

DiFilippo, Flaherty & Steinhaus, PLLC

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March 1, 2016

Town of Yorkshire
P.O. Box 6
82 Main Street
Delevan, NY 14042

Attn: M. Fred Clark, Town Clerk

RE: Town of Yorkshire, Local Law No. 1 of the year 2016 – Proposed Highway
Bonding/Financial Securities Law of Town of Yorkshire

Dear Mr. Clark:

Enclosed herewith please find Local Law No. 1 of the year 2016 regarding the above
referenced matter.

Kindly execute same and return to my office for filing with the New York State
Department of State.

Thank you for your help and cooperation. Should you have any questions and/or
concerns please do not hesitate to contact me.

Very truly yours,

DIFILIPPO, FLAHERTY & STEINHAUS, PLLC

By: 

Robert D. Steinhaus, Esq.

RDS/dme
Enclosure

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 of Yorkshire
- Town
- Village

Local Law No. 1 of the year 20 16

A local law Proposed Highway Bonding/Financial Securities Law of Town of Yorkshire.
(Insert Title)

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

- County
- City of Yorkshire _____ as follows:
- Town
- Village

Proposed Highway Bonding/Financial Securities Law of Town of Yorkshire

(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 20 16 of the (County)(City)(Town)(Village) of Yorkshire was duly passed by the Yorkshire Town Board on February 17 20 2016, 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.)

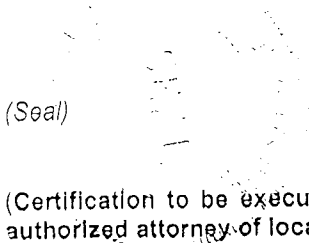
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified 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.



(Seal)

M. Fard Clark

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

Date: 3/7/16

(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 ERIE

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
Robert D. Steinhaus, Esq. - Town Attorney
Title

County _____
City of Yorkshire
Town _____
Village _____

Date: March 2, 2016

THE HIGHWAY BONDING / FINANCIAL SECURITIES LAW OF THE TOWN OF YORKSHIRE

LOCAL LAW 1 OF THE YEAR 2016

Article authorizing the Town Highway Superintendent to grant revocable hauling permits on posted roads within the Town of Yorkshire being enacted by the Town Board of the Town of Yorkshire as follows;

Section 1: Purpose and Intent

1. WHEREAS, 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 corporations whose vehicular traffic causes a disproportional amount of wear and tear on the Town roads; and
2. WHEREAS, The Town Board also has a limited source of funds to pay for repair of roads within the Town of Yorkshire

Section 2: Highway Superintendent Authority

- a. Pursuant to the provisions of Article 7 of the Highway Law, Section 140 (13), the Town Highway Superintendent has the duty to bring an action in the name of the Town, against any person or corporation, sustain the rights of the public, in and to any town highway in the Town, and to enforce the performance of any duty enjoined upon any person or corporation in relation thereto, and to recover any damages sustained or suffered, or expenses incurred by such Town, and consequence of any act or omission of any such person or corporation, in violation of any law or contract in relation to such town highway.
- b. Pursuant to Article 7, Section 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 the highway commissioners;

Section 3: Town Authority

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

Section 4: Bonds and Financial Security Authorized

- A. The Highway Superintendent shall have the authority to require the posting of a bond or other financial security when the vehicle has a gross weight of 4 tons or more and utilize the roadway in the Town of Yorkshire more than three (3) times in any 30-day period.
- B. The Board gives the Highway Superintendent the authority to issue a permit allowing the use of an excluded vehicle upon the posting of a bond or other financial security.

Article 31 Permit Requirements

A.

1. To be eligible to receive a permit, an individual (whether human person or a corporation) must post a bond or other financial security. Said bond is to be reasonable may be up to \$500,000 but not less than \$10,000. The bond is to be \$10,000 for every one (1) mile of road. This \$10,000 figure may be adjusted annually in accord with inflation by an annual resolution of the Town Board.
2. The individual has the option to post an annual bond in the amount of \$50,000 to cover all Town roads he may use during a one (1) year period. This figure may be adjusted annually in accord with inflation by an annual resolution of the Town Board.
3. BOND REQUIREMENTS:
 - a. 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.
 - 1.) 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 Certification of Authentication (also sealed with corporate seal) by the corporate secretary certifying that the authorizing resolution is full, true and direct copy.
 - b. 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 (1) year, the bond must be renewed and written notice is to be provided to the Town Board of the bond applicants intent to use the road for more than one year.
 - c. On all bonds, the Town is to be named as the additional payee.
 - d. All Bonds, with their associated documents are to be kept by the Town Clerk in the Town Office until they are expired
 - e. All bonds must be verified for authenticity by the Town Insurance Agent
 - f. All bonds must be obtained from an insurance carrier who is duly licensed to conduct insurance operations within the State of New York.

Upon completion of these requirements, the bonded corporation or individual will be then call upon the Town Highway Superintendent to sign his permit, which said permit shall state what roads the bonded corporation or individual may use. Upon approval by the Highway Superintendent, the bonded corporation 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 for the state exemption of such vehicle.

Upon completion of the project and following a reasonable inspection by the Highway Superintendent that determines no damage occurred to the road, the Town may release the bond to the bonded individual or corporation. Where an inspection determines that the bonded individual or corporations permitted activity has caused damage to the roads covered by the permit, the Town Highway Superintendent shall document this damage, and cash the bond. The bond may only be used for the repairs of damaged roads

If a bonded individual or corporation disputes the Highway Superintendents finding that the bond must be forfeited to the Town, either wholly or partially, in order to pay for road repairs, the bond will not be released until the Town is ordered to do so by a Court of competent jurisdiction.

Section 5: Posting Roads/Publishing Notice

1. The Highway Superintendent must post a sign, on the road in question, stating that such vehicles over such weight or 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 7: Permit

1. When reviewing as to whether a permit shall be granted, it must be asked whether the denial of a permit would create hardship upon the applicant.
2. 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 police officers.
3. Such permits shall be for the duration of the restriction imposed.
4. Every such permit may designate the route to be traversed and contain other

Section 8: Exemptions

Trucks used for United Parcel Service (UPS), FedEx, food delivery, fuel delivery, fuel oil, septic pumping, utility trucks (excluding utility subcontractors) and medical deliveries and/or services are exempt from the provisions of this law.

Section 9: Penalties

Enforcement of this law shall allow the Town Highway Superintendent under Article 7, Section 140 (13) to bring an action against the individual to perform the enforcement of the obligations under this law in any court of competent jurisdiction.

Any violation of this law shall be liable to a civil penalty or fine of not more than \$500.00 for each day (and a maximum of \$250.00) or part thereof during which time such violation continues. The civil penalties provided by this law shall be recoverable in an action instituted by the Highway Superintendent in the Town of Yorkshire Court, or in any court of Competent Jurisdiction. Failure to pay the court ordered fine shall result in the unpaid fine being levied on the violator's Town tax bill against any real property the violator may have within the Town or a personal judgment may be entered against the violator for the unpaid fine, and the Town may turn this over to a collection agency.

Equitable Relief-an action on proceeding may be instituted in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of this law in the Supreme Court or in any other court having the requisite jurisdiction.

A. Other Financial Security

1. Joint Bank Account – In lieu of a bond, an individual or corporation may place an equivalent amount of money into a joint bank account with the Town.

- a. 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 this account the individuals name be on it, along with the Towns name and that nobody will withdraw money from the account without the other parties’ permission
- b. 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 be then call upon the Town Highway Superintendent to sign his permit, which said permit shall state what roads the bond holder may use. Upon approval by the Highway Superintendent, the joint bank holder will be granted a permit, which will state the amount in the joint bank account or the amount of money in the account. The Town Board shall then, upon the completion of these requirements, grant the Highway Superintendent the authority to issue a permit providing appropriate exemption of such vehicle.

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 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 this damage, and cash the check. The account monies may only be used for the repairs of the damaged roads.

Where the joint account holder disputes the Highway Superintendents finding that the account must be forfeited to the Town, either wholly or partially, in order to pay for road repairs, the joint account will not be released until the Town is ordered to do so by a Court of competent jurisdiction.

2. Certified Check- A certified check, made out to the Town in the amount that otherwise would be bonded, will be held by the Town. Validity of the Check shall be verified by the Town's local depository.

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

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 corporation may retrieve the check. Where an inspection determines that the certified check holder's permitted activity has caused damage to the roads named in the permit, the Town Highway Superintendent shall document this damage, and cash the check. The check monies may only be used for the repairs of the damaged roads.

Where the certified check provider disputes the Highway Superintendent's finding that the account must be forfeited to the Town, either wholly or partially, in order to pay for road repairs, the check will not be released until the Town is ordered to do so by a Court of competent jurisdiction.

Section 17 - Severability Clause

Notwithstanding that any section of this local law shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder of this local law.

Section 18 - Effective Date

This local law shall take place effective on file with the New York Department of State.

Carol A. Flaherty
Robert D. Steinhaus

Anthony DiFilippo, III
(1938-2010)
Thomas P. Flaherty
(1925-2009)
Gerson L. Steinhaus
(1935-1973)

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Wendy K. Francis

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Renée M. Zaccarine

March 18, 2016

Town of Yorkshire
P.O. Box 6
82 Main Street
Delevan, NY 14042

Attn: M. Fred Clark, Town Clerk

Re: Town of Yorkshire – Local Law No. 1 of the year 2016 – Proposed Highway
Bonding/Financial Securities Law of the Town of Yorkshire


Dear Mr. Clark:

Enclosed herewith please find a copy of the filing receipt we received from the Secretary of State relative to the above referenced matter.

Thank you for your help and cooperation. Should you have any questions and/or concerns please do not hesitate to contact me.

Very truly yours,

DIFILIPPO, FLAHERTY & STEINHAUS, PLLC

By: 
Robert D. Steinhaus, Esq.

RDS/dme
Enclosure

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
ACTING SECRETARY OF STATE

March 15, 2016

Robert D Steinhaus
DeFilippo, Flaherty & Steinhaus PLLC
305 Main Street
East Aurora NY 14052

RE: Town of Yorkshire, Local Law 1 2016, filed on March 15, 2016

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.

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