

## Temporary Spring Weight Restrictions via V&T Law, §1660(a) (11)

The exclusion of vehicles from highways in a town can be both temporary and permanent. 1980 Op.Atty.Gen. (Inf.) 209.

Vehicle and Traffic Law, §1660 provides the town board with the authority to establish weight limits on town roads and truck routes. V&T Law, §1660(a) (11) specifically authorizes town boards to temporarily exclude heavy vehicles from town roads during the spring thaw.

11. "Temporarily exclude from any portion of any town highway any vehicle with a gross weight of over four or more tons or any vehicle with a gross weight in excess of any designated weight on any wheel, axle, any number of axles, or per inch width of tire when in its opinion such highway would be materially injured by the operation of any such vehicle thereon. Such exclusion shall take effect upon the erection of signs on the section of highway from which such vehicles are excluded, and a notice that such vehicles are excluded shall be published in a newspaper in the county where the highway is situated. The exclusion shall remain in effect until the removal of the signs as directed by the town board. Upon written application by any operator of a vehicle subject to this section, the town board may issue a permit providing appropriate exemption to such vehicle, if it is deemed that said vehicle is performing essential local pickup or delivery service and that a failure to grant such permit would create hardship. Every such permit may designate the route to be traversed and contain other reasonable restrictions or conditions deemed necessary. Every such permit shall be carried on the vehicle to which it refers and shall be open to inspection of any peace officer, acting pursuant to his special duties, or police officer. Such permits shall be for the duration of the restriction imposed under this section"

The State Comptroller's Office has opined that a town board may only utilize the provisions of Vehicle and Traffic Law §1660 in accordance with Article 9 of the Town Law. Op. St. Compt. No. 88-34. Article 9 of the Town Law sets forth the procedure to adopt an ordinance, rule or regulation. The adoption of each requires a public hearing and publication. In addition, the Municipal Home Rule authorizes the town board to accomplish by local law that which they can accomplish by ordinance. Therefore, the town board should establish weight limits on town roads in accordance with Vehicle and Traffic Law, §1660 by the adoption of an ordinance, rule, regulation or local law.

There appears to be sufficient authority for the town board, by resolution, to delegate its authority (as provided in Vehicle and Traffic Law, §1660) to the highway superintendent. Vehicle and Traffic Law, §1603(e) authorizes the town board to delegate their authority to another town official, such as the highway superintendent. In *Dibble v. Town of Ripley*, 124 Misc.2d 951 (Sup. Ct. Chautauqua Co. 1984), the Chautauqua County Supreme Court held that the town board may, by resolution, delegate to the highway superintendent, its authority to limit vehicle weight.

We believe the best practice is for the town board to adopt a local law temporarily limiting vehicles of a certain weight on an annual basis (See Town of Kirkland Local Law No. 2 of the year 1993 - copy enclosed). Town boards may temporarily exclude from any portion of any town highway any vehicle

with a gross weight of more than four tons or any vehicle with a gross weight in excess of any designated weight on any wheel, axle, any number of axles, or per inch width of tire when in its opinion such highway would be materially injured by the operation of any such vehicle thereon.

The exclusion takes effect upon the erection of signs on the section of highway affected, and a notice of the exclusion must be published in a newspaper in the county where the highway is situated.

The exclusion is effective until the removal of the signs as directed by the town board.

There is also a procedure for an exemption from the weight restriction for local delivery trucks. Upon written application by any operator of an excluded vehicle, the town board may issue a permit exempting such vehicle, if it is deemed that it is performing essential local pickup or delivery service and that a failure to grant the permit would create hardship. The permit may designate the route to be traversed, may contain other reasonable restrictions or conditions deemed necessary, must be carried on the vehicle affected, is open to inspection of any peace officer or police officer, and is effective for the duration of the restriction imposed

NYJUR AUTOS § 661 citing N.Y. Veh. & Traf. Law § 1660(a)(11).