

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED
JAN 10 2007

- County
- City of German
- Town
- Village

MISCELLANEOUS
& STATE RECORDS

Local Law No. 2 of the year 20 06

A local law entitled
(Insert Title)
"REGULATION OF LOGGING AND MINERAL EXTRACTION ACTIVITIES
INVOLVING THE USE OF HEAVY EQUIPMENT ON TOWN ROADS"

Be it enacted by the Town Board of the
(Name of Legislative Body)

- County
- City of German **as follows:**
- Town
- Village

SECTION ONE. LEGISLATIVE PURPOSE AND INTENT

1.0 By means of this local law it is the intent of the Town Board of the Town of German to prevent damage to and the destruction of the surface, roadbed and ditching of town roads by regulating the use of town roads by those persons or entities engaged in commercial or private logging, timbering, pulping, other wood cutting activities or mineral extraction activities upon lands located within the Town when said projects involve the use of heavy vehicles, equipment and machinery.

SECTION TWO. LEGISLATIVE AUTHORITY

2.0 This local law is enacted pursuant to the authority vested in the Town Board by Vehicle and Traffic Law 1660 (21) and Municipal Home Rule Law 10(6).

(If additional space is needed, attach pages the same size as this sheet, and number each.)

SECTION THREE. DEFINITIONS

- 3.0 The following words as used herein shall have the following definitions:
- 3.1 Town. The Town of German located in the County of Chenango, State of New York.
- 3.2 Commercial Contract or Commercial Project. An agreement, either oral or in writing, between an owner of lands located within, or fronting upon a Town Road within, the Town of German and another person or entity for a project involving the harvesting, cutting and removal of timber, logs, pulpwood or firewood from such lands, or for a mineral extraction project as herein defined which involves the use on a Town Road or Roads of regulated vehicles, equipment or machinery as defined in Section Three, 3.5 below. An owner shall include any individual or entity having the timber or mineral rights to said land.
- 3.3 Mineral Extraction or Mineral Extraction Project. The quarrying, mining, digging, drilling, removal or extraction of stone, shale, slate, dirt, topsoil, gravel, sand, coal, petroleum or natural gas from lands located within the Town of German.
- 3.4 Town Road, Town Highway. All roads and highways including seasonal limited use roads designated as such pursuant to Highway Law §205-a, both paved and unpaved, open to travel by the public pursuant to easement or fee title vested in the Town of German, which said roads and highways are repaired and maintained by the Town of German and listed upon the town's official inventory of public highways for state aid purposes.

SECTION FIVE. APPLICATION FOR PERMIT AND PERMIT REQUIREMENTS

- 5.0 Application Shall Be Made to the Town Clerk. Any person wishing to operate or utilize a regulated vehicle, equipment or machinery upon a Town of German road or highway in connection with either a private or commercial project shall make application in writing to the Town Clerk upon a form to be supplied by the Town Clerk. A separate application shall be made for each commercial contract or regulated private project.
- 5.1 Contents of Application. The application for a permit shall contain the following information:
- A. The name, address and telephone number of the applicant.
 - B. The name, address, phone number, title or official capacity of the individual who will have overall responsibility and authority for the project or activity for which the permit is sought.
 - C. The name of the town road(s) or town highway(s) to be utilized by the applicant in conducting the activities for which the permit is sought.

- D. The location of and a description of the lands upon which the regulated activities are to be conducted including the land owner's name, address, telephone number and the parcel's Chenango County Tax Map Parcel identification number.
 - E. A description of the activities to be conducted, the time frame during which the activities will be conducted, together with an itemized description of the regulated vehicles, equipment, machinery which will be utilized.
 - F. A description of any special needs or requirements involving alterations, modifications, excavations to the town road or highway such as the need for the installation of, widening or lengthening of culverts, sluices, ditching, snow plowing, etc. All such special needs or requirements shall be subject to the prior approval by the town superintendent of highways and be at the sole cost of applicant, or as otherwise determined by the town superintendent of highways.
- 5.2 Time Frame For Decision. No later than thirty (30) days from the date a complete application shall be submitted to the Town Clerk, the Town Superintendent of Highways shall, in writing, grant the application, grant the application with special conditions or deny the application.

SECTION SIX. BOND REQUIRED FOR COMMERCIAL PROJECT

- 6.0 In the event the Town Superintendent of Highways shall grant the application or grant the application with special conditions in connection with a commercial contract involving logging, mineral extraction or salvage yard activity, the Applicant shall be required to furnish a bond equal to 10 percent (10%) of the commercial contract sales price, to a maximum of \$5000, or in the amount of one thousand dollars (\$1,000.00), whichever amount is greater.
- 6.1 The bond shall be in the form of:
- (a) Cash; or
 - (b) Bank check, payable to the Town of German; or
 - (c) Certified check, payable to the Town of German; or
 - (d) Performance bond issued by an insurance company authorized to do business in the State of New York.

- 6.2 Bonds in the form of cash, bank or certified check shall be deposited into the Town of German's account and held in escrow without interest. The bond proceeds shall be returned to the applicant without interest upon completion of the permitted activities subject to the passing of an inspection of the affected town road(s) or highway(s) by the Town Superintendent of Highways or the Superintendent's designee. In the event such inspection discloses that the roadbed, surface, ditching or culverts of the affected town road(s) or highway(s) has been damaged during the course of the permitted activities to the extent that such damage is in excess of the ordinary repairs and maintenance the town annually performs on the affected road(s) or highway(s), the town, utilizing the bond funds, shall cause same to be repaired to as good a condition as existed immediately prior to the commencement of the permitted activities. Bond funds in excess of the amount required to pay the cost of repairs shall be returned to the applicant. In the event the cost of repairs exceeds the amount of the bond funds, the applicant shall be liable to pay the excess cost to the town, failing which the town may resort to any legal remedy available to it for its collection. Until such time as said monies are paid the applicant shall be ineligible for a future permit.

SECTION SEVEN, PERMIT SUBJECT TO SUSPENSION OR REVOCATION

- 7.0 During the course of the permitted activities the Town Superintendent of Highways or his/her designee shall have the right to periodically inspect the affected town road(s), highway(s) including but not limited to the roadbed, road surface, ditching, culvert(s) and sluices. In the event such inspection reveals excessive damage to, destruction of the roadbed, road surface, culverts, ditching, sluicing, or the failure of the applicant to abide by any special terms or conditions of the permit, the Town Superintendent of Highways may suspend the applicant's permit until such time as all noted defects have been cured to the reasonable satisfaction of the superintendent, failing which the superintendent shall have the authority to revoke the applicant's permit.

SECTION EIGHT. PENALTIES

- 8.0 Any person violating this local law shall be guilty of a violation punishable by a fine not in excess of two hundred fifty dollars (\$250.00) or by imprisonment not in excess of fifteen (15) days, or by both such fine and imprisonment. Each twenty-four hour period or portion thereof during which a violation occurs shall be deemed a separate offense. In lieu of or in addition to said penalties, the Town may initiate legal proceedings in a court of competent jurisdiction for injunctive relief, money damages or such other and further relief as appropriate.

SECTION NINE. APPEALS

- 9.0 Any applicant feeling aggrieved by the Town Superintendent of Highway's decision to deny an application or to grant same with conditions shall have the right to appeal such decision to the Town Board by filing in letter form an appeal with the Town Clerk, either by personal delivery or by regular US mail, not later than 30 days after receipt by the applicant of the Superintendent of Highway's decision. **An applicant for permit involving a commercial project of \$5000 or less for whom the bonding provision is a hardship, may apply to the Town Board for a variance.** The Town Board shall schedule the appeal or request for variance to be heard at the next regularly scheduled Town Board Meeting or as soon thereafter as practical at which time the Town Board shall hear both the applicant and the Town Superintendent of Highways. The Town Board by a majority vote of the members present at such hearing shall decide the appeal.

The Town Board's decision may be appealed to Supreme Court of the State of New York by means of a CPLR Article 78 Proceeding.

SECTION TEN. SEVERABILITY

- 10.0 In the event any term, clause or provision hereof shall be deemed by a court of competent jurisdiction to be invalid, illegal, null and void, such ruling shall not affect the validity of the remaining terms and provisions hereof which shall continue in full force and effect.

SECTION ELEVEN. AMENDMENTS

- 11.0 This local law may be amended by the adoption by the town board of an amending local law.

SECTION TWELVE. EFFECTIVE DATE

- 12.0 This local law shall be effective upon its filing with the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 20 06 of the (County)(City)(Town)(Village) of German was duly passed by the Town Board on November 2 20 06, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) _____ (Name of Legislative Body) (repassed after disapproval) by the _____ and was deemed duly adopted (Elective Chief Executive Officer*) on _____ 20 _____, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) _____ (Name of Legislative Body) (repassed after disapproval) by the _____ on _____ 20 _____ (Elective Chief Executive Officer*)

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on _____ 20 _____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) _____ (Name of Legislative Body) (repassed after disapproval) by the _____ on _____ 20 _____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20 _____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

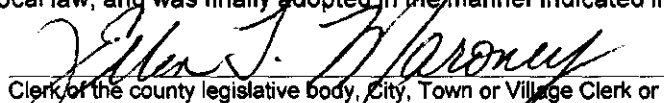
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20 _____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20 _____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the ~~qualified electors of the towns of said county considered as a unit voting at said general election~~, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 _____, above.


Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

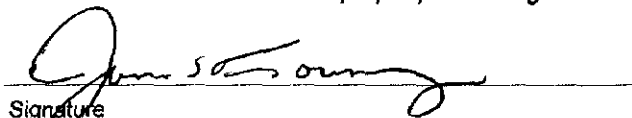
Date: 12/14/2006

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF Chenango

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.


Signature
Town Attorney
Title

County
City of German
Town
Village

Date: December 28, 2006