

CHAPTER 45

HEAVY VEHICLE OPERATOR'S PERMITS

SECTION 1 - FINDING, PURPOSE AND AUTHORITY

- (1) Findings. Nonmetallic mining operations and other industries requiring repeated Heavy Vehicle traffic, while a vital component of our state and local economy, can have both direct and indirect adverse impacts. The nature of heavy vehicular traffic is anticipated to exceed the normal and anticipated use of the public roadways within the Town's corporate limits. The life expectancy of roadways within the Town's corporate limits decreases with heavy vehicular traffic traveling upon it, and heavy equipment loads produce greater amounts of road distress. Greater amounts of road distress increase overall road maintenance, oversight, repair, and replacement costs to the Town. Such use of Town roadways causes distress to the roadways as a result of the frequency of their specific operations and such distress may be immediate or it may be gradual and delayed, and will also exceed the design criteria of such roadways, thus causing greater than ordinary wear and tear and damaging of the Town roadways. Heavy vehicular traffic can generate other impacts including safety concerns to children and other residents. While certain aspects of Heavy Vehicle traffic are subject to state or federal regulations, there is no comprehensive state or federal regulation that would limit or condition use sufficiently such that, left unregulated, there would be adverse impacts to the public health, safety and welfare. While the Town could implement weight limits on all Town Roads, such action could impede economic activity in the Town. Rather, the Town has elected to implement the Permit process set forth in this Chapter to balance the needs of the Town to cover undue wear and tear damage to Town Roads caused by Heavy Vehicles, and the need to promote economic activity in the Town.
- (2) Purpose. The purpose of this Chapter is to provide further regulation and conditions for repeated heavy vehicle traffic on Town roadways through a permitting process.
- (3) Authority. This Chapter is adopted by the powers granted to the Town of Auburn by the Town's adoption of Village powers under Sections 60.10 and 61.34 Wis. Stats., its authority under Section 66.0415 Wis. Stats., and other authority under the statutes. Any amendment, repeal, or recreation of the statutes relating to this Chapter made after the effective date of this Chapter is incorporated into this Chapter by reference on the effective date of the amendment, repeal, or recreation.

SECTION 2 - APPLICABILITY AND SCOPE

- (1) This Chapter shall apply to all operation of Heavy Vehicles on Town Roads except as set forth in sub. (2).
- (2) This Chapter shall not apply to the following Heavy Vehicle traffic:
 - (a) Occasional operation of Heavy Vehicles by a person solely for that person's own personal, household use, or farm use at that person's residence or farm.
 - (b) Occasional Heavy Vehicle operation for the construction, reconstruction, maintenance or repair of a highway, railroad, or any other transportation facility where the excavation or grading is entirely within the property boundaries or right of ways of the highway, railroad, or other transportation facility.
 - (c) Occasional Heavy Vehicle operation conducted for preparing a building site or restoring land following a flood or other natural disaster.
 - (d) Occasional Heavy Vehicle operation for residential or agricultural building construction purposes conducted to and from a particular building site.
 - (e) Operation of heavy farm or farm-related vehicles and/or equipment on Town Roads, including but not limited to fertilizer trucks.
 - (f) Milk trucks on a regularly established route that will result in no more than two trips per day over any portion of a Town Road.

SECTION 3 - DEFINITIONS

- (1) "Heavy Vehicle" means any vehicle over 48,000 pounds operating or proposing to operate on a Town Road.
- (2) "Occasional" means not more than two trips per day for the same vehicle using the same portion of any Town Road.
- (3) "Operator" means any person or entity who is engaged in Heavy Vehicle operation or who has applied for a Heavy Vehicle Operator's permit.
- (4) "Operator's Permit" or "Permit" means the permit required of Operators of Heavy Vehicles on Town Roads."
- (5) "Town" means the Town of Auburn, Chippewa County, Wisconsin.

- (6) "Town Board" means the Town Board of the Town of Auburn, Chippewa County, Wisconsin.
- (7) "Town Road" or "Town Roads" means any roadway owned by the Town or subject to its control, regulation and/or maintenance.

SECTION 4 - PERMIT REQUIRED

- (1) Permit Requirement. No person shall operate a Heavy Vehicle within the scope of this Chapter in the Town without first obtaining an Operator's Permit from the Town Board.
- (2) Permit Term.
 - (a) Except for the first year of operation under this Chapter, an Operator's Permit shall be granted for a period of one year commencing on July 1 and ending on June 30 of the following calendar year. For the first year of operation under this Chapter, the Operator's Permit will extend from the date of issuance until the first June 30th after 12 months of operations have been completed.
 - (b) An Operator's Permit may be renewed as set forth in Section 14.08, except that a temporary Operator's Permit may not be renewed.
- (3) Permit Amendment. If the Town has issued an Operator's Permit, the Operator may request an amendment to that Permit during the Permit term, using the same process as the original Permit application.
- (4) Permit Transfer. An Operator's Permit may be transferred to a new Operator, if the new Operator provides financial assurances as may be required by the Town, county, or state.
- (5) Permit Revocation. An Operator's Permit may be revoked under the procedures in Section 9 of this Chapter.

SECTION 5 - PROCEDURES FOR APPLYING FOR A PERMIT

- (1) Application Form. The Application Form for a license to operate a Heavy Vehicle in the Town shall be available from the Town Clerk.
- (2) Application Submittal. The Operator shall submit five (5) copies of the Application Form and all required documentation required under Section 6 of this Chapter to the Town Board accompanied by the payment of both the application fee and the base administrative fee established for the administration of this Chapter in amounts set forth in the Town of Auburn Schedule of Fees and

Forfeitures. The fees shall be made payable to "Treasurer, Town of Auburn."
The Application Form shall be signed by the Operator.

(3) Initial Review by the Town Board.

- (a) Preliminary Review. Upon receipt of the application, the Town Board shall conduct an initial review to determine if additional information or expertise is necessary to properly evaluate the application. If no additional information or expertise is deemed necessary the Town Board shall schedule the application for a decision under sub. (4).
- (b) Additional Information. The Town Board may request the Operator to submit additional information if the Town Board determines that the application is incomplete. The Town Board may also retain the services of an engineering firm or other qualified person with appropriate expertise ("Retained Expert") to review the application and report to the Town Board whether additional information is required for review of the application and to determine whether the application meets the standards of this Chapter.
- (c) Additional Fees. If the Town Board determines that additional expertise is required, the Town Board shall authorize retaining the services of a Retained Expert and shall give written notice to the Operator of the additional administrative fee to be charged beyond the base administrative fee to cover the cost of the services of any such Retained Expert. The additional fee shall be paid before the additional review is undertaken.
- (d) Once the Operator has submitted any additional information and has paid the additional administrative fee in the amount charged, the retained expert shall report to the Town Board on whether the application meets the requirements of this Chapter.

(4) Decision by the Town Board.

- (a) Notice and Hearing. Once the application is complete and any report by a Retained Expert has been completed, the Town Clerk shall place the application on the agenda for action at the next regular meeting of the Town Board. If a special meeting is warranted, the Operator shall pay the additional fees incurred for the special meeting.
- (b) Town Board Decision. The Town Board may take immediate action or set a date for the meeting at which time the Town Board shall make a final decision on the Operator's Permit. If a special meeting is requested and granted, the Operator shall pay the additional fees incurred for the special meeting. The Town Board shall review the Retained Expert's report as well as any public comments. The Town Board shall grant the Permit if it

determines that the Heavy Vehicle operation will be consistent with the minimum standards and the purposes of this Chapter. If the Town Board denies the Permit, the Operator may request a hearing under the provisions of Section 9.

SECTION 6 - PERMIT APPLICATION

All Operators applying for a Heavy Vehicle Operator's Permit shall submit the following information:

- (1) Ownership Information.
 - (a) The name, address, phone number(s), and e-mail address(es) of the Operator of the Heavy Vehicles.
 - (b) The name, address, phone number(s), and e-mail address(es) of all owners or lessors of the land to and or from which the Heavy Vehicles operation will occur.
 - (c) The route(s) proposed to be traveled which are Town Roads, together with estimated mileage of roadway to be covered and weight, type and number of Heavy Vehicles anticipated to be operating on said Town Roads.
- (2) Site Information and Maps.
 - (a) A plat map identifying the relevant Town Road locations.
- (3) Operation Plan.
 - (a) Dates of the planned commencement and cessation of the operation.
 - (b) Location of road access points. The proposed location within the site of all buildings and other structures, equipment, stockpiles, storage and parking areas.
 - (c) Identification of all proposed off-site trucking routes, together with the frequency of traffic and the common schedule of travel to be used.
- (4) Information Demonstrating Compliance with Minimum Standards. The Operator shall provide the information necessary to demonstrate that the Heavy Vehicle operations will comply with the minimum standards in Section 7.

SECTION 7 - MINIMUM STANDARDS OF OPERATION

The Town Board may grant an Operator's Permit if the Operator can demonstrate that the following minimum standards of operation will be met:

(1) General Standards.

- (a) The Operator shall demonstrate compliance with all of the other provisions of this Chapter.
- (b) The Operator shall demonstrate that all other applicable federal, state and local permits and approvals required have been or will be obtained prior to commencement of operation.
- (c) The Operator shall provide notice to the Town of any notices of violation, citations, or other enforcement actions taken by any other governmental body against the operation.
- (d) The Operator shall comply with the financial assurance standards of Section 10.

(2) Standards Regarding Off-Site Impacts.

- (a) The Operator shall limit its use of Town Roads to the hours of 5:00 a.m. to 9:00 p.m. Monday through Saturday. The Operator may also submit a plan for extended hours as a special exception, if it can demonstrate that additional hours are necessary and would be consistent with public health, safety, and welfare.
- (b) The Operator shall ensure that the Operator's Heavy Vehicles operation shall not interfere with the safety of children being taken or returned from school, or the safety of residents and commuters.

(3) Special Exceptions.

- (a) The Operator may request a special exception from the minimum standards of this Section 7 if it can demonstrate that the intent of this Chapter can be achieved through the use of alternative measures and that the public health, safety, and welfare will not be adversely affected thereby.
- (b) The Town Board may impose requirements in addition to or exceeding the minimum standards if it has evidence that the public health, safety, and welfare will not be adequately protected without the imposition of additional measures.

SECTION 8 - ANNUAL REPORT AND PERMIT RENEWAL

- (1) Annual Report.
 - (a) No later than March 1 of each calendar year, the Operator shall submit an annual report to the Town Board for all active and intermittent Heavy Vehicle operations for which the Operator has a Permit from the Town.
 - (b) The annual report shall include the following information:
 - (i) An identification of the Operator.
 - (ii) A map or drawing accurately showing the area being used (Town roads).
 - (iii) A description of all Heavy Vehicle activities and operations in the Town during the previous calendar year.
 - (iv) A description of activities and operations on the site anticipated during the following calendar year.
 - (v) A written report demonstrating how the Operator has been in compliance or noncompliance with any and all terms and conditions of its Permit and this Chapter. For areas of noncompliance, the Operator shall provide a summary of all areas of noncompliance and a plan for bringing non-compliant areas into compliance.
- (2) Permit Renewal.
 - (a) The Operator shall make written request to the Town Board for a renewal of the Permit to operate no later than March 1 of the year in which the Permit will expire. The application shall be accompanied by the payment of both the renewal application fee and the base administrative fee established for the administration of this Chapter in amounts set forth in the Town of Auburn Schedule of Fees and Forfeitures.
 - (b) The written request for renewal shall include the annual report from the previous calendar year in accordance with the provisions of sub. (1) of this Section.
 - (c) The Town staff shall review the renewal application within thirty (30) days of its receipt to determine whether the application is complete, and upon a determination that it is complete shall forward it to the Town Board.

- (d) The Town Board shall review the application to determine if additional information or expertise is necessary to properly evaluate the application. The Town may retain an engineer or other qualified person with appropriate expertise to inspect the Town Road(s) affected. If no additional information or expertise is deemed necessary, the Town Board shall schedule the application for a decision under paragraph (g) hereof.
- (e) If the Town Board determines that additional expertise is required, the Town Board shall authorize a Retained Expert to advise the Town and shall give written notice to the Operator of the additional administrative fee to be charged beyond the base administrative fee to cover the cost of additional review by the Retained Expert. The additional fee shall be paid before the additional review is undertaken.
- (f) Once the Operator has submitted any additional information and has paid the additional administrative fee in the amount charged, the Retained Expert shall report to the Town Board on whether the renewal application meets the requirements of this Chapter. The Town Clerk shall place the request on the agenda of the next regular meeting or a special meeting of the Town Board prior to the expiration of the license.
- (g) The Town Board shall grant the request for renewal if it finds:
 - (i) there have been no material violations of the Chapter or the Permit which have not been appropriately remedied, and
 - (ii) the Operator has not received multiple or recurring citations or orders for violations of the Operator's Permit or this Chapter, and
 - (iii) all applicable fees have been paid and financial responsibility requirements have been met.
- (h) If the Town Board denies the request for renewal, the Town Board shall notify the Operator and provide the Operator with an opportunity for a hearing.

SECTION 9 - INSPECTION, ENFORCEMENT, PROCEDURES, AND PENALTIES

- (1) Inspection. In addition to an annual inspection pursuant to Section 8, the Town Board or other authorized representative of the Town may make inspections to determine the condition of Town Roads in the Town in order to safeguard the health and safety of the public and determine compliance with the minimum standards.

(2) Violations. The following are violations under this Chapter:

- (a) Operating a Heavy Vehicle on a Town Road without an Operator's Permit required by this Chapter.
- (b) Failure to comply with the minimum standards and other terms of this Chapter.
- (c) Making an incorrect or false statement in the information and documentation submitted during the permitting process or during inspection by the Town or its duly appointed representative.
- (d) Failure to timely file the annual report under Section 8.

(3) Hearings.

- (a) Any person affected by a notice and order issued in connection with the enforcement of this Chapter under sub. (4), or upon denial of an application for a Permit or Permit renewal, may request and shall be granted a hearing on the matter before the Town Board, provided such person shall file with the Town Clerk a written petition requesting the hearing and setting forth the Operator's name, address, telephone number, and a brief statement of the grounds for the hearing or for the mitigation of the order. Such petition shall be filed within thirty (30) days of the date on which the notice and order are served or within thirty (30) days after denial of an application for a renewal. Upon receipt of the petition, the Town Clerk shall set a time and place for a hearing before the Town Board and shall give the petitioner written notice thereof.
- (b) After the hearing, the Town Board, by a majority vote, shall sustain, modify, or withdraw the notice under sub. (4), or grant or deny the Permit or Permit renewal, depending on its findings as to whether the provisions of this Chapter have been complied with, and the petitioner shall be notified within ten (10) days in writing of such findings.
- (c) The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore shall be summarized in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of every notice and order issued in connection with the case.

(4) Remedies.

The Town Board may take any appropriate action or proceeding against any person or entity in violation of this Chapter, including the following:

- (a) Issue a cease and desist order.
- (b) Issue a notice of violation and order that specifies the action to be taken to remedy the situation.
- (c) Issue a citation in accordance with any Town ordinance.
- (d) Refer the matter to legal counsel for consideration and commencement of legal action including the assessment of penalties under sub. (6) and for injunctive relief.
- (e) Suspend or revoke the Operator's Permit under sub. (5).

(5) Suspension or Revocation. After giving notice and a hearing, the Town Board may suspend or revoke an Operator's Permit for a violation under sub. (2).

(6) Penalties.

- (a) Any person or entity who is adjudicated for a violation shall pay a forfeiture of not less than \$100 per violation nor more than \$5,000 per violation and/or shall be subject to injunctive relief. Each day a violation exists is a separate violation.
- (b) Any person or entity adjudicated for violation of this Chapter shall pay court costs and reasonable attorney's fees. The remedies provided herein shall not be exclusive of other remedies.

(7) Non-Waiver of Rights. A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's rights to take action on any present violation(s).

SECTION 10 - FINANCIAL ASSURANCE

- (1) Financial assurance shall be provided to the Town as a condition of Permit approval in the amount necessary for the repair and maintenance of Town Roads used for Heavy Vehicle operations by that party.
- (2) The form of financial assurance made to the Town shall be in that form agreed to by the Town Board and may include periodic payments, performance bonds, irrevocable letters of credit, or other measures agreed upon by the Town Board.

- (3) In the event the Town determines that the amount of financial assurance must be increased to meet specific road repair needs, or the amount available has been utilized, the Town shall notify the Operator of the additional amount needed and the basis for the request. The Operator shall have thirty (30) days to provide the increased amount.

SECTION 11 - SEVERABILITY, INTERPRETATION, AND ABROGATION

- (1) Severability.
 - (a) Should any section, clause, provision or portion of this Chapter be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction, including all applicable appeals, the remainder of this Chapter shall remain in full force and effect.
 - (b) If any application of this Chapter to a particular parcel of land is adjudged unconstitutional or invalid by a final order or a court of competent jurisdiction, including all applicable appeals, such judgment shall not be applicable to any other parcel of land not specifically included in said judgment.
- (2) Interpretation. The provisions of this Chapter shall be liberally construed in favor of the Town and shall not be construed to be a limitation or a repeal of any other power now possessed or granted to the Town.
- (3) Abrogation. This Chapter is not intended to repeal, annul, interfere with, or abrogate any easements, covenants, deed restrictions, or agreements created prior to the effective date of this Chapter.

CHAPTER 60

CODE ENFORCEMENT OFFICER

SECTION 1 - OFFICE OF CONSTABLE ABOLISHED

The office of Town Constable is hereby abolished.

SECTION 2 - CODE ENFORCEMENT OFFICER

The position(s) of Code Enforcement Officer is hereby created. The Town Chairman shall serve as the initial Code Enforcement Officer. Any additional Code Enforcement Officers shall be appointed by the Town Board and shall serve at the pleasure of the Town Board.

SECTION 3 - POWER AND DUTIES

1. Investigate, respond to complaints, cause prosecution of violations of the Town ordinances as set forth in the ordinances, or as assigned or directed by the Town Board.
2. Any and such other responsibilities as assigned by the Town Board relating to the health, welfare, and safety of the Town of Auburn.

SECTION 4 - REFERENCES TO CONSTABLE

Any reference in any other ordinances of the Town of Auburn to "Constable," shall be interpreted to refer to the duties of the Code Enforcement Officer.

CHAPTER 70

VARIANCES

SECTION 1: All reasonable effort will be made by the Comprehensive Plan Commission to hold a hearing within thirty (30) days of application. The Comprehensive Plan Commission will then forward recommendations to the Town Board.

SECTION 2: The following procedure will be followed for variances. Fees for publishing, mailings, mileage and time for special meetings, will be at the expense of the requester.

- A. When an identified chapter allows for a variance procedure, the requester shall file for a variance with the Town Clerk in writing.
- B. The clerk shall make a reasonable attempt to notify all adjoining property owners of variance request in writing, by certified mail.
- C. The Clerk shall notify the Comprehensive Plan Commission, set date and will give public notice. The Comprehensive Plan Commission shall hold a hearing and make recommendation to Town Board.

CHAPTER 71

APPEALS PROCEDURES

SECTION 1 – PURPOSE

The purpose of this ordinance is to provide for full hearing and review of town decisions for which other review provisions are not provided or detailed.

SECTION 2 – APPEALS

- A. Any party aggrieved by any decision of the Town Board, any municipal official, or the Comprehensive Plan Commission (where applicable), shall seek review under the provisions hereof before initiating any action in any state or federal court.
- B. All appeals shall be in a writing, delivered to the Town Clerk within sixty (60) days of the date the adverse decision was made, and shall state with specificity the decision appealed from and the reasons why said decisions should be altered.
- C. Appeals shall be heard by sworn testimony by the Town Board within sixty (60) days of receipt by the Town Clerk, and a written decision thereof shall be issued within thirty (30) days after the hearing is completed or the appeal shall be deemed to be denied.
- D. No variance to the provisions of the Town's ordinances shall be granted unless the Town Board finds by the preponderance of the evidence that all the following facts and conditions exist and so indicates in the minutes of its proceedings.
 1. Preservations of Intent: No variance shall be granted that is not consistent with the purpose and intent of the applicable ordinance.
 2. Exceptional Circumstances: There must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot, parcel, structure, or situation that do not apply generally to other properties or parties in the Town and the granting of the variance would not be of so general or recurrent nature as to suggest that the ordinance would be changed.
 3. Economic Hardship and Self-Imposed Hardship Not Ground for Variance: No variance shall be granted solely on the basis of economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of a variance.

4. Preservations of Property Rights: That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties or other parties in the Town.
5. Absence of Detriment: That the variance will not create substantial detriment to adjacent property and will not materially impair or be contrary to the purpose and spirit of the applicable ordinance or of the public interest.
6. Error: An error in a finding of fact or of application of law was made such that the decision made was incorrect.

SECTION 3 – FEES

Payment of a fee of fifty (\$50.00) dollars shall be required for the appeal process to be implemented.

CHAPTER 80

SCHEDULE OF FEES AND FORFEITURES

SECTION 1 - TITLE

This ordinance shall be cited as the "Town of Auburn Schedule of Fees and Forfeitures" hereinafter referred to as "this ordinance."

SECTION 2 - PAYMENT OF FEES

Certain fees required by Town of Auburn ordinances shall be paid to the Town of Auburn in amounts set forth in Section 4 of this Chapter. Fees shall not be proratable or refundable.

SECTION 3 - FORFEITURES

All forfeitures for a violation of the specified Town of Auburn ordinances shall be in the amounts set forth in Section 5 of this Chapter. Forfeitures shall be paid to the Chippewa County Clerk of Courts by the date assigned on the Citation.

SECTION 4 - TABLE OF FEES

Chapter 45, Section	Purpose of Fee	Amount	When Payable
5(2)	Base administrative fee	\$750 / \$250	Upon application
5(3)(c) 8(2)(c)	Supplemental administrative fee	Variable	Upon review by Town
8(2)(a)	Annual administrative fee	Variable	Annually
8(2)(e)	License renewal fee	\$250	At application for renewal

SECTION 5 - TABLE OF FORFEITURES

Ordinance #	Purpose of Forfeiture	Amounts
Chapter 45	Violation of ordinance, per day	\$100 - \$5,000

SECTION 6 – General Provisions

(1) The amounts of fees may be changed by resolution of the Town Board and are effective upon the date of that resolution. The Town Fee Schedule shall be reviewed annually by the Town Board and any changes deemed necessary shall be presented in detail at the annual budget hearing and shall be adopted along with the annual budget without the need for further action by the Town Board. Any fee may be reviewed and amended by the Town Board at any time outside the annual budget review. Any changes in fees shall not require ordinance amendment. A history of each resolution that includes the resolution number and its effective date shall be kept by the Town Clerk.

(2) Any fee in effect at the time of application for a permit shall remain in effect for the life of the permit. The fee for reapplication for a permit will be the appropriate fee for the time period for which reapplication is made.

(3) The amount of forfeitures shall be changed by amendment of the ordinance in which the forfeitures are set forth and shall be effective on the date that the amendment is published/posted.