

Section xxx-xx  
Adopted  
Town Of Smithville  
Road Use Agreement  
Local Law No. 1 of 2017

**SECTION I: PURPOSE**

The purpose of this law is to maintain the safety and general welfare of Town residents by regulating commercial activities that have the potential to adversely affect road right-of-ways.

Well maintained roads are important to the economic well-being of the Town. Commercial endeavors, such as timber harvesting, gas, and oil exploration and mining, are also economically beneficial. This law is not intended to regulate such business: the intent is to protect the public right-of-ways from damage. The Town Board of the Town of Smithville hereby enacts the following Road Preservation Local Law pursuant to the provisions of the Municipal Home Rule Law.

**SECTION II: APPLICABILITY**

The Smithville Town Board delegates to the Smithville Highway Superintendent the oversight of assuring commercial activities do not have an adverse impact on public right-of-ways.

**SECTION III: DEFINITIONS**

1. *Specific Contracted Activity*: Commercially contracted activities between Town landowners and commercial contractors could potentially impact Town road right-of-ways.
2. *Non-Refundable Permit*: A fee to be charged to the commercial entity or resident responsible for the activity to ensure that the condition of the town roads impacted by the job is left in as good or better condition at the completion of the job as they were at the start of the job.
3. *Road Use Agreement Worksheet (Appendix A)*: Worksheet is to be completed by the owner or contractor, summarizing the job, site location, start and completion dates, expected max gross vehicle weight used for the contract, and any other items that the Town Highway Superintendent deems necessary.

**SECTION IV: GENERAL PROVISIONS**

1. Prior to the start of any contracted activity that could have an impact on Town right-of-ways, a non-refundable permit must be obtained. The non-refundable permit fee amount shall be determined by the Town Board and will be listed on the Town of Smithville Fee Schedule on file with the Smithville Town Clerk. The amount of the non-refundable permit fee may be changed by the Town Board by Resolution. Non-refundable permits must be renewed annually. A completed *Road Use Agreement Worksheet (Attachment A)*, shall be submitted to the Town Highway Superintendent. *Road Use Agreement Worksheet (Attachment A)* must be renewed annually.
2. Upon completion of the contract, the contractor will notify the Town Highway Superintendent for a road review. Upon inspection of the work site and roadway as necessary, the Town Highway Superintendent will determine the road condition. The Town Highway Superintendent will specifically document the tasks that must be accomplished in order for the road to be returned to original condition. The contractor will remedy the specified necessary repairs as stated on the *Road Use Agreement Worksheet (Attachment A)*.

3. If the contractor does not comply and operates outside the parameters as specified on the worksheet, any law enforcement officer or Code Enforcement Officer has the authority to shut down any operation.
4. The landowner and or Lessee will be responsible for the repair of any damages that occur to the Town of Smithville road right-of-ways, when a project proceeds without a proper permit.

#### **SECTION V: PERMIT FEE & PENALTY**

A non-refundable permit fee as depicted in the Town of Smithville Fee Schedule, payable to the Town of Smithville, must accompany each Worksheet submitted to the Highway Superintendent.

Failure to obtain a permit shall result in a minimum \$1,000 penalty with additional penalties assessed based on any damages to Town of Smithville roads/right-of-ways.

#### **SECTION VI: APPEALS**

Contractor has the right to appeal to that Smithville Town Board.

#### **SECTION VII: REQUEST FOR VARIANCE**

Request for a variance from the standards set forth in this Local Law shall be made to the Smithville Town Board in writing and shall contain the grounds on which the applicant relies for requesting the variance, including allegations on any facts on which the appellant will rely. Where the Smithville Town Board finds that due to special circumstances of the particular case a waiver of certain requirements as stated in Section IV is justified, then a variance may be granted. No variance shall be granted, however, unless the Town Board finds and records in its minutes that: (a) granting the variance 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 variance would result in undue hardship to the applicant, provided that such hardship has not been self-imposed; (d) the variance is the minimum necessary to accomplish the purpose.

#### **SECTION VIII: INVALID SEGMENT**

Should any section or provision of this Local Law contained herein or as amended hereafter be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the local Law as a Whole or any part thereof-other than the part declared to be invalid.

#### **SECTION X: EFFECTIVE DATE**

This Local Law shall take effect upon filing with the State of New York.

**ATTACHMENT A  
TOWN OF SMITHVILLE  
ROAD USE AGREEMENT WORKSHEET**

Landowner and or Lessee: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (    ) \_\_\_\_\_ - \_\_\_\_\_

Description of work to be done (logging, gravel, mining, etc.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Work Location: \_\_\_\_\_

Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (    ) \_\_\_\_\_ - \_\_\_\_\_

Start Date: \_\_\_\_\_ Completion Date: \_\_\_\_\_

Expected maximum gross vehicle weight: \_\_\_\_\_

Anticipated number of vehicle trips: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

Signature Smithville Highway Superintendent

<b>FOR OFFICIAL USE ONLY</b>
Description of Necessary Repairs: _____ _____ _____ _____
Date of Completion: _____
_____ Date: _____
Signature Smithville Highway Superintendent

# 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.

County  City  Town  Village  
(Select one.)

of Smithville

Local Law No. 1 of the year 2017

A local law Road Use Agreement  
(Insert Title)

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

County  City  Town  Village  
(Select one.)

of Smithville as follows:

see attached

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

(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. 1 of 2017 of the (County)(City)(Town)(Village) of Smithville was duly passed by the Town Board on October 16 2017, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

**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 \_\_\_\_\_ above.

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

(Seal)

Date: \_\_\_\_\_

STATE OF NEW YORK  
DEPARTMENT OF STATE  
ONE COMMERCE PLAZA  
99 WASHINGTON AVENUE  
ALBANY, NY 12231-0001  
WWW.DOS.NY.GOV

ANDREW M. CUOMO  
GOVERNOR

ROSSANA ROSADO  
SECRETARY OF STATE

RECEIVED

NOV 13 2017

Town of Smithville

November 2, 2017

Town Clerk  
PO Box 217  
5285 State Hwy 41  
Smithville Flats NY 13841-0217

**RE: Town of Smithville, Local Law 1 2017, filed on October 31, 2017**

Dear Sir/Madam:

The above referenced material was filed by this office as indicated. Additional local law filing forms can be obtained from our website, [www.dos.ny.gov](http://www.dos.ny.gov).

Sincerely,  
State Records and Law Bureau  
(518) 473-2492



Department  
of State