

# **Town of Mishicot Holding Tank Ordinance**

## **Ordinance No. 2009-1**

WHEREAS, the Town of Mishicot is located in Manitowoc County, Wisconsin; and

WHEREAS, Manitowoc County, through its Board of Supervisors, has not adopted any ordinance prohibiting the installation and use of holding tanks for new construction under Section ILHR 83.18(2), Wisconsin Administrative Code; and

WHEREAS, the Town of Mishicot Town Board deems it appropriate and necessary for the protection of the public health, welfare, convenience, and the environment, pursuant to its authority under Chapters 60, 145, and 146, Wis. Stats., and Section ILHR 83.18(2) to prohibit holding tanks for new construction,

NOW THEREFORE, the Town Board of the Town of Mishicot does ordain as follows:

### SECTION I.

#### DEFINITIONS

- 1.0 "Board" means the Town of Mishicot Town Board.
- 1.1 "Holding tank" means an approved watertight receptacle for the collection and holding of sewage.
- 1.2 "Alternative private sewage system" shall be as defined in Section ILHR 83.02(2), Wis. Adm. Code.
- 1.3 "Conventional private sewage system" shall be as defined in Section ILHR 83.02(10), Wis. Adm. Code.
- 1.4 "Person" means an individual, corporation, partnership, association, municipality, or other entity.
- 1.5 "New construction" means the original creation of a structure, as distinguished from the repair or improvement of a structure already existing.

### SECTION II.

#### HOLDING TANKS PROHIBITED

No person shall install or use a holding tank for new construction within the Town of Mishicot, except as further set forth in this ordinance.

### SECTION III.

#### VARIANCE

The Board may authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where owing to special conditions a literal enforcement of the provisions of this ordinance will result in unnecessary hardship or practical difficulty and so that the spirit of the ordinance shall be observed, public health and welfare secured, environmental conditions addressed, and substantial justice done.

### SECTION IV.

#### PROCEDURE FOR APPEAL

4.1 APPLICATION. Any person aggrieved by this ordinance has the right to appeal to the Board for a variance. Any such appeal shall be filed in writing by the applicant on forms provided by the Town Clerk. The application for a variance shall include information including the name and address of the applicant, the legal description of the real estate proposed for a holding tank, the reasons for requesting a holding tank, other information as may be requested by the Board, and shall be accompanied by any evidence indicating the premises will not support a conventional or alternative private sewage system. No application shall be accepted for filing by the Town Clerk unless accompanied by a non-refundable administrative fee in the amount of \$350.00.

4.2 HEARING. Upon receipt of the written application fully completed as required by this ordinance, the Board shall fix a reasonable time for a hearing on the appeal and provide public notice and specific written notice to the applicant of the place and time of hearing. All persons interested shall have the right to be heard at the hearing. The hearing shall be not more than thirty (30) days after the application for the variance is filed.

4.3 STANDARD. The Board shall consider the testimony and decide on the application. In every case where a variance is granted by the Board, the findings of the Board shall affirmatively show that an unnecessary hardship or practical difficulty exists and shall specify in what particular and specific respects an unnecessary hardship or practical difficulty is created. The Board may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the terms of this ordinance, other town ordinances, and all other county and state rules and regulations.

4.4 NOTIFICATION. In the event any variance is granted hereunder, the Town Board shall inform the Department of Industry, Labor and Human relations in writing of specific variance granted.

SECTION V.

EXISTING SANITARY SYSTEMS

In the event the use of a holding tank is the only available alternative for the disposal of sanitary liquid waste for an existing building with a failing sanitary system, the applicant shall file an Application for Holding Tank - Existing Sewage System Failure with the Mishicot Town Board Chairperson or his designee, upon which time approval shall be given. The \$350.00 fee shall be waived with this application. All requirements established for the use of the holding tanks for newly developed properties shall also apply to replacement system uses.

SECTION VI.

RULES AND REGULATIONS

In the event a variance is granted under this ordinance, then the applicant shall comply with all applicable requirements of Section ILHR 83, Wisconsin Administrative Code, Section 146.20, Wisconsin Statutes, and all other applicable codes and ordinances, including providing a contract with a person who is licensed under Chapter NR 113 to have the holding tank serviced. The applicant shall file a copy of the contract with the Town and with Manitowoc County. The owner shall file a copy of any changes to the service contract or a copy of a new service contract with the Town within ten (10) business days from the date of change to the service contract.

SECTION VII.

LIMITATIONS FOR SPECIFIC BUILDING OCCUPANCIES  
OR SPECIFIC GEOGRAPHICAL AREAS

TOWN BOARD DECISION.

SECTION VIII.

INSPECTION

The Town Building Inspector, or other designee of the Town Board, shall be authorized to inspect at reasonable times any holding tank installed and in use under this ordinance.

SECTION IX.

ENFORCEMENT AND NOTICE OF VIOLATION

Upon personal inspection by the Building Inspector, if the holding tank has not been properly maintained or serviced in compliance with Wisconsin Law or has been maintained in such a manner as to create a nuisance, the Building Inspector may issue a

notice to pump or correct the violation within not less than twenty-four (24) hours. The notice shall indicate that failure to pump the holding tank or take corrective action as directed shall result in the town causing such work to be done and charged back to the owner. Further, that failure to pay the costs of such work within thirty (30) days of the date of notice of the charges shall result in placing the charge on the owner's tax bill as a special charge.

#### SECTION X.

##### SERVICING OF HOLDING TANK AND CHARGE BACK

Upon failure of an owner to comply with a proper notice of the Town Building Inspector, or the Town Board's designee, to pump or correct a violation in the use of a holding tank, the Building Inspector may contract with a properly licensed business to pump or correct the holding tank. The costs of such pumping or corrective action shall be billed to the owner of the land. Failure to pay the costs within thirty (30) days shall result in the placing of the costs on the owner's tax bill as a special charge. The special charge shall be a special assessment against the property.

#### SECTION XI.

##### SEMI-ANNUAL REPORT

Pursuant to Sec. ILHR 83.18(4) of Wisconsin Administrative Code, The owner shall submit a semi-annual pumping report to the Town Clerk which shall state the information required under that section.

#### SECTION XII.

##### SEVERABILITY

The provisions of this ordinance are severable; and, if for any reason any portion of this ordinance is determined by a Court of competent jurisdiction to be invalid, such determination shall not affect the ordinance as a whole or other than the part so declared.

#### SECTION XIII.

##### PENALTY

In addition to the other procedures contained herein, any person violating this ordinance by installing or using a holding tank without the issuance of a variance shall be fined not less than Ten Dollars (\$10) and not more than Two Hundred Dollars (\$200) for each offense, plus costs and disbursements. Each day of violation shall be deemed a separate offence.

SECTION XIV.

INJUNCTIVE RELIEF

The Town Board may authorize the commencement of appropriate legal action or proceedings to prohibit the owner, resident, agent or occupant of the premises from the use of a holding tank installed or used in violation of this ordinance.

TOWN BOARD OF THE TOWN OF MISHICOT

By: CJ Hoffa  
Chairman

Dean Anhalt  
Supervisor

Lee Styanich  
Supervisor

Attest: Annice Isaacs  
Clerk

ADOPTED: 1/5/2009

POSTED: 1/6/2009

APPLICATION FOR HOLDING TANK – EXISTING SYSTEM FAILURE  
TOWN OF MISHICOT

NAME OF APPLICANT \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

LEGAL DESCRIPTION AND ADDRESS OF REAL ESTATE PROPERTY FOR  
PROPOSED HOLDING TANK:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

REASON FOR NECESSITY OF A HOLDING TANK:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MUST BE ACCOMPANIED BY WRITTEN EVIDENCE THAT THE PREMISES  
WILL NOT SUPPORT A CONVENTIONAL OR ALTERNATIVE PRIVATE  
SEWAGE SYSTEM WHICH WOULD INDICATE TO THE BOARD THAT A  
HARDSHIP EXISTS.

Date: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF APPLICANT

\_\_\_\_\_  
SIGNATURE OF TOWN CHAIRPERSON  
OR HIS DESIGNEE

APPLICATION FOR APPEAL  
OF HOLDING TANK ORDINANCE  
TOWN OF MISHICOT

NAME OF APPLICANT \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

LEGAL DESCRIPTION OF REAL ESTATE PROPERTY FOR PROPOSED  
HOLDING TANK:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

REASON FOR REQUEST OF APPEAL TO HOLDING TANK ORDINANCE \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MUST BE ACCOMPANIED BY WRITTEN EVIDENCE THAT THE PREMISES  
WILL NOT SUPPORT A CONVENTIONAL OR ALTERNATIVE PRIVATE  
SEWAGE SYSTEM WHICH WOULD INDICATE TO THE BOARD THAT A  
HARDSHIP EXISTS. THE BOARD RESERVES THE RIGHT TO MAKE THAT  
DETERMINATION AT THE HEARING.

A NON-REFUNDABLE FEE OF \$350.00 (EXCEPT IN THE CASE OF AN EXISTING  
BUILDING) FOR ADMINISTRATIVE EXPENSES MUST ACCOMPANY THIS  
APPEAL OR THE CLERK FOR THE TOWN OF MISHICOT CANNOT ACCEPT  
THIS APPLICATION.

\_\_\_\_\_  
SIGNATURE OF APPLICANT

\_\_\_\_\_  
SIGNATURE OF TOWN CLERK

\_\_\_\_\_  
DATE TURNED IN TO CLERK

\_\_\_\_\_  
DATE PRESENTED TO BOARD

Date Hearing Held: \_\_\_\_\_

BOARD MEMBERS PRESENT:

---

---

---

---

---

FINDINGS OF HEARING:

---

---

---

---

---

---

---

---

---

---

---

DATE

CHAIRMAN

SUPERVISOR

SUPERVISOR