



# SPECIFIC TOWN ORDINANCE REVIEW

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Presented by:  
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2010



# I. TOWN BUILDING INFORMATION PERMIT ORDINANCE. (BIPO)

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- A. See Gehl vs. Town of Perry 295 Wis2d 490, 719 Nw2d 800 (Wis App 2006).

Building Permit issuance is a discretionary act of Town Board.

- B. See Village of Hobart vs. Brown County 271 Wis2d 268, 678 NW2d 402 (Wis App 2004).

To obtain vesting rights, Applicant must submit a Building Permit application which is in conformance with requirements of Ordinance.



# I. TOWN BUILDING INFORMATION PERMIT ORDINANCE (BIPO) (CONT).

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C. See new §60.61(2)(b) Wis Stats.

Mixed use districts authorized under §60.61(2)(b) Wis Stats.

D. See Gehl vs. Town Board of Town of Perry 317 Wis2d 727, 768 NW2d 62 (Wis App 2009).

Towns with Village Powers may regulate building locations by Town Building Permit Ordinance.



# I. TOWN BUILDING INFORMATION PERMIT ORDINANCE (BIPO) (CONT).

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E. See attached Handout with §60.61 Wis Stats. See also the Wisconsin Towns Law Form Book.

F. Legal Concerns

- 1) Building Permit Ordinance can be adopted without Village Powers. (See §60.61(1m) Wis Stats).
- 2) Building Permit Ordinance can address locations, and type of buildings, including building styles, heights and colors.



# I. TOWN BUILDING INFORMATION PERMIT ORDINANCE (CONT).

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## F. Legal Concerns (cont).

- 3) Building Permit Ordinance is in addition to Wisconsin Uniform Dwelling Code requirements



## II. DRIVEWAY AND HIGHWAY ACCESS PERMIT ORDINANCE.

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A. See Ottman vs. Town of Primrose 324 Wis2d 306 2010 WL 546331.

Town Board can consider land use plan “least impact” to deny driveway for residence.



## II. DRIVEWAY AND HIGHWAY ACCESS PERMIT ORDINANCE (CONT).

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- B. See Cook vs. Town of Greenfield 312 Wis2d 811 2008 WL 2201780 (Wis App)  
Town has authority to deny driveway permit where length would exceed Ordinance requirements. Ordinance requirements are not a Zoning Ordinance.
- C. See Handout attached. See §66.0425 Wis Stats in the Town Law Form Book.



## II. DRIVEWAY AND HIGHWAY ACCESS PERMIT ORDINANCE.

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### D. Legal Concerns

1. The Driveway Permit Ordinance requirements can apply to private driveways that access onto State, County and Town roads. The highway access, not the driveway, is regulated by public entity that controls the road and highway.





## II. DRIVEWAY AND HIGHWAY ACCESS PERMIT ORDINANCE (CONT).

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### D. Legal Concerns (cont).

2. The Driveway Permit Ordinance requirements should include private bridge and private culvert requirements.
3. The Driveway Permit Ordinance requirements can apply to existing non-conforming driveways as well as new driveways. No “grandfather” clause.



### III. ROAD USE, WEIGHT LIMIT AND MOTOR VEHICLE CONTROL ORDINANCE.

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A. See Town Weight Limit Ordinances at [Google](#). View Wisconsin Weight Limit Ordinances.

1. Town of Walworth – Walworth County
2. Town of Greenville – Outagamie County
3. Town of Navarino – Shawano County
4. Town of Webster – Vernon County
5. Town of Troy – Walworth County



### III. ROAD USE, WEIGHT LIMIT AND MOTOR VEHICLE CONTROL ORDINANCE (CONT).

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- B. See Umansky vs. ABC Insurance Company 319 Wis2d 622, 769 NW2d 1 (2009). See also Dane County vs. O'Malley 313 Wis2d 524 (2008). Traffic signs must be properly placed and Town officials have, for liability purposes, Ministerial Duty for proper and timely placement. However, stop signs are not illegal where judgment to place or not to place signs is with the Municipality.

### III. ROAD USE, WEIGHT LIMIT AND MOTOR VEHICLE CONTROL ORDINANCE (CONT).



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- C. See §66.0425 Wis Stats and §82.03 Wis Stats et alia in the Wisconsin Towns Law Form Book.
- D. Legal Concerns.
  - 1. Town weight limit and use provisions in Ordinance should note, in addition, Town civil lawsuit potential for treble damage under §86.02 Wis Stats where road is damaged or disturbed without Permit.



### III. ROAD USE, WEIGHT LIMIT AND MOTOR VEHICLE CONTROL ORDINANCE (CONT).

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#### D. Legal Concerns (cont).

2. Town Permits to allow use of Town roads for ATV, snowmobiles or other recreational vehicles should not be granted where roads are dangerous or are not passable and safe for regular licensed motor vehicles.



### III. ROAD USE, WEIGHT LIMIT AND MOTOR VEHICLE CONTROL ORDINANCE (CONT).

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#### D. Legal Concerns (cont).

3. Towns establishing weight, speed or other use limits on Town roads should be in full compliance with State laws and should be enforceable by Town law enforceable authorities or with specific arrangement with County or State law enforcement authorities.



## IV. TOWN CEMETERY AND BURIAL SITE ORDINANCE.

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- A. See Town Cemetery Ordinances.
  - 1. Town of Jacksonport – Door County.
  - 2. Town of Clover, Bayfield County.
- B. See §157.50 Wis Stats in the Wisconsin Towns Law Form Book.



## IV. TOWN CEMETERY AND BURIAL SITE ORDINANCE (CONT).

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### C. Legal Concerns.

1. Town Board should adopt specific provisions in Ordinance that no human remains shall be buried in the Town without an issued Conditional Permit by Town Board and without the long-term recorded responsibility to landowner for maintenance of grave (possible cemetery).





## V. JUNKED VEHICLE ORDINANCE.

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- A. See Regret vs. City of La Crosse 595 F3 691 CA 7 (Wis 2010).

Junk Dealer Ordinance did not violate Equal Protection under Constitution.

- B. See Town of Lyndon vs. Jensen 287 Wis2d 508, 704 NW2d 424 (Wis App 2005).

The definition of Junk and Junked Vehicles is reviewed.



## V. JUNKED VEHICLE ORDINANCE (CONT).

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C. See Town of Mosel vs. Hodgell 306 Wis2d 446 2007 WL 2848125 (Wis App).

The police power authority sufficient to regulate junked vehicles.

D. Review what specific vehicles and implements you wish to regulate and those you wish to exempt.



## V. JUNKED VEHICLE ORDINANCE (CONT).

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- E. See also Town Junked Vehicle Ordinances.
  1. Town of Glenmore – Brown County.
  2. Town of Dunn, Dane County.



V. JUNKED VEHICLE ORDINANCE  
(CONT).

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F. See §175.25 Wis Stats in the Wisconsin  
Towns Law Form Book.



## V. JUNKED VEHICLE ORDINANCE (CONT).

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### G. Legal Concerns

1. Town Junked Vehicle Ordinance must carefully define what is a junked vehicle and other junk equipment and implements, and should provide specific exemptions for certain vehicle, equipment or implement storage and sales, including salvage yard, auto retail sales license, vehicles stored within structures (e.g. hobby vehicles) and farm equipment and implements stored outside.



## VI. PUBLIC NUISANCE ORDINANCE.

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- A. See Town Public Nuisance Ordinance at [Google](#). View Wisconsin Public Nuisance Ordinances.
  - 1. Town of Morrison – Brown County.
  - 2. Town of Forest – St. Croix County.
  - 3. Town of Lomira, Dodge County.
- B. See Chapter 823 Wis Stats in the Wisconsin Towns Law Form Book.



## VI. PUBLIC NUISANCE ORDINANCE (CONT).

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### C. Legal Concerns

1. Town Board Public Nuisance Ordinance or a public nuisance (Chapter 823 Wis Stats) civil action can be brought against existing permitted uses that are causing a public nuisance. Public nuisances are not “grandfathered” under any License or Zoning Permits or approvals.



## VI. PUBLIC NUISANCE ORDINANCE (CONT).

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2. The Town Board should review carefully what specific items it desires to consider for potential public nuisance under its Ordinance.
3. The Town Board should be aware that constitutional challenges may be made where certain declared public nuisances in Ordinance may infringe on constitutionally protected rights and uses (e.g. dirty dancing or dirty book facilities).





## VII. ORDINANCE TO REGULATE CERTAIN EVENTS AND PRODUCTIONS.

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- A. See Sauk County vs. Gumz 266 Wis2d 758, 669 NW2d 509 (2003).

Certain restrictions placed on individuals under Public Event Ordinance may violate Constitutional Freedom of Assembly/Freedom of Speech.

## VII. ORDINANCE TO REGULATE CERTAIN EVENTS AND PRODUCTIONS (CONT).



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- B. See Town Public Assembly Ordinances at [Google](#) – View Wisconsin Public Assembly Control Ordinances.
  - 1. Town of Dunn – Dane County.
- C. See §349.185 Wis Stats in the Wisconsin Towns Law Form Book.

## VIII. TOWN WASTE TREATMENT, DISPOSAL, AND STORAGE ORDINANCE.



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- A. See DeRosso Landfill Co. Inc. vs. City of Oak Creek 200 Wis2d 642, 547 NW2d 770 (Wis 1996).
1. Ordinance preempted because facility is not Solid Waste Facility.
  2. Ordinance not preempted can be used in negotiation/arbitration process under Chapter 289 Wis Stats if in effect 15 months prior.



## VIII. TOWN WASTE TREATMENT, DISPOSAL, AND STORAGE ORDINANCE (CONT).

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- B. See Town Waste Treatment Disposal and Storage Ordinances at Google - Wisconsin Waste Disposal Treatment and Storage Control Ordinance.
- C. See §289.22 Wis Stats in the Wisconsin Towns Law Form Book.
  - 1. Town of Barnes – Bayfield County.



## IX. LIVESTOCK SITING ORDINANCE.

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- A. See Town Livestock Siting Ordinances at DATCP Website where thirty-eight (38) Towns have adopted Town Livestock Siting Ordinance, including:
1. Town of Arlington – Columbia County.
  2. Town of Buffalo – Marquette County.
  3. Town of Cottage Grove – Dane County.
  4. Town of Rosendale – Fond du Lac County.



## IX. LIVESTOCK SITING ORDINANCE (CONT).

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### A. (cont).

5. Town of Turtle – Rock County.
6. Town of Spring Green – Sauk County.
7. Town of Casco – Kewaunee County.



## IX. LIVESTOCK SITING ORDINANCE.

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- B. See Adams vs. State of Wisconsin Livestock Facility Siting 787 NW2d 941 2010 WI App 88. Town exceeds its statutory authority to grant Permit based on certain conditions where conditions under Town Ordinance were in excess of the statutory authority of the Town. (Preemption).
- C. See Wisconsin Towns Association website [www.wisctowns.com](http://www.wisctowns.com) for Model Livestock Ordinance.



## IX. LIVESTOCK SITING ORDINANCE (CONT).

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- D. Contact Michael Murray at DATCP at (608) 244-4613.
- E. Legal Concerns.
  1. The legal issues are what Town Control Ordinance provisions are not preempted by State Siting Law and what provisions can be more stringent with State approval.





## X. HARMFUL AND EXOTIC WILD ANIMAL ORDINANCE.

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- A. See definition of Harmful Wild Animals – 169.11 Wis Stats.
- B. See DNR Harmful Wild Animals – Administrative Rule NR 16.11
- C. See §169.43 Wis Stats in the Wisconsin Towns Law Form Book.



## XI. TELECOMMUNICATIONS, ATTENNAS AND TOWERS.

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- A. See Town Telecommunication Antenna and Tower Control Ordinance at Google – Wisconsin Telecommunication Control Ordinance.
  - 1. Town of Lyndon – Sheboygan County.
  - 2. Town of Vienna – Dane County.
  - 3. Town of Wilson – Sheboygan County.
- B. See attached Handout. See also Wisconsin Towns Association website [www.wisctowns.com](http://www.wisctowns.com)



## XII. MANUFACTURED AND MOBILE HOME COMMUNITY ORDINANCE.

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- A. See Town of Clearfield vs. Cushman 150 Wis2d 10, 440 NW2d 777 Wis 1989.
- B. See §66.0435 Wis Stats in the Wisconsin Towns Law Form Book.

## XII. MANUFACTURED AND MOBILE HOME COMMUNITY ORDINANCE (CONT).



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- C. See Town Manufactured and Home Community Ordinance at Google with Wisconsin Manufactured Homes Ordinances
1. Town of Auburn – Chippewa County.
  2. Town of Shelby – La Crosse County.
  3. Town of St. Germain – Vilas County.
  4. Town of Buffalo – Marquette County.



## XII. MANUFACTURED AND MOBILE HOME COMMUNITY ORDINANCE (CONT).

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### D. Legal Concerns.

1. The Town Board should, in its Town Ordinance, recognize that three (3) or more mobile or manufactured homes on a plot or tax parcel will be a "community" for Town licensing purposes. See §66.0435 Wis Stats.



## XII. MANUFACTURED AND MOBILE HOME COMMUNITY ORDINANCE (CONT).

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### D. Legal Concerns (cont).

2. The Town Board should, in its Ordinance, recognize what local Town requirements can be applied to any mobile or manufactured homes outside a “community”, including septic, water and electricity construction and maintenance requirements.



## XII. MANUFACTURED AND MOBILE HOME COMMUNITY ORDINANCE (CONT).

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### D. Legal Concerns (cont).

3. The Town Board should, in its Ordinance, recognize that unreasonable location restrictions on certain manufactured homes constructed and located in a Town may allow for successful challenges for non-compliance by Town with Federal restrictions.



## XIII. WIND TURBINE CONTROL ORDINANCE.

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A. See Town Wind Turbine Ordinances at [Google](#) – Wisconsin Wind Turbine Ordinances.

1. Town of Wilton – Monroe County.

2. Town of Union – Rock County.

Query: Will these ordinances be effective upon PSC adoption of Wind Turbine Rules?





## XIII. WIND TURBINE CONTROL ORDINANCE (CONT).

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- B. See Ecker Brothers vs. Calumet County 321 Wis2d 51, 772 NW2d 240 (Wis App. 2009). Ordinances must require Conditional Use Permits issued on a case by case basis and across the board ordinance restrictions are not proper.



## XIII. WIND TURBINE CONTROL ORDINANCE (CONT).

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- C. See Wind Siting Clearinghouse Rule (August 2010). Call Deb Irvin for update on PSC Rules at (608) 266-3905.
- D. See §66.0401 Wis Stats – Regulatory Solar/Wind Systems.
- E. See §23.39 Wis Stats – Placement of Wind Turbines.
- F. See §196.378 Wis Stats – Renewable Resources.



## XIII. WIND TURBINE CONTROL ORDINANCE (CONT).

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- G. See §66.403 Wis Stats – Solar/Wind Access Permits.
- H. See §844.22 Wis Stats – Interference with Solar/Wind Systems.



## XIII. WIND TURBINE CONTROL ORDINANCE (CONT).

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- I. Legal Concerns.
  1. Towns will need Town Ordinance Siting requirements, but not more restrictive than PSC rules. PSC will not, however, enforce siting requirements. Enforcement responsibility is then only likely with Towns.



## XIII. WIND TURBINE CONTROL ORDINANCE (CONT).

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1. Legal Concerns (cont).
2. The Town Boards should recognize until further action by the Public Service Commission with its Ordinance that specific construction/maintenance standards for the wind turbines may be challenged as unlawful “across the board” restrictions.



## XIII. WIND TURBINE CONTROL ORDINANCE (CONT).

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- I. Legal Concerns (cont).
  3. The Town Board should recognize by amendment of its Ordinance that the State Public Service Commission will soon establish minimum standards that would preempt Town standards and will, hopefully, allow for certain local controls in the Town Ordinance regarding construction and maintenance.