraw money from the account without the other party’s permission.
- ii. The account is to be at a bank which is the official Town depository in the State of New York.

Upon completion of these requirements, the joint bank account holder will then call upon the Town Highway Superintendent to sign the permit, which said permit shall state which roads the joint bank account holder may use. Upon approval by the Town Highway Superintendent, the joint bank account holder will be granted a permit, which will state the amount of money in the joint bank account. The Town Board shall then, upon completion of these requirements, grant the Highway Superintendent the authority to issue a permit providing appropriate exemption of such vehicle.

- iii. Upon completion of the project and following a reasonable inspection by the Highway Superintendent to determine that no damage occurred to the road, the Town may release the account to the joint account holder. Where an inspection determines that the joint bank account holders permitted activity has caused damage to the roads named in the permit, the Town Highway Superintendent shall document the damage and use the funds in the joint bank account to repair said damage. The account monies may only be used for the repairs to the damaged roads.
- iv. Where the joint account holder disputes the Highway Superintendent’s finding that the account must be forfeited to the Town, either wholly or partially, the account will not be released until the Town is ordered to do so by a Court of competent jurisdiction.

- (b) Certified Check: A certified check made out to the Town in the amount that otherwise would be bonded will be held by the Town. The validity of the check shall be verified by the Town's local depository.
- i. Upon completion of these requirements, the certified check holder will then call upon the Town Highway Superintendent to sign the permit, which said permit shall state which roads the certified check holder may use. Upon approval by the Town Highway Superintendent, the certified check holder will be granted a permit, which will state the amount of the certified check. The Town Board shall then, upon completion of these requirements, grant the Highway Superintendent the authority to issue a permit providing appropriate exemption of such vehicle.
 - ii. Upon completion of the project and following a reasonable inspection by the Highway Superintendent that determines that no damage occurred to the road, the individual or entity may retrieve the check. Where an inspection determines that the certified check holders permitted activity has caused damage to the roads named in the permit, the Town Highway Superintendent shall document this damage and cash the check to repair said damage. The certified check monies may only be used for the repairs to the damaged roads.
 - iii. Where the individual or entity disputes the Highway Superintendent's finding that the certified check must be forfeited to the Town, either wholly or partially, in order to pay for road repairs, the certified check will not be released until the Town is ordered to do so by a Court of competent jurisdiction.

SECTION 7. POSTING.

Roads/Publishing Notice

1. The Highway Superintendent must post a sign on the road in question stating that any vehicles overweight are excluded from the roads and notice that such vehicles are excluded shall be published in the official Town newspaper which is where the highway is located. Such publication and posting must take place yearly.

SECTION 8. PERMIT.

Every permit granted shall be carried on the vehicle to which it refers and shall be open to inspection of any peace officer acting pursuant to special duties or to police officers.

SECTION 9. RESERVATION OF RIGHTS.

The Town hereby retains and reserves all rights it has now or may have hereinafter pursuant to the provisions of Subdivision 3 of §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 Town for costs related to repairing damages to any Town road or any other Town property. The Town hereby retains and reserves all rights it has now or may have hereafter pursuant to Navigation Law Article 12 to make a claim against New York Environmental Protection & Spill Compensation Fund to reimburse or compensate the Town for costs related to repairing damages to any Town road or other Town property. The Town hereby retains and reserves all other rights it has now or may have hereafter to seek reimbursement or compensation for costs related to repairing damages to any Town road or other property.

SECTION 10. EXEMPTIONS.

All Postal, United Parcel Service (UPS), FedEx, Amazon, food delivery, fuel delivery, fuel oil, septic pumping, garbage pick-up, utility trucks (excluding utility subcontractors), medical deliveries and/or services, police, fire vehicles or other emergency vehicles are exempt from the provisions of this Law. Further, nothing contained in this Local Law shall be deemed to limit the right to farm as set forth in Article 25-AA of the New York State Agricultural & Markets Law.

SECTION 11. SEVERABILITY.

If any clause, sentence, phrase, paragraph or any part of this Local Law shall for any reason be finally adjudged by a Court of competent jurisdiction to be invalid, such determination shall not affect, impair or invalidate the remainder of this Local Law but shall be confined in its operation to the clause, sentence, phrase, paragraph or part thereof directly involved in the controversy or action in which such Judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this Local Law would have been adopted and any such provision not been included.

SECTION 12. EFFECTIVE DATE.

This Local Law shall take effect immediately upon filing with the Secretary of State.

DULY ADOPTED, this _____ day of _____, 2024, by the following vote:

Supervisor Dusterhus	Voted _____
Councilman Shenk	Voted _____
Councilman Reese	Voted _____
Councilman Glasner	Voted _____
Councilman Bork	Voted _____