

**AMENDED  
ORDINANCE NO. 07-01  
Town of Auburn  
Chippewa County, Wisconsin**

**SECTION I –TITLE AND PURPOSE**

The title of this ordinance is the Town of Auburn Driveway and Highway Access Permit Ordinance. The purpose is to regulate, for public health and safety reasons, the establishment, repair, construction, improvement, modification, and reconstruction of private driveways, to assure that the methods of repair, construction, improvement, modification, and reconstruction practices used in any driveway will protect properly the public health, safety, and general welfare of persons in the Town of Auburn, and to limit and regulate highway access by motor vehicles to any town highway in the town. This is not a town zoning ordinance.

**SECTION II – AUTHORITY**

The Town Board has the specific authority under ss. 66.0425 and 86.07, Wis. Stats., to adopt a town highway access permit ordinance, and has the general authority under its village powers under s. 60.22, Wis. Stats., to adopt this ordinance.

**SECTION III – ADOPTION OF ORDINANCE**

The Town Board, by this ordinance, adopted on proper notice with a quorum and roll call vote by a majority of the town board present and voting, provides the authority for the town to regulate and permit certain driveways and highway access locations in the town.

**SECTION IV –DEFINITIONS**

In this ordinance:

- A. “Prime or productive agricultural or forestry land” means any land with the town that is currently being farmed or kept in forestry, including cropland and pastureland, or land that is included in a government sponsored agricultural or forestry program.
- B. “Driveway” means any private way, private road, or other avenue of private travel that runs through any part of a private parcel of land that connects or will connect with any public highway, and will provide vehicular access from the highway to a residence, business, recreational site, or other similarly appropriate use.
- C. “Emergency vehicle” means any fire, police, ambulance, or first responder vehicle used in emergency or hazard activities in the town.
- D. “Impacted landowner” means an owner of real estate that is provided vehicular access to a public highway by a driveway determined to be unsafe.
- E. “Town” means the C Wisconsin.

- F. “Town Board” means the board of supervisors for the Town of Auburn, Chippewa County, Wisconsin and includes any designee of the board authorized to act for the board.
- G. “Town Clerk” means the clerk of the Town of Auburn, Chippewa County, Wisconsin.
- H. “Wis. Stats.” means the Wisconsin Statutes, including successor provisions to cited statutes.

## **SECTION V – SUBDIVISION AND NUMBERING OF THIS ORDINANCE**

This ordinance is divided into sections designated by upper case Roman numerals. Sections may be divided into subsections designated by upper case letters. Subsections may be divided into paragraphs designated by numbers. Paragraphs may be divided into subdivisions designated by lower case letters. Subdivisions may be divided into subdivision paragraphs designated by lower case Roman numerals. Reference to a “section,” “subsection,” “paragraph,” or “subdivision” includes all divisions of the referenced section, subsection, paragraph, or subdivision.

## **SECTION VI – COVERAGE**

- A. No person may establish or construct a driveway or reconstruct, reroute, or alter the existing slope of any existing driveway or any town or other highway or highway right-of-way in the town in relation to the connection of the highway or highway right-of-way to a driveway, whether new or previously existing, without first obtaining a Town Driveway Permit to be issued by the Town Board.
- B. No person may establish or construct a driveway or reconstruct, reroute, or alter any highway access onto a town highway without first obtaining a Town Highway Access Permit to be issued by the Town Board.
- C. Any person prior to and at the time of seeking a Town Driveway Permit or a Town Highway Access Permit must own or have a legal interest in and current legal access to the land to which the permit(s) will apply.

D.

1. Upon receipt of written notice from the Town, no landowner may maintain or use, or allow the maintenance or use of, any existing driveway on the landowner's land if the driveway, for any structural, location, deterioration, or design reasons, has been determined by the Town Board, or its agents, in writing to substantially limit or negate safe and timely vehicle access and travel of general public or emergency vehicles to and from the property served by the driveway.
2. The Town Board shall serve upon any potentially impacted landowner a copy of its written determination under paragraph 1 that a driveway substantially limits or negates safe and timely vehicle access and travel of general public or emergency vehicles. The determination of the Town Board shall not be final until a public hearing before the town board has been held. The Town Board shall publish a class 2 notice, under s. 85.07, Wis. Stats., of the public hearing.
3. A copy of the Town Board's written determination and notice of the public hearing on the Town Board's determination shall be served by registered or certified mail on any potentially impacted landowner within 20 days of the making of the written determination and at least 10 days prior to the hearing date. The notice shall include the names of all potentially impacted landowners and the location of the subject driveway in the town. The notice may specifically contain a warning that due to the existing condition of the driveway emergency vehicle access to the dwellings served by the subject driveway may not be possible.
4. Any potentially impacted landowner may provide at the public hearing evidence regarding access provided by and the condition of the driveway. Any potentially impacted landowner may be represented by legal counsel at the public hearing and may present witnesses and cross-examine witnesses presented by the Town Board. All witnesses testifying before the Town Board shall be under oath. No person testifying before the hearing shall vote as a member of the Town Board in making a final determination regarding the subject driveway.
5. The Town Board, at or after the hearing, may order any of the following
  - a. That the Town Attorney seek a court order providing that the driveway be closed for general vehicle traffic use, but not closed to emergency vehicle use, until the driveway is structurally designed and reconstructed to allow for safe and timely general public and emergency vehicle access to and from the property.
  - b. That the Town Attorney seek a court order providing that the driveway be reconstructed or repaired to allow for safe and timely vehicle access and travel of general public or emergency vehicles to and from the property in a proper manner and in a reasonable time specified by the court and that if the driveway is not so reconstructed or repaired by the date specified, the town board may have the driveway reconstructed or repaired and the cost assessed

as a special assessment against the land under its police power under ss. 66.0701 and 66.0703, Wis. Stats.

- c. Other reasonable and necessary action that will serve to protect the public health and safety of persons within the town, including the owner, occupants, or guests of the owner of the land.

## **SECTION VII – SPECIFICATIONS**

All driveways in the Town for which a Town Driveway and Highway Access Permit is required under Section VI shall meet all of the following minimum requirements. Unless specifically excepted by the Town Board, no permit shall be issued unless the materials submitted as required under Sections VIII and IX demonstrate compliance with the requirements of this section:

- A. Culverts are required to be installed as directed by the Town;
- B. Culverts must be a minimum of 40 feet in length;
- C. Culverts must have at least a 15 inch diameter;
- D. Culverts must have double-walled construction;
- E. The Driveway shall slope away from the municipal road for at least twenty-three (23) feet;
- F. Driveways shall have at least two (2) inches of base course covering for at least twenty-three (23) feet extending back from the municipal roadway; and
- G. Construction shall materially comply with the approved driveway plan.
- H. The Driveway, if used for commercial or industrial purposes, may not be located less than three hundred (300) feet from a neighboring Property Line. This provision does not relate to residential or agricultural purpose driveways unless said use is accompanied by or includes a retail business that results in more than occasional vehicular traffic. “Property Line” does not include public road right of way lines.

## **SECTION VIII – APPLICATION AND PERMIT PROVISIONS**

- A. The Town Board shall approve a form for application for the Town Driveway and Highway Access Permit which shall be available from the Town Clerk.
- B. The applicant for a Town Driveway and Town Highway Access Permit shall submit to the Town Clerk a completed application for each access together with the appropriate fee(s) and with the following attachments:
  - 1. Sketch Map. A rough sketch showing the conceptual idea of the project and approximate location and dimensions of the project. Neighboring access points shall be depicted. The sketch map may be submitted to the town board prior to the preparation or submission of the other supporting documents in

order for the Town Board to provide initial comments and review of the proposal. However, formal approval for a Town Driveway Permit or Town Highway Access Permit may not be granted without the submission of complete supporting documents.

2. Soil/Slope Analysis
3. Other Documents. The Town Board may require other documents to be presented prior to final action on the application.

C. Review. Upon the filing of the complete application and application fee with the Town Clerk, the application shall be reviewed in a reasonable amount of time as follows:

- A. The Inspector and any two Town Board Members may approve the application or, if the Inspector, in his discretion, determines that the application presents issues that should be resolved by the Plan Commission and Town Board, schedule a meeting on the application before the Town Plan Commission.
- B. If requested by the Inspector, the Town Plan Commission shall hold a meeting on the application.
- C. After the Plan Commission holds the meeting on the application, it shall recommend approval, conditional approval, denial or tabling of the application.
- D. Once the Plan Commission has made a recommendation on the application, the Town Board shall consider the application and, at its sole discretion, approve, conditionally approve, or deny the application. The Town Board's determination on required slope, curves, and other safety related factors shall be a legislative determination and be final. If the Town Board approves the application, the Inspector shall then approve the application. If the Town Board conditionally approves the application, the Inspector shall approve the application only when the conditions of the approval have been fulfilled. If the Town Board denies the application, it will not consider a substantially similar application from the applicant for a period of three months from the date of the denial.
- E. In the event of a denial of an application, the town board shall recite in writing the particular facts upon which it bases its denial of the permit. The Town Board shall also afford the applicant an opportunity to review the Town Board's decision and present evidence at a public hearing after Class 1 Notice under 985.07, Wis. Stats., of the hearing to the Town Board refuting the determination. Thereafter, the town board may affirm, reverse or modify its decision. The Town Board shall recite in writing findings for any decision to modify or reverse its initial determination.
- F. If the Town Board denies two consecutive applications on the same parcel, no subsequent reapplication for a permit of the same type that was denied

for that parcel will be considered within twelve (12) months of the second denial.

- G. The Town Driveway and Highway Access Permit are effective for construction of the approved driveway for three (3) months from the date of issuance. Each permit shall expire after three (3) months unless renewed.
- H. Each permit may be renewed for an additional period of 3 months. If the driveway or highway access has not been constructed by the end of one 3-month renewal period, a new application and fee must be submitted and approved.
- I. The applicant shall notify the Town Inspector within 30 days after completion of the construction, reconstruction, rerouting, or alternation of the driveway or highway access. Within 30 days of notification, the Town shall cause an inspection of the driveway or highway access to be conducted to ensure full compliance with all of permit conditions and provisions of this ordinance. Upon a determination of completeness and compliance, the Town Board shall issue a Town Driveway Occupancy Permit.
- J. No occupancy permit for any buildings or structures will be issued by the Town until the driveway or highway access is constructed, reconstructed, rerouted, or altered according to the specifications of the permit as issued and this ordinance.
- K. The application fee is non-refundable and is set at \$100.00.
- L. The Town Board, or its designees, shall have the right of inspection onto land pursuant to a warrant issued under s. 66.0119, Wis. Stats., for the purpose of inspecting existing or proposed driveways to determine if the driveways will allow for the safe and timely travel by emergency vehicles or vehicles of the general public.
- M. The approval of a Town Driveway and Town Highway Access Permit application by the Town Board does not constitute a determination that the driveway is safe, suitable for use or otherwise passable for vehicles of the general public or emergency vehicles, that public access and travel is authorized, or that the applicant or permittee is in compliance with this ordinance. No person may rely on the issuance of either permit to determine that driveway, bridge, culvert, or highway access location is fit or safe for any purpose or that any person is in compliance with this ordinance or any State or County laws or ordinance.
- N. The approval of any Town Driveway and Town Highway Access Permit application does not establish or commit the Town to future approval of any driveway as a public road or highway in the Town.

## **SECTION X – PENALTY PROVISION**

Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this ordinance shall, upon conviction, pay a forfeiture of not less than \$100.00, plus the applicable surcharges, assessments, and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this ordinance. However, the maximum forfeiture portion of charges shall not exceed \$2,500.00. In addition, the Town Board may seek injunctive relief from a court of record to enjoin further violations.

#### **SECTION XI – SPECIAL ASSESSMENT**

Should any driveway or highway access be constructed in violation hereof and the owner of the parcel refuses or neglects to correct the same within thirty (30) days of notice being sent to the record owner, then, in that event, the Town may enter on the premises without further notice and correct any violations found. The costs of said corrections shall be chargeable against the owner and may be assessed against and collected from the affected real estate as a special assessment or special tax. This remedy is in addition to all other available under this ordinance or otherwise provided for by law.

#### **SECTION XII – SEVERABILITY CLAUSE**

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application and, to this end, the provisions of this ordinance are severable.

#### **SECTION XII – EFFECTIVE DATE**

This ordinance is effective on publication or posting.

The Town Clerk shall properly post or publish this ordinance as required under s. 60.80, Wis. Stats.

Adopted this 11<sup>th</sup> day of May, 2011.