

A MODEL ORDINANCE FOR LICENSING LIVESTOCK FACILITIES

THE _____ OF _____ DOES HEREBY ORDAIN
AS FOLLOWS:

Section 1. Authority

This ordinance is adopted pursuant to the powers granted under Wisconsin Constitution, and Wisconsin Statutes including but not limited to Section 92.15 and 93.90. *{If the town board has village powers:}* Further this ordinance is adopted pursuant to the powers granted to the town board under the grant of village powers pursuant to Sec. 60.22 of Wis. Statutes for the protection of public health and safety.

Section 2. Purpose and Findings

Purpose: The purpose of this ordinance is to comply with requirements of Sec. 93.90 of Wis. Statutes and ch. ATCP 51, Wis. Adm. Code (ATCP 51), and to establish standards and authority to protect the public health and safety of the people of the Town/County of _____. This ordinance sets forth the procedures for obtaining a license for the siting of new and expanded livestock facilities in the Town/County of _____.

Findings: *{If the town or county intends to adopt more stringent standards than state standards in ATCP 51, pursuant to Sec. 93.90 (3)(a)6b. of Wis. Statutes, a statement of findings in this section should be stated that the more stringent standard is based upon reasonable and scientifically defensible findings of fact and that the more stringent standards are necessary to protect public health or safety. It would be recommended that the town board or county board have a public hearing on the more stringent local standard, receiving evidence that supports that more stringent standards are reasonable and scientifically defensible to show that these requirements are necessary to protect public health or safety. This draft recommends that a separate set of findings of fact meeting this statutory standard be adopted separate from the ordinance.}* The Town Board/County Board of the Town/County of _____ hereby finds after public hearing that the standards in Sec. 6 of this ordinance, which are more stringent than those comparable standards of ATCP are based upon reasonable and scientifically defensible findings of fact as documented by board findings dated _____ and adopted by the board. Further that the more stringent standards in Sec. 6 of this ordinance of this ordinance are necessary to protect public health and safety.

Section 3. Definitions

{Specific definitions as listed in ATCP 51 are recommended to be included verbatim in the draft ordinance for ease of use by local officials. Note the number in parentheses corresponds to the section in ATCP 51 :}

- (1) Adjacent*
- (2) Animal unit*
- (9) Complete application for local approval*
- (13) Expanded livestock facility*
- (14) Expansion*
- (18) Livestock*
- (19) Livestock facility*
- (20) Livestock structure*
- (23) Manure*
- (26) New Livestock facility*
- (28) Operator*
- (30) Person*
- (32) Populate*
- (33) Property line*
- (36) Related livestock facilities*
- (37) Separate species facility*
- (43) Waste storage facility*
- (44) Waste storage structure*
- (47) WPDES permit*

The remaining definitions in ATCP 51 are hereby incorporated by reference without reproducing them in full in this ordinance.

Section 4 . License Required

A) General

A license issued by the Town/County of _____ is required for *new or expanded* livestock facilities that will have 500 or more animal units.

B) Licenses for Existing Livestock Facilities

1) A license is required for the expansion of a pre-existing or previously approved livestock facility if the number of animal units kept at the expanded livestock facility will exceed all of the following:

- a) The applicable size threshold for a license.
- b) The maximum number previously approved or, if no maximum number was previously approved, a number that is 20% higher than the number kept on (May 1, 2006 or on the effective date of the license requirement, whichever date is later)

2) A license is not required for livestock facility that existed before May 1, 2006 or before the effective date of the license requirement in this ordinance, except as provided in sub. 1).

3) A license is not required for livestock facility that was previously issued a conditional use permit, license or other local approval, except as provided in sub. 1). A prior approval for the construction of a livestock facility implies approval for the maximum number of animal units that the approved livestock facility was reasonably designed to house, except as otherwise clearly provided in the approval. Prior approval of a single livestock structure, such as a waste storage structure, does not constitute prior approval of an entire livestock facility.

Section 5. Licensing Administration

The Town/County of _____ does hereby create the position of Livestock Facility Siting Administrator who shall have the primary responsibility of administering this ordinance and related matters thereto. The Livestock Facility Siting Administrator shall be appointed by the town board/county board to serve at the pleasure of said board.

{Note the creation of an administrative position to administer this ordinance is a recommendation, not a requirement of the law or rules. An existing position such as the zoning administrator or some other existing position could be assigned the responsibility for administering this ordinance.}

Section 6. Licensing Standards

The standards for issuing a license are as follows:

1. The state livestock facility siting standards adopted under ATCP 51, Wis. Adm. Code, inclusive of all appendixes and worksheets and any future amendments to this chapter, except as may be noted in this section of the ordinance, are incorporated by reference in this ordinance, without reproducing them in full.

2. The following setbacks shall apply to livestock structures:

a) Property lines

Except as provided for waste storage structures, livestock structures must be located a minimum of ___ feet [not to exceed 100 feet] from the property line if the livestock facility will have fewer than 1,000 animal units, and ___ feet

[not exceed 200 feet] from the property line if the livestock facility will have 1,000 or more animal units.

The setback requirement does not prevent the use or expansion of a livestock structure that was located within the setback area prior to the effective date of the setback requirement, except that a structure may not be expanded closer to the property line.

Key Limitation

The siting law recognizes and allows local-established setback requirements for property lines, provided that the requirements do not impose a setback of more than 100 feet from any property line if the livestock facility will have fewer than 1,000 animal units, or more than 200 feet from any property line if the livestock facility will have 1,000 or more animal units.

b) Public road right-of-way

Except as provided for waste storage structures, livestock structures must be located a minimum of ___ feet [not to exceed 100 feet] from public road right-of-way if the livestock facility will have fewer than 1,000 animal units, and ___ feet [not to exceed 150 feet] from a public road right-of-way if the livestock facility will have 1,000 or more animal units.

The setback requirement does not prevent the use or expansion of a livestock structure that was located within the setback area prior to the effective date of the setback requirement, except that a structure may not be expanded closer to the public road right-of-way.

Key Limitation

The siting rule recognizes and allows local-established setback requirements for public road right-of-ways, provided that the requirements do not impose a setback of more than 100 feet from any public road right-of-way if the livestock facility will have fewer than 1,000 animal units, and or more than 150 feet from any public road right-of-way if the livestock facility will have 1,000 or more animal units.

c) Waste Storage Structure

A new waste storage structure may not be located within _____ feet [not to exceed 350] of a property line, or within _____ feet [not to exceed 350] feet of the nearest point of any public road right-of-way.

A single new waste storage structure may be constructed closer to the property line or public road if a new structure is:

- Located on the same tax parcel as a waste storage structure in existence before May 1, 2006.
- No larger than the existing structure.
- No further than 50 ft. from the existing structure.
- No closer to the road or property line than the existing structure.

This setback requirement *does not apply* to existing waste storage structures, except that an existing structure within _____ feet [not to exceed 350] of a property line or road may not expand *toward* that property line or road.

3. The following more stringent local standard adopted in this ordinance required to protect public health or safety:

{Note that ATCP 51 includes standards for Odor and air emissions (ATCP 51.14); Nutrient management (ATCP 51.16); Waste storage facilities (ATCP 51.18); and Runoff Management (ATCP 51.20) }

These more stringent standards are based on reasonable and scientifically defensible findings of fact listed in Section 2 of this ordinance.

{Note that Sec. 93.90 (3) (a)6 b. of Wis. Statutes and ATCP 51.10 (3) provide that local jurisdictions may only adopt more stringent standards than those in ATCP 51, if the more stringent standards are based on reasonable and scientifically defensible findings of fact adopted by the political subdivision's governing authority. Further that the findings of fact must show that the standards are need to protect public health or safety.}

Section 7. License Application

A livestock operator must complete the application form and worksheets prescribed by ATCP 51, including any authorized local modifications. The application form and worksheets demonstrate compliance with standards in ATCP 51 and this ordinance.

The operator must file (2, 3 or 4) ***{select one number}*** duplicate copies of the application form , including worksheets, maps and documents (other than engineering design specifications) included in the application.

{ATCP 51.30 provides that up to 4 duplicate copies may be required to be filed by the applicant. One copy must be filed after a final decision on the application with DATCP. If approved, one duplicate copy marked approved must be given back to the applicant. The applicant may wish to record the approved application with the register of deeds. It is recommended that 4 duplicate copies be required to have adequate copies available in the event of a future appeal.}

Section 8. License Application Fee

A non-refundable application fee of \$_____ {*Not to exceed \$1000*} payable to the Town/County of _____ shall accompany an application for the purpose of offsetting the town/county costs to review and process the application.

{Note that under Sec. 66.0628, any fee imposed by a political subdivision must bear a reasonable relationship to the service for which the fee is imposed. The fee established should take into account the costs of any published notices; mailings; meeting costs including special meetings; contracted services of consultants to assist in reviewing the application and any other reasonable costs that can be attributed to the costs to review and process the application.}

Section 9. Application Procedure

1. Pursuant to ATCP 51.30 (5), within 45 days after a political subdivision receives an application, it shall notify the applicant whether the application is complete. If the application is not complete, the notice shall describe the additional information needed. Within 14 days after the applicant provides all of the required information, the political subdivision shall notify the applicant that the application is complete. This notice does not constitute an approval of the proposed livestock facility.

2. Pursuant to ATCP 51.30 (6), within 14 days after a political subdivision notifies an applicant that the application is complete, the political subdivision shall notify adjacent landowners of the application. The political subdivision shall use the approved notice form in ATCP 51, and mail by first class mail a written notice to each adjacent landowner.

3. Upon determination of completeness the town/county clerk shall give notice of a public hearing to receive information from the applicant and receive public input on the application. Public notice shall be a class 2 notice the last of which is at least a week before the date of the public hearing. The public hearing may be continued, but final decision shall be made within the time limits described in the next paragraph.

4. Pursuant to ATCP 51.32, a political subdivision shall grant or deny an application within 90 days after the political subdivision gives notice that the application is complete under paragraph 2 above. A political subdivision may extend this time limit for good cause, including any of the following:

- The political subdivision needs additional information to act on the application.
- The applicant materially modifies the application or agrees to an extension.

A political subdivision shall give written notice of any extension. The notice shall specify the reason for the extension, and the extended deadline date by which the political subdivision will act on the application.

Section 10. Criteria for Issuance of a License

A license shall issue if the application for the proposed livestock facility:

- Complies with this ordinance, and
- Is complete, and
- Contains sufficient credible information to show, in the absence of clear and convincing information to the contrary, that the proposed livestock facility meets the standards specified in this ordinance, specifically Section 6 above.

{Note: If the application and worksheets prescribed by ATCP 51 are properly completed, there is a rebuttable presumption that the applicant has meet the application requirements.}

A license shall be denied if any of the following apply:

- The application, on its face, fails to meet the standard for approval in the previous paragraph,
- The political subdivision finds, based on other clear and convincing information in the record, that the proposed livestock facility does not comply with applicable standards in this ordinance.
- Other grounds authorized by s. 93.90, Stats., that warrant disapproving the proposed livestock facility.

Section 11. Record of Decision

A political subdivision must issue its decision in writing. The decision must be based on written findings of fact supported by evidence in the record. Findings may be based in part on the presumptions created by ATCP 51.

If the political subdivision approves the application, it must give the applicant a duplicate copy of the approved application, marked “approved.” The duplicate copy must include worksheets, maps and other documents (other than engineering specifications) included in the application.

The town/county clerk as required by ATCP 51.36 within 30 days of the town/county decision on the application shall do all of the following:

- a. Give the Department of Agriculture, Trade and Consumer Protection written notice of the town/county decision.
- b. File with the Department a copy of the final application granted or denied, if the town/county has granted or denied an application under this ordinance. (The copy shall include all of the worksheets, maps and other attachments included in the application, except that it is not required to include the engineering design specifications.)
- c. If the town/county has withdrawn a local approval under this ordinance, file with the department a copy of the town/county final notice or order withdrawing the local approval.

{Note the information in this paragraph may shall be submitted to the Department of Agriculture, Trade and Consumer Protection at the following address:}
Wisconsin DATCP—Agricultural Resource Management Division
Bureau of Land and Water Resources
P.O. Box 8911
Madison, Wis. 53708-8911
Fax (608) 224-4615

Section 12. Transferability of License

A license and the privileges granted by this license run with the land approved under the license and remain in effect, despite a change in ownership of the livestock facility, as long as the new operator does not violate the terms of the local approval. An applicant may record with the register of deeds, at the applicant's expense, the duplicate copy of the approved application.

The town/county requests that upon change of ownership of the livestock facility, the new owner of the facility shall file information with the town/county clerk providing pertinent information, including but not limited to such information as the name and address of the new owner and date of transfer of ownership.

Section 13. Expiration of License

A license remains in effect regardless of the amount of time that elapses before the livestock operator exercises the authority granted under license, and regardless of whether the livestock operator exercises the full authority granted by the approval. However, the political subdivision may treat a license as lapsed and withdraw the license if the license holder fails to do all of the following within 2 years after issuance of license:

- *Begin* populating the new or expanded livestock facility.
- *Begin* constructing all of the new or expanded livestock housing or waste storage structures proposed in the application for local approval.

Section 14. License Terms and Modifications

A license and the privileges granted by a license issued under this ordinance is conditioned on the livestock operator's compliance with the standards in this ordinance, and with commitments made in the application for a license. The operator may make reasonable changes that maintain compliance with the standards in this ordinance, and the political subdivision shall not withhold authorization for those changes. A violation of the license or a failure to comply with the commitments made in the application may result in suspension and/or termination of the license as provided in Section 13 of this ordinance

Section 15. Compliance Monitoring

The political subdivision shall monitor compliance with the ordinance as follows:

- a. Upon notice to the livestock facility owner request the right of the Town/County Livestock Facility Siting Administrator under Section 5

of this ordinance to personally view the licensed premises at a reasonable time and date to insure that all commitments of the application as approved are being complied with.

- b. If the livestock facility owner refuses the Town/County Livestock Facility Siting Administrator the right to view the licensed premises, the Administrator may request the assistance of the Sheriff or a deputy Sheriff to obtain an inspection warrant from the circuit court to inspect the licensed premises for the purpose of protection of the public health and safety under Sec. 66.0119 of Wis. Statutes.
- c. If a licensed premises is found not to be in compliance with the commitments made in the approved application, the Livestock Facility Siting Administrator shall issue a written notice to the livestock facility owner stating the conditions of non-compliance and directing that compliance of the commitments of the approved application and license be complied with in a reasonable amount of time stated in this written notice.
- d. If non-compliance of the license conditions as described in the written notice given by the Administrator continue past the stated reasonable time to comply, the Administrator may take further action as provided in this ordinance, including but not limited to issuance of a citation or seeking of injunctive relief.
- e. If the livestock facility owner disputes that the conditions of the license have not been complied with, the livestock facility owner may request a hearing in writing within five days of receipt of the notice of non-compliance. The town board (county committee) shall schedule a hearing within five days to determine if the conditions of the license have been complied with or whether non-compliance of the commitments of the approved application and local approval exists.

Section 16. Penalties

Any person who violates any of the provisions of this ordinance, or who fails, neglects or refuses to comply with the provisions of this ordinance, or who knowingly makes any material false statement or knowing omission in any document required to be submitted under the provisions hereof, shall be subject to the following penalties:

- a. Upon conviction by a court of law, pay a forfeiture of not less than \$_____ nor more than \$_____, plus the applicable surcharges, assessments and costs for each violation.
- b. Each day a violation exists or continues shall be considered a separate offense under this ordinance.
- c. In addition, the town board/county committee may seek injunctive relief from a court of record to enjoin further violations.

- d. In addition, the town board/county committee may suspend or revoke the local approval of a license under this ordinance after due notice to the livestock facility owner and a public hearing to determine whether the license should be suspended or revoked.

A political subdivision shall exercise sound judgment in deciding whether to suspend or revoke a license. The political subdivision shall consider extenuating circumstances, such as adverse weather conditions, that may affect an operator's ability to comply.

In addition to any other penalty imposed by this ordinance, the cost of abatement of any public nuisance on the licensed premises by the town/county may be collected under this ordinance or Sec. 823.06 of Wis. Statutes against the owner of the real estate upon which the public nuisance exists. Such costs of abatement may be recovered against the real estate as a special charge under Sec. 66.0627 of Wis. Statutes unless paid earlier.

Section 17. Appeals

In addition to other appeal rights provided by law, Sec. 93.90 (5), Stats, provides that any "aggrieved person" may request review by the Livestock Facility Siting Review Board of any decision by the (political subdivision) in connection with a permit application. An "aggrieved person" may challenge the decision on the grounds that the (political subdivision) incorrectly applied the standards under this ordinance or violated sec. 93.30, Stats.

An "aggrieved person" under this section as defined in Sec. 93.90 (5) of Wis. Statutes means a person who applied to a political subdivision for approval of a livestock siting or expansion, a person who lives within 2 miles of the livestock facility that is proposed to be sited or expanded, or a person who owns land within 2 miles of a livestock facility that is proposed to be sited or expanded.

An "aggrieved person" may request review of any decision of the Livestock Facility Siting Administrator decision or action by the town board/county committee.

Any appeal brought under this section must be requested with 30 days of the town/county approval or disapproval or within 30 days after the decision on appeal before the town board/county committee.

Any appeal to the State Livestock Facility Siting Review Board shall comply with Sec. 93.90 of Wis. Statutes and administrative rules of said board.

Section 18. Severability

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 that end, the provisions of this ordinance are severable.

Section 19. Effective Date

This ordinance is effective the day after publication. *{Note this ordinance should be published due the inclusion of a forfeiture provision.}*

Adopted this _____ day of _____, 200__, by the _____
Town/County Board of Supervisors.

Town Chairperson/County Chairperson

Attested by the Town Clerk/County Clerk

Town Clerk/County Clerk