

CHAPTER 3

PRIVATE ACCESS TO TOWN ROADS

Section 3.1. Purpose.

Chapter 3 restricts and regulates private Access onto Town Roads in order to promote the public safety by providing for safe and efficient private ingress and egress to Town of Hampden roads, ensure proper drainage, and minimize disruption to existing agricultural lands.

Section 3.2. Definitions.

(a) The following terms shall be applied as indicated throughout this ordinance.

(1) **Access.** Driveway access point for any motorized vehicles except for State of Wisconsin funded snowmobile trails.

(2) **Access Permit.** A permit from the Town of Hampden granting Access onto a TR.

(3) **Administrator.** Town Engineer, Building Inspector or any designee of same.

(4) **ADT.** Average Daily Traffic generated on a given road or highway.

(5) **Driveway and Shared Driveway.** The terms "Driveway" and "Shared Driveway" shall be as defined in the Town's Private Driveway Siting, Construction and Maintenance Control Ordinance.

(6) **Parcel.** The area of land within the property lines of a given piece of property.

(7) **Person.** Includes any individual, firm, association, joint stock association, organization, partnership, limited, trust, body politic, governmental agency, company, corporation and includes any trustee, receiver, assignee, or other representative thereof.

(8) **Shared Access.** The point of Access to a public road for a Shared Driveway as defined in the Town's Private Driveway, Siting, Construction and Maintenance Control Ordinance.

(9) **Town Road (TR).** Any segment of a Town Road located within the boundaries of the Town of Hampden.

(b) Words used in the present tense includes the future tense; the singular tense includes the plural and the plural the singular; the word "shall" is mandatory and the word "may" is permissive; the words "used" or "occupied" also mean intended, designed or arranged to be used or occupied; and all distances unless otherwise stated shall be measured in the horizontal direction.

Section 3.3. Regulations.

(a) **Existing Access.** Any Driveway Access to a TR prior to the effective date of this ordinance will be allowed, provided that any future construction or alteration shall meet the terms of this ordinance.

(b) **Access to Highway.** Entrance upon or departure from a TR shall be prohibited except at locations specifically designated by this Section. No Driveway shall be opened into or connected with any TR, under this Section or converted from one use of Access to another use of Access and no culvert shall be installed within Town right-of-way without an Access Permit.

(c) **Subdivision of Land.** Before any Parcel of land is allowed to be subdivided, it must be proven that Access can be provided to each proposed Parcel in such a way that it will not violate any of the regulations of this ordinance.

(d) **Access Spacing and Frequency.**

(1) In a case where a property owner owns more than one adjacent Parcel (of the same land use) with frontage, all Parcels shall be treated as a single Parcel for the purposes of this section.

(2) Each residence shall have one Access.

(3) Commercial and industrial zoned Parcels may be allowed two points of Access provided they each separately meet the remaining criteria of this ordinance, and require more than 50 parking spaces.

(4) Multiple Access points for agricultural purposes may be granted, if reasonably necessary, on a case-by-case basis.

(5) Whenever possible, Access should be granted onto the most minor road adjacent to the property when there is a choice between roads.

(6) Safety shall not be interfered with due to Access locations near hills, curves, intersections, or other locations which may not be in clear and apparent view of on-coming traffic.

(e) **Design Standards.** Driveways within the TR right-of-way must comply with the following design standards:

(1) Driveways shall be so located as to not create a safety hazard for vehicles traveling on the TR or exiting and entering the property. The Administrator, using good engineering practice, shall determine the permitted location for Driveways with consideration given to the TR's classification, topography, and posted travel speed.

(2) To the extent possible, no Driveway shall be located within or traverse any area that is part of a "vision clearance triangle" that is created by a hypotenuse line connecting points 150 feet from the center of a TR intersection, nor shall Driveways be located closer than 15 feet outside of the extended pavement edge line at a "T" intersection.

(3) Driveways may be constructed of any hard, clean, durable material such as concrete, crushed stone, bituminous or paving stone placed so that the surface of the Driveway meets the existing edge of pavement. Driveways shall not extend into the roadway surface so as to cause an obstruction to the maintenance or snow removal on the roadway.

(4) All Accesses to TR's without curb and gutter must be provided with a culvert. Culverts shall be thirty (30) feet in width for all field, residential, and commercial Accesses provided, however, the Town Engineer may require a wider culvert if, in the opinion of the Town Engineer, it is required, for example, for reasons of safety to persons or property, depth of the ditch, or type of Access. Culverts must be placed at least 1 foot under the Access, be a minimum of 15 inches or equivalent in diameter or as large as may be determined by the town Engineer is needed for adequate drainage and be constructed of corrugated metal or concrete, with endwalls. Plastic pipe and/or plastic endwalls shall not be allowed.

(5) Culverts shall be placed in the ditch line at elevations as set by the Administrator so as to adequately convey water and assure proper drainage.

(6) Culverts shall be bedded and backfilled with granular material, compacted in place, or other material acceptable to the Administrator. The minimum cover, measured from the top of the pipe to the top of the subgrade material shall be six inches.

(7) Direct drainage from Driveway to ditch or culvert on same side of TR.

(8) Slopes to the side of the Access shall not be steeper than 4 to 1 (25 percent desirable) or that of the embankment of the existing TR whichever is less.

(9) Driveway entrances shall be sloped away from the edge of the TR pavement at a minimum slope of two percent across the shoulder and one percent from the shoulder point to the low point. The low point of the Driveway shall be located at the center of any required ditch over the Driveway culvert. If no ditch exists, the Driveway low point shall be placed at the center of the future ditch as determined by the Administrator. If the Driveway slopes down from the roadway, a swale must be created over the center of any existing or future ditch.

(10) In the case of long Driveways or Driveways which carry unusually large volumes of runoff, the Administrator may direct the owner to construct a drainage ditch on one or both sides of the Driveway directing runoff to the roadway ditch or a drainageway on the property.

(11) No roof drain or other storm drain may discharge directly or indirectly onto a Driveway sloping toward the street.

(12) Retaining walls, stone walls, etc. shall not be allowed on Driveways within right-of-way.

(13) Concrete may be prohibited as a Driveway paving material within the Town right-of-way when, in the opinion of the Town Engineer the use of concrete may cause damage or injury or create the threat of danger or injury to road equipment or for other safety reasons.

(14) Any pavement in the right-of-way, whether new, resurface, or replacement, shall require a permit.

(15) Crowning of Access shall be provided within a minimum pitch of 2 percent towards the side of the Access.

(16) Where curb and gutter exists, it must be removed at the entrance for new Access and new curb and gutter must be provided within the TR right-of-way.

(17) Angle of a Driveway shall be as close to 90 degrees with the centerline of the TR as possible, but not less than 75 degrees. The slope of the Driveway surface between the right-of-way and the edge of pavement shall not exceed 8%.

(18) Facing Access on opposite sides of a TR shall be located directly opposite each other whenever possible.

(19) Type "A" Access: Private Driveways with Access to one or two agricultural or residential Parcels must have a Driveway width of 20 to 24 feet and a return radius of 20 feet (See Attachment).

(20) Type "B" Access standards (See Attachment) must be used for residential with 3-20 units, and commercial or industrial with up to 25,000 square feet

(21) Type "C" Access standards (See Attachment) must be used for residential with over 20 units, and commercial or industrial over 25,000 square feet.

(22) Bypass lane is required where the ADT of the TR that the Access enters onto is 2500 or more for type B Access, and 1000 or more for type C Access.

(23) Turnarounds shall be provided so that vehicles do not need to back out onto a TR as provided in the Town's Ordinance to Control Private Driveways.

(24) Existing TR property including road surfaces, curbs, shoulders, slopes, ditches and vegetation shall be restored to its original condition.

(25) Vision corners must be free of all obstructions at each Access point in accordance with the Vision Corner diagram below. Driveway vision corners are to be measured from a point 3.5 feet above the center of the proposed Access, 15 feet back from the edge of pavement of the TR, to two points 4.5 feet above the center of the nearest on-coming lane of the TR in each direction, at a distance of "D" from the point where the TR meets the center of the proposed Access. Distance "D" shall correspond to the speed limit of the road. If the given speed limit is not listed, the next highest speed limit shall be used.

(26) Additional information and the requirements relating to applicable standards for all new or altered Driveways are illustrated on the attached Driveway Detail incorporated herein.

Section 3.4. Administration and Enforcement.

(a) **Administration.** The Administrator is hereby authorized to administer Chapter 3.

Applications for permits shall be made to the Administrator who shall review the proposed development or construction and shall either grant or deny the proposed Access based upon the provisions, standards, and requirements of this ordinance, within ten (10) working days.

(b) **Interpretation.** All restrictions on the use of land are restricted to the objects, growth, and use of land within the Road right-of-way of the Town of Hampden. Whenever it is questionable as to whether or not an object or a part of an object is within the jurisdiction of this ordinance, the entire object shall be considered to be entirely within.

(c) **Access Permits.** No structure, object, excavation nor growth shall be constructed, reconstructed, altered, placed, installed, or planted within the right-of-way of a TR as part of Access construction until an Access Permit has been issued by the Administrator. Said permit shall be placed in clear view as near to the point of proposed construction or Access as possible. An Access Permit shall expire one year from the date of issuance. All construction must be completed within this time. The Administrator may extend approval of an Access Permit, under extenuating circumstances.

The permittee shall be liable for all materials, labor and other costs connected with the construction of the Access within the TR right-of-way. The Town of Hampden shall not be liable for any damage or injury which results from the construction of an Access. The Town of Hampden shall not be responsible for any maintenance of a private Access/Access culvert including the removal of snow, ice, or sleet from the Access.

(d) **Fees.** An application fee in an amount to be determined from time to time by resolution of the Town Board will be charged. In addition, all reasonable costs for engineering, legal or clerical services incurred by the Town in the course of reviewing, evaluating, and issuing the Access Permit shall be paid by the applicant, to the extent not covered by the application fee. The applicant shall reimburse the Town for the costs within fifteen (15) days of billing. In the event the applicant fails to pay, in addition to any other remedies to which the Town may be entitled to pursue, including forfeiture, the delinquent costs and expenses shall be entered on the tax roll as a special tax against the property pursuant to Section 66.0627, Wis. Stats.

In the event that any construction or alteration is commenced prior to application or issuance of a permit, in addition to any other remedies available to the Town, including the right to deny the Access notwithstanding commencement of construction and return of the right-of-way to its prior condition, the permit fee shall be doubled.

(e) **Hazard Marking and Lighting.** Any Access location shall during construction within the right-of-way be provided with adequate hazard marking and lighting to prevent possible accidents. The hazard marking and lighting shall be provided by the owner of the Parcel to which the Access will enter.

(f) **Appeals.** Any Person aggrieved by any decision made in the administration of this ordinance may appeal to the Town Board of the Town of Hampden. Appeals shall be filed within thirty (30) calendar days following the administrative decision by the Administrator. Appeals shall be filed in writing with the Town Clerk. The appeal shall specify the legal description of the Parcel and Access location in question, and the reason given for the appeal.

The Town Board shall make a decision on the appeal within forty-five (45) calendar days from the day the appeal was filed. The decision of the Town Board shall be made by the majority present.

(g) **Variances.**

(1) Where, in the sole judgment of the Town Board, on the recommendation of the Plan Commission, it would be inappropriate to apply literally the provisions of this Chapter 3 because undue hardship would result, the Town Board may waive or modify any requirements to the extent deemed just and proper. Application for a variance shall be made in writing by the property owner on the application form provided by the Town. The application may not be filed until after a permit has been sought from the Town and discussions occurred with the Administrator. The applicant shall set forth all facts relied upon to justify the variance request and the application shall be supplemented with maps, plans or additional data which may aid the Plan Commission and Town Board in the analysis of the variance request.

(2) The Plan Commission shall not recommend nor shall the Town Board grant a variance unless it shall make findings based upon the evidence presented to it that:

(A) The granting of the variance will not be detrimental to the public safety, health or welfare of the general public or injurious to other property or improvements in the neighborhood in which the property is located;

(B) The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.

(C) Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, financial hardship or self-imposed hardship, if the strict letter of the regulations were carried out.

(D) The alleged difficulty or hardship is caused by this Chapter 3 and has not been created or self-imposed by the property owner. It shall not be deemed to be a hardship merely because a property owner desires a different Access location, for whatever reason, if the property can be otherwise Accessed in compliance with this Chapter.

(3) The Town Board, if it approves of the variance, shall do so by motion or resolution and instruct the Town Clerk to notify the property owner.

(4) A majority vote of the entire membership of the Town Board shall be required to grant any modification of this ordinance, and the reasons shall be entered in the minutes of the Board. The Town Board may impose such conditions or restrictions upon the permit benefited by the variance as may be necessary in the sole opinion of the Board.

(5) The Plan Commission and Town Board shall have the power to call on the Administrator for assistance, including written reports, with respect to the variance.

(h) **Violations.**

(1) The Town or its designee is authorized to enter upon the lands regulated by this Chapter to inspect the land prior to permit issuance for the purpose of determining whether to approve the permit or to otherwise determine compliance with this Ordinance. If permission cannot be received from the landowner or user, entry by the Town Engineer shall be by special inspection warrant pursuant to Sections 66.0119, Wis. Stats.

(2) The Town or its designee is authorized to post a stop-work order upon land which has a permit revoked or to post a stop-work order upon land upon which an Access is being constructed in violation of this Chapter, including without a permit. The Town Engineer shall supply a copy of the stop-work order to the Town Attorney. In lieu of a stop-work order, the Town Engineer may issue a written cease and desist order to any landowner or land user violating this Chapter. These orders shall specify that the activity must be ceased or brought into compliance with the order within seven (7) days. Any revocation, stop-work order or cease and desist order shall remain in effect unless retracted by the

Town Board, the Town Engineer, or by a court of general jurisdiction, or until construction of the Access is brought into compliance with the Ordinance. The Town Engineer is authorized to refer any violation of this Chapter or a stop-work or cease and desist order issued pursuant to this Chapter to the Town Attorney for the commencement of further legal proceedings.

(3) Should an Access be sited, constructed or maintained in violation of the provisions of this Chapter, or create a hazard that is not corrected within thirty (30) days of notification, the owner(s) of the land which the Access is intended to serve shall, upon conviction, pay a forfeiture between \$75.00 and \$200.00 plus applicable surcharges and court costs per violation. Each day that the violation continues to exist shall constitute a separate offense.

(4) Compliance with the provisions of this Chapter may also be enforced by injunction after commencement of suit by the Town of Hampden. It shall not be necessary to prosecute a forfeiture action before resorting to injunctive proceedings.

(5) When the Town or its designee has determined that a landowner or land user has failed to obtain a permit as required by this Chapter, or that the holder of a permit issued pursuant to this Chapter has failed to make the improvements or to follow the practices as approved as a condition of the permit or required by this Chapter, the Town or its designee may perform the work necessary to bring the Access into conformity with the permit or to restore the land to its pre-existing condition in the event that a permit has not been issued. The Town or its designee shall keep a detailed accounting of the costs and expenses of performing this work and these costs and expenses shall be entered on the tax roll as a special tax against the property intended to be served by the Access pursuant to Section 66.0627, Wis. Stats. Notwithstanding this authority, nothing herein shall impose any liability upon the Town for any purpose for failing to undertake such work at any time.

(j) **Deposit.** In the event of violation of any provision of this Chapter, a cash deposit for inclusion in the citation is established as follows: 1st offense \$75.00; 2nd offense (and each subsequent day of offense) \$125.00.