

Sample Ordinance Provisions

How this works

The following offers a zoning-based approach to local livestock regulation. It modifies the **Sample Ordinance Provisions** in the Appendix of *Livestock Guidance Local Planning For Livestock Operations in Wisconsin* (April 2003)

The modifications are designed to allow local livestock regulation consistent with requirements of the Livestock Facility Siting Law (siting law) (sec. 93.90, Stats. and ATCP 51, Wis. Adm. Code)

Under the siting law, a local government can use its zoning authority in different ways to regulate the siting and operation of livestock facilities. However there are important limitations. Local governments can set up agricultural zones in accordance with comprehensive plans. If a local government only establishes one agricultural zone, livestock facilities cannot be prohibited based on size in that zone. If a local government establishes more than one agricultural zone, it can prohibit livestock facilities based on size for public health or safety reasons, but must allow at least one zone where livestock facilities are not prohibited based on size. This limitation does not affect the authority to exclude livestock operations in non-agricultural zones.

Local governments may require conditional use (special exception) permits for livestock facilities. However, they must follow state requirements for issuing these permits.

This appendix provides components for developing multiple agricultural and other districts: Agriculture Enterprise (AE), General Agriculture (G-AG), Limited Agriculture District (L-AG), Rural Residential District (RR). For each district, there is a purpose statement, a menu of options for permitted and conditional uses in the district, and property development standards such as maximum lot sizes and setbacks.

Local governments must take additional steps to codify these provisions into an ordinance. For example, maps are needed to determine the location and boundaries of zoning districts. As important as any step, local governments need expert advice to make use of this model. Legal and other experts can help you address the following issues:

- Consistency of zoning actions with a comprehensive plan
- Compliance with the requirements of the Livestock Facility Siting Law
- Consistency with the requirements of the state runoff law for farms (NR 151, Wis. Adm. Code, ATCP 50)
- Compliance with requirements of the Farmland Preservation Program, Ch. 91, Stats., to ensure eligibility for tax credits for farm landowners.

Note: Language that appears in brackets is additional language you may wish to include. If a parenthesis includes terms such as “administrative authority” or “political subdivision,” you will need to modify this language to suit your particular situation.

Establishment of Multiple Agricultural and Other Zoning Districts

AE Agriculture Enterprise District

A) Purpose

The Agriculture Enterprise District is intended to preserve and promote a full range of agricultural uses, secure land for livestock production and other agricultural uses that may be more intensive than crop production, strengthen agriculture’s contribution to an area’s economic base (including new employment opportunities), support processing, value added, and other activities closely allied to the agricultural industry, and prevent conversion of land identified as a valuable agricultural resource to uses that are not consistent with agriculture. The district’s uses and regulations are designed to implement Comprehensive Plan goals by encouraging livestock and other agricultural uses in areas where conditions are best suited to these agricultural pursuits, and discouraging residential development to avoid potential land use conflict. The AE district is generally compatible with the “Exclusive Agriculture” and “Open Space” land use designations of the Comprehensive Plan. Due to the more intensive nature of uses allowed, the AE district is not intended to be applied near moderately- to densely-populated areas, and it is not intended to accommodate residential uses as principle uses.

Drafting tip

Purpose statements explain the function of a zoning district and should be consistent with the goals of a Comprehensive Plan. This explanation is critical in providing adequate notice to property owners and public officials concerning the district’s purpose and where the district is intended to be applied. It also establishes the basis for designating the appropriate uses in the district.

B) Permitted Uses

The following uses are permitted by right in this district without any further notice approval to or from the local unit of government:

- Agriculture Uses, including livestock facilities under (____) animal units.
- Agriculturally-Related Residence
- “Value Added” Agriculture
- Roadside Stand
- Signage
- Agricultural Sales and Service

- Agricultural Storage
- Agricultural Research and Development
- Other Agriculturally-Related Structures and Improvements
- Stable, Commercial
- Utility, Minor

Drafting tip

An Agricultural Enterprise District may allow, as permitted uses, livestock facilities that might require conditional use permits in other districts (the Agricultural Enterprise District may have no permit requirement, or a higher size threshold for a permit). Under the livestock siting law, an ordinance adopted after July 19, 2003 may not require a conditional use permit for a livestock facility that will have fewer than 500 animal units.

C) Conditional Uses

The following uses may be allowed in this district if reviewed and approved in accordance with standards in this ordinance:

- Livestock facilities over (___) animal units.
- Communication Tower, Commercial
- Mining and Extraction
- Utility, Major
- Agricultural Packing and Processing

Drafting tip

For this and other districts, a menu of suggested uses is provided. Specific uses for the district should be selected consistent with the purpose of the district and planning goals. To reduce the potential for conflict, new single family residential dwellings are not allowed in this district. A less effective approach involves regulating new single family residential dwellings as conditional uses. Existing residential uses are authorized to continue as non-conforming uses. Conditional uses such as Agricultural Packing and Processing should be allowed if they fit with planning goals and are compatible with uses in the district. The provisions in this section, however, may not provide the necessary standards to regulate uses other than livestock operations.

D) Property Development Standards

Drafting tip

This section may include minimum lot size, lot width and depth, maximum residential density, setbacks from highways, and maximum heights for structures.

- 1) Minimum lot area

No building, structure or use shall be established on any parcel less than ___ acres. Exception: The minimum lot area may be reduced to ___ acres for agricultural buildings and structures if required for biosecurity or other operation - related reasons.

Drafting tip

While no minimum lot area is provided, it is suggested that a lot area less than 40 acres may not be adequate to meet the purpose of this section.

2) General setbacks (Applies 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.

Drafting tip

Because of the intensive uses allowed in this district, local governments may wish to impose minimum setbacks to minimize land use conflicts, subject to the limitations of the livestock siting rule.

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) Water quality and related setbacks

a) Navigable Waters and Wetlands

A livestock facility shall comply with setback and related requirements in any applicable shoreland or wetland zoning ordinances enacted within the scope of authority granted under s. 59.692, 61.351 or 62.231, Stats.

Drafting tip

Essentially all navigable waters are now protected by ordinances that require building setbacks of 75 feet or more (depending on the ordinance). Zoning restrictions, if any, typically apply to new or enlarged structures. A local government may apply its zoning ordinance if the ordinance was enacted within the scope of statutory authority under s. 59.692, 61.351 or 62.231, Stats., even if it was also enacted under other authority.

b) Floodplain

A livestock facility shall comply with setback and related requirements in any applicable floodplain zoning ordinance that is enacted within the scope of statutory authority under s. 87.30, Stats.

Drafting tip

County or local zoning ordinances currently apply to many, but not all, waterways (not all waterways have mapped floodplains). Zoning restrictions, if any, typically apply to new or enlarged structures. A local government may apply its zoning ordinance if the ordinance was enacted within the scope of statutory authority under s. 87.30, Stats., even if it was also enacted under other authority.

c) Wells

All wells located within in a livestock facility shall comply with chs. NR 811 and 812. New or substantially altered livestock structures shall be separated from existing wells by the distances required in chs. NR 811 and 812, regardless of whether the livestock facility operator owns the land on which the wells are located. A livestock structure in existence on May 1, 2006 may be altered as long as the alteration does not reduce the distance between the livestock structure and an existing well.

Drafting tip

DNR rules under chs. NR 811 and 812 spell out well construction and well location standards to protect water supplies. Violation of well setback requirements in ch. NR 811 or 812 may prevent use of a well. DNR may grant appropriate variances, as provided in chs. NR 811 and 812.

G-AG General Agriculture District

A) Purpose

The General Agriculture District is intended to preserve and enhance land for agricultural uses. Confined livestock operations and single-family residences are regulated as conditional uses to ensure compatible land use. The district's uses and regulations are designed to implement Comprehensive Plan goals by encouraging agricultural uses in areas where soil and other conditions are best suited to these agricultural pursuits, and controlling residential development to avoid potential conflict with agriculture uses. The G-AG district is generally compatible with the "Exclusive Agriculture" and "Open Space" land use designations of the Comprehensive Plan.

B) Permitted Uses

The following uses are permitted by right in this district without any further notice approval to or from the local unit of government:

- Agriculture Uses, including Livestock Facilities of less than (___) animal units, subject to compliance with Property Development Standards.
- Agriculturally-Related Residence
- “Value Added” Agriculture
- Roadside Stand
- Signage
- Agricultural Sales and Service
- Agricultural Storage
- Agricultural Research and Development
- Other Agriculturally-Related Structures and Improvements
- Stable, Commercial
- Utility, Minor

C) Conditional Uses

The following uses may be allowed in this district if reviewed and approved in accordance with standards in this ordinance

- Livestock Facilities of (___) or more animal units.
- Single-Family Residence
- Mining and Extraction
- Communication Tower, Commercial
- Utility, Major

Key Limitation

Under the livestock siting law, an ordinance adopted after July 19, 2003 may not require a conditional use permit for a livestock facility that will have fewer than 500 animal units. The livestock siting rule explains how to count “animal units.”

D) Property Development Standards

Drafting tip

This section may include minimum lot size, lot width and depth, maximum residential density, setbacks from highways, and maximum heights for structures.

1) Minimum lot area No building, structure or use shall be established on any parcel less than ___ acres. Exception: The minimum lot area may be reduced to ___ acres for agricultural buildings and structures if required for biosecurity or other operation - related reasons.

Drafting tip

While no minimum lot area is provided, it is suggested that a lot area less than 40 acres may not be adequate to meet the purpose of this section. To retain sufficient blocks of land to sustain farming in an area, local governments may consider rules limiting the subdivision of farm parcels to create non-farm lots.

2) General setbacks (Applies 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) Water quality and related setbacks

a) Navigable Waters and Wetlands

A livestock facility shall comply with setback and related requirements in any applicable shoreland or wetland zoning ordinances enacted within the scope of authority granted under s. 59.692, 61.351 or 62.231, Stats.

Drafting tip

Essentially all navigable waters are now protected by ordinances that require building setbacks of 75 feet or more (depending on the ordinance). Zoning restrictions, if any, typically apply to new or enlarged structures. A local government may apply its zoning ordinance if the ordinance was enacted within the scope of statutory authority under s. 59.692, 61.351 or 62.231, Stats., even if it was also enacted under other authority.

b) Floodplain

A livestock facility shall comply with setback and related requirements in any applicable floodplain zoning ordinance that is enacted within the scope of statutory authority under s. 87.30, Stats.

Drafting tip

County or local zoning ordinances currently apply to many, but not all, waterways (not all waterways have mapped floodplains). Zoning restrictions, if any, typically apply to new or enlarged structures. A local government may apply its zoning ordinance if the ordinance was enacted within the scope of statutory authority under s. 87.30, Stats., even if it was also enacted under other authority.

c) Wells

All wells located within in a livestock facility shall comply with chs. NR 811 and 812. New or substantially altered livestock structures shall be separated from existing wells by the distances required in chs. NR 811 and 812, regardless of whether the livestock facility operator owns the land on which the wells are located. A livestock structure in existence on May 1, 2006 may altered as long as the alteration does not reduce the distance between the livestock structure and an existing well.

Drafting tip

DNR rules under chs. NR 811 and 812 spell out well construction and well location standards to protect water supplies. Violation of well setback requirements in ch. NR 811 or 812 may prevent use of a well. DNR may grant appropriate variances, as provided in chs. NR 811 and 812.

4) Single-family residences

No single-family residence shall be constructed within 1000 feet of a livestock structure or building, including animal waste storage areas. This provision shall not apply to dwelling units that are accessory to a livestock facility.

Drafting tip

Local governments may use other tools to control residential development. In addition to designating a single-family residence as a conditional use, they may set a maximum lot area for a single-family residence at one acre. You need to evaluate how this may impact EAZ zoning for the purpose of farmland preservation eligibility.

Limited Agriculture District

A) Purpose

The Limited Agriculture District is intended to provide for the continuation of low intensity agricultural, restrict new and expanding livestock operations, provide for limited siting of single family residences, and support other uses that maintain the rural characteristics of the area. It may serve as a buffer for more intensive agricultural uses in adjacent districts, and prevent premature conversion of rural lands to urban and other non-agricultural uses. The district's use and development regulations are designed to implement the Comprehensive Plan goals by discouraging urban and suburban development in areas that are suited to agricultural uses and that are not well served by public facilities and services.

Note: With modification, this district may be designed to be compatible with designation as "Exclusive Agricultural Zone." If the district is used for transitional agricultural district, the EAZ status can be maintained. See Zoning to Preserve Agricultural Land, UWEX A3038 (1980), s. 2.0. It may be advisable to create a separate district to meet the need for a transition district.

B) Permitted Uses

The following uses are permitted by right in this district without any further notice approval to or from the local unit of government:

- Agricultural Uses, (excluding Livestock Facilities)(including Livestock Facilities of less than ___ more animal units), subject to Property Development Standards.
- Agriculturally-Related Residence
- Keeping and raising of domestic stock limited to 1 animal unit per acre
- "Value Added" Agriculture
- Roadside Stand
- Signage
- Single-Family Residence
- Home Occupation
- Utility, Minor

Key Limitation

A local government must identify if livestock facilities are allowed in this agricultural zoning district and then determine the size of livestock facilities allowed as permitted uses. If the local government excludes livestock facilities entirely or by size in this district, it must meet special requirements of the siting law. First, the exclusion must be clearly justified on the basis of public health or safety. Second, the town, county or other municipality must have at least one other agricultural zoning district where livestock agriculture is not excluded by size. This second requirement would be satisfied by adoption of either of these districts: Agriculture Enterprise (AE) or General Agriculture (G-AG).

C) Conditional Uses

The following uses may be allowed in this district if reviewed and approved in accordance with standards in this ordinance:

- Livestock Facilities of (500)(___)or more animal units, subject to Property Development Standards and Siting Standards.
- Bed and Breakfast
- Communication Tower, Commercial
- Mining and Extraction
- Utility, Major

Drafting tip

If livestock facilities are not allowed in the district, delete the conditional use provision related to these facilities. If a conditional use permit is used, the siting law determines the threshold a local government may use for a permit. An ordinance adopted after July 19, 2003 may not set a permit threshold lower than 500 animal units. The livestock siting rule explains how to count “animal units.”

D) Property Development Standards

Drafting tip This section may include minimum lot size, lot width and depth, maximum residential density, setbacks from highways, and maximum heights for structures.

1) Minimum lot area

No building, structure or use shall be established on any parcel less than ___ acres.

Drafting tip

While no minimum lot area is provided, it is suggested that a lot area less than 20 acres may not be adequate to meet the purpose of this section.

2) General setbacks (Applies 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) Water quality and related setbacks

a) Navigable Waters and Wetlands

A livestock facility shall comply with setback and related requirements in any applicable shoreland or wetland zoning ordinances enacted within the scope of authority granted under s. 59.692, 61.351 or 62.231, Stats.

Drafting tip

Essentially all navigable waters are now protected by ordinances that require building setbacks of 75 feet or more (depending on the ordinance). Zoning restrictions, if any, typically apply to new or enlarged structures. A local government may apply its zoning ordinance if the ordinance was enacted within the scope of statutory authority under s. 59.692, 61.351 or 62.231, Stats., even if it was also enacted under other authority.

b) Floodplain

A livestock facility shall comply with setback and related requirements in any applicable floodplain zoning ordinance that is enacted within the scope of statutory authority under s. 87.30, Stats.

Drafting tip

County or local zoning ordinances currently apply to many, but not all, waterways (not all waterways have mapped floodplains). Zoning restrictions, if any, typically apply to new or enlarged structures. A local government may apply its zoning ordinance if the ordinance was enacted within the scope of statutory authority under s. 87.30, Stats., even if it was also enacted under other authority.

c) Wells

All wells located within in a livestock facility shall comply with chs. NR 811 and 812. New or substantially altered livestock structures shall be separated from existing wells by the distances required in chs. NR 811 and 812, regardless of whether the livestock facility operator owns the land on which the wells are located. A livestock structure in existence on May 1, 2006 may altered as long as the alteration does not reduce the distance between the livestock structure and an existing well.

Drafting tip

DNR rules under chs. NR 811 and 812 spell out well construction and well location standards to protect water supplies. Violation of well setback requirements in ch. NR 811 or 812 may prevent use of a well. DNR may grant appropriate variances, as provided in chs. NR 811 and 812.

4) Single-family residences

No single-family residence shall be constructed within 1000 feet of a livestock structure or building, including animal waste storage areas. This provision shall not apply to dwelling units that are accessory to a livestock facility.

RR Rural Residential District

A) Purpose

The Rural Residential District is intended to permit low-density residential uses, require large single-family lots to maintain the area's rural character, and accommodate uses that are not urban in nature, including low-intensity agriculture. The district may be used as a "holding" or "transitional" zone to retain land in a less intensive use until the appropriate time for more intensive residential and other development, avoid scattered development, and premature and costly extension of utility mains and services.

B) Permitted Uses

The following uses are permitted by right in this district without any further notice approval to or from the local unit of government:

- Single-Family Residence
- Agriculture, Crop
- Mobile or Manufactured Home (Optional)
- Home Occupation
- Roadside Stand
- Signage
- Utility, Minor
- Accessory Uses and Buildings

Drafting tip

A menu of suggested uses is provided. Specific uses for the district should be selected consistent with the purpose of the district and planning goals. The provisions in this section, however, do not provide the necessary standards to regulate uses such as mobile or manufactured homes.

B) Conditional Uses

The following uses may be allowed in this district if reviewed and approved in accordance with standards in this ordinance:

- Planned Unit or Mixed Unit Development
- Two Family Development
- Bed and Breakfast
- Mobile or Manufactured Home (Optional)
- Church and School
- Cemetery
- Sports Facility
- Communication Tower, Commercial
- Mining and Extraction
- Utility, Major

D) Property Development Standards

Drafting tip

This section may include minimum lot size, lot width and depth, maximum residential density, setbacks from highways, and maximum heights for structures.

- 1) Minimum lot area: No building, structure or use shall be established on any parcel less than __ acres.

Drafting tip

Local governments are encouraged to design this district to promote cluster development and other strategies that reduce sprawl and protect open space. Minimum lot areas and other standards should be written to be compatible with cluster development.

- 2) No single-family residence shall be constructed within 500 feet of livestock structure or facility, including animal waste storage areas. This provision shall not apply to dwelling units that are accessory to the Livestock Facility.

Conditional Uses (Special Exceptions)

Drafting tip

Create a separate section that covers applications for local approval of livestock facilities. This may require changes in other sections of a zoning ordinance including administration section.

A) Approval Required

These procedures apply to livestock facilities that require a conditional use permit under this ordinance.

B) Permits for Existing Livestock Facilities

- 1) A permit 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 conditional use permit established in the zoning district where the facility is located.
 - 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 permit requirement, whichever date is later)
- 2) A permit is not required for livestock facility that existed before May 1, 2006 or before the effective date of the permit requirement in this ordinance (except as provided in sub. 1).
- 3) A permit is not required for livestock facility that was previously issued a conditional use permit 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.

C) Application Procedure

A livestock operator must complete the application and worksheets prescribed by ATCP 51, including any authorized local modifications. The application requirements specified in ATCP 51, Wis. Adm. Code are incorporated by reference, without reproducing them in full. The application form and worksheets establish compliance with the standards in ATCP 51 and this ordinance.

The operator must file ___[select 2, 3 or 4] duplicate copies of the application form, including worksheets, maps and documents (other than engineering design specifications) included in the application.

Drafting Tip

ATCP 51.30 provides that an applicant may be required to file up to 4 duplicate copies of an permit application. 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. }

D) Application Fee

A non-refundable application fee of \$_____ [not to exceed \$1000] shall accompany an application.

E) Application Review Procedure

1) Within 45 days after the (administrative authority) 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 (administrative authority) shall notify the applicant that the application is complete. This notice does not constitute an approval of the proposed livestock facility.

2) Within 14 days after the (administrative authority) notifies an applicant that the application is complete, the (administrative authority) shall notify adjacent landowners of the application. The (administrative authority) shall use the approved notice form in ATCP 51, and mail a written notice to each adjacent landowner.

3) The (administrative authority) shall grant or deny an application within 90 days after the notice of a complete application is provided as required by 2) above. The (administrative authority) may extend this time limit for good cause, including any of the following:

- a) The (administrative authority) needs additional information to act on the application.
- b) The applicant materially modifies the application or agrees to an extension.

The (administrative authority) shall give written notice of any extension. The notice shall specify the reason for the extension, and the extended deadline date by which the (administrative authority) will act on the application.

F) Public Hearing

The (administrative authority) may schedule public hearing on the application within 90 days after issuing notice of a complete application.

G) Standards

The standards for issuing a permit are as follows:

- 1) The state livestock facility siting standards adopted under ATCP 51, Wis. Adm. Code. These standards are incorporated by reference, without reproducing them in full.
- 2) Setbacks authorized by this ordinance

3) The following more stringent standards required to protect public health or safety:

a) These more standard standards are based on the following reasonable and scientifically defensible findings of fact adopted after public hearing:

Key Limitation

Local governments will need to meet additional requirements to adopt more stringent standards. To adopt a more stringent standard consistent with the requirements of s. 93.90(3)(ar), Stats., a local government must include the standard in its ordinance along with the scientifically defensible findings of fact to justify the more stringent standard being necessary to protect public health and safety. It is recommended that a town or county board hold a public hearing to receive evidence that supports the adoption of a more stringent standard. Any more stringent standards must be adopted in ordinance *prior* to applying it to a particular permit applicant.

Under s. 92.15, Stats., a local government may need approval from DATCP or DNR for local livestock regulations that exceed state performance standards in NR 151 and ATCP 50, Wis. Adm. Code.

To qualify for local approval, an operator must meet the standards in this rule, regardless of whether the applicant receives cost-sharing (*see* s. 93.30(3)(ae), Stats.). *However, a political subdivision may provide cost-sharing if it wishes to do so.*

H) Criteria for Issuance of a Permit

1) A permit shall issue if the application for the proposed livestock facility 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.

Rebuttable Presumption

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.

2) A permit may be denied if any of the following apply:

- a) The application, on its face, fails to meet the standard for approval.
- b) 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.
- c) Other grounds authorized by s. 93.90, Stats., that warrant disapproving the proposed livestock facility.

3) No conditions may be imposed on permit other than standards provided in ordinance.

D) Record of Decision

- 1) The (decision-making body) shall issue its decision in writing. Its decision shall be based on written findings of fact supported by evidence in the record.
- 2) In the event that a permit is approved, the applicant shall receive 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.

Appeals to the Livestock Facility Siting Review Board

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.

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

K) Notice to the Department

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:

- 1) Give the Department of Agriculture, Trade and Consumer Protection written notice of the town/county decision.

- 2) 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.)
- 3) 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.

L) Expiration of Permit

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

- *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 permit application.

M) Permit modifications

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.

N) Compliance Monitoring

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

- 1) Upon notice to the livestock facility owner request the right of the (permit administrator) to personally view the permitted facility at a reasonable time and date to insure that all commitments of the application as approved are being complied with.
- 2) If the livestock facility owner refuses the (permit administrator) the right to view the permitted facility, the (permit administrator) may request the assistance of the Sheriff or a deputy Sheriff to obtain an inspection warrant from the circuit court to inspect the permitted facility for the purpose of protection of the public health and safety under Sec. 66.0119 of Wis. Statutes.
- 3) If a permitted facility is found not to be in compliance with the commitments made in the approved application, the (permit 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 be complied with in a reasonable amount of time stated in this written notice.

- 4) If non-compliance of the permit conditions as described in the written notice given by the (permit administrator) continue past the stated reasonable time to comply, the (permit administrator) may take further action as provided in this ordinance, including but not limited to issuance of a citation or seeking of injunctive relief.
- 5) If the livestock facility owner disputes that the conditions of the permit 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 permit have been complied with or whether non-compliance of the commitments of the approved application and local approval exists.

O) Terms of the Permit

A permit and the privileges granted by a permit 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 permit. The (political subdivision) is authorized suspend a permit or seek other redress provided in this ordinance for non-compliance. .

Drafting tip

The siting rule does not limit a political subdivision's authority seek redress for permit violations and failure to comply with commitments made in the application. Remedies may include permit revocation or suspension, forfeiture, and injunctive relief.

A political subdivision shall exercise sound judgment in deciding whether to suspend or revoke a permit. 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 permitted facility 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.

P) Transferability

A permit and the privileges granted by the permit run with land, 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.

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.

Non-Conforming Uses

~~A land use existing and operational at the time of this ordinance that is not in compliance with this ordinance shall be considered a non-conforming use.~~

A) Abandonment

~~A non-conforming livestock facility that is abandoned or not operational for a period of 24 consecutive months, or a total of 36 months in a 5 year period, shall no longer retain its non-conforming status and must comply with all of the regulations set forth in this ordinance prior to the reintroduction of livestock. A landowner may retain a non-conforming status by demonstrating an active and continuous marketing of the land for sale or lease, or other activities that affirmatively prove there is no intent to abandon. In the event of an involuntary change of ownership of a livestock facility including but not limited to mortgage or land contract foreclosures or bankruptcy proceedings, the lender or subsequent owner has 24 months from the date of acquisition to restock the feedlot and retain the non-conforming status of the livestock facility.~~

B) Alteration, Enlargement, Movement

~~A non-conforming use may not be altered, enlarged or moved, except for normal maintenance and repairs.~~

Variance

A) The (political subdivision) is not authorized to grant a variance from the state requirements related to livestock facility siting, except as provided in s. 93.90, Stats. and ATCP 51.

B) Local governments may reduce general setbacks in specified in zoning district by ____-foot increments but no lower than:

____ feet for setbacks to roads and property line

____ feet for new manure storage structures

The local government may the discretion to reduce setbacks using factors it deems appropriate, including compliance with procedures

Definitions

Drafting tip Definitions are not provided for every use and only explain key agricultural uses. Sample provisions contain terms such as Utility, Major and Utility, Minor, which have generally accepted zoning definitions.

“Adjacent” means located on land parcels that touch each other, or on land parcels that are separated only by a river, stream, or transportation or utility right-of-way.

“Agriculture, Animal” means the use of land for animal feeding operations, including areas for the storage, treatment and disposal of manure and other related waste products.

“Agriculture, Crop” means the use of land for the production of row crops, field crops, tree crops, timber, bees, apiary productions, and fur-bearing mammals.

“Agricultural use” means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; participating in the milk production termination program under 7 USC 1446 (d); and vegetable raising.

“Agriculturally Related Residence” means a residence which are occupied by (1) a person who, or a family at least one member of which, earns a substantial part of his or her livelihood from farm operations on the land, or (2) a parent or child of the owner of the farm.

“Agricultural Processing and Packaging” means an establishment primarily engaged in refining, processing or otherwise adding value to raw agricultural goods, including but not limited to washing, sorting, cutting, bagging, freezing, canning, packing, bottling or butchering. “Agricultural Research and Development” means the use of land or buildings for agriculture research and the cultivation of new agricultural products.

“Agricultural Sales and Service” means an establishment primarily engaged in (1) the sale or rental of farm tools and implements, feed and grain, tack, animal care products, farm supplies and the like, or (2) performing agricultural or horticultural services on a fee or contract basis, including but not limited to crop dusting and spraying services, harvesting and plowing services, agricultural land grading services, farm equipment service and repair, and large animal veterinary services.

“Agricultural Storage” means grain elevators and other facilities for the warehousing and storage of agricultural products.

“Animal unit” has the meaning that was given in s. NR 243.03(3) as of April 27, 2004.

“Complete application for local approval” means an application that contains everything required under ss. ATCP 51.30(1) to (4).

“Department” means the Department of Agriculture, Trade, and Consumer Protection.

“Expanded livestock facility” means the entire livestock facility that is created by the expansion, after *May 1, 2006*. “Expanded livestock facility” includes all livestock

structures in the expanded facility, regardless of whether those structures are new, existing or altered.

NOTE: This chapter applies to local approvals of *new or expanded* livestock facilities that will have 500 or more animal units (or will exceed a lower permit threshold incorporated in a local *zoning* ordinance prior to July 19, 2003). *See s. ATCP 51.02.* Although this chapter covers all livestock structures in an “expanded livestock facility,” existing structures are subject to less rigorous standards than new or expanded structures, and are completely exempt from certain requirements.

“Expansion” means an increase in the largest number of animal units kept at a livestock facility on at least 90 days in any 12-month period. The acquisition of an existing livestock facility, by the operator of an adjacent livestock facility, does not constitute an “expansion” unless that operator increases the largest number of animal units kept at the combined livestock facilities on at least 90 days in any 12-month period.

“Livestock” means domestic animals traditionally used in this state in the production of food, fiber or other animal products. “Livestock” includes cattle, swine, poultry, sheep and goats. “Livestock” does not include equine animals, bison, farm-raised deer, fish, captive game birds, ratites, camelids or mink.

“Livestock facility” means a feedlot, dairy farm or other operation where livestock are or will be fed, confined, maintained or stabled for a total of 45 days or more in any 12-month period. A “livestock facility” includes all of the tax parcels of land on which the facility is located, but does not include a pasture or winter grazing area. Related livestock facilities are collectively treated as a single “livestock facility” for purposes of this chapter, except that an operator may elect to treat a separate species facility as a separate “livestock facility.”

“Livestock structure” means a building or other structure used to house or feed livestock, to confine livestock for milking, to confine livestock for feeding other than grazing, to store livestock feed, or to collect or store waste generated at a livestock facility.

“Livestock structure” includes a barn, milking parlor, feed storage facility, feeding facility, animal lot or waste storage facility. “Livestock structure” does not include a pasture or winter grazing area, a fence surrounding a pasture or winter grazing area, a livestock watering or feeding facility in a pasture or winter grazing area, or a machine shed or like facility that is not used for livestock.

“Navigable waters” has the meaning given in s. 30.01(4m), Stats

“New livestock facility” means a livestock facility that will be used as a livestock facility for the first time, or for the first time in at least 5 years. “New livestock facility” does not include an expanded livestock facility if any portion of that facility has been used as a livestock facility in the preceding 5 years.

“Operator” means a person who applies for or holds a local approval for a livestock facility.

“Person” means an individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity.

“Populate” means to add animal units for which a permit or other local approval is required.

“Property line” means a line that separates parcels of land owned by different persons.

“Qualified nutrient management planner” means a person qualified under s. ATCP 50.48.

“Related livestock facilities” means livestock facilities that are owned or managed by the same person, and related to each other in at least one of the following ways:

(a) They are located on the same tax parcel or adjacent tax parcels of land.

NOTE: A mere acquisition of a neighboring livestock facility does not constitute an “expansion” unless more animal units are added to the combined facilities.

(b) They use one or more of the same livestock structures to collect or store manure.

(c) At least a portion of their manure is applied to the same landspreading acreage.

NOTE: Compare definition of “animal feeding operation” under s. NR 243.03(2). “Related livestock facilities” are treated as a single livestock facility for purposes of local approval, except that a “separate species facility” may be treated as a separate livestock facility.

“Separate species facility” means a livestock facility that meets all of the following criteria:

(a) It has only one of the following types of livestock, and that type of livestock is not kept on any other livestock facility to which the separate species facility is related (see definition of a “related livestock facility”):

1. Cattle.
2. Swine.
3. Poultry.
4. Sheep.
5. Goats.

(b) It has no more than 500 animal units.

(c) Its livestock housing and manure storage structures, if any, are separate from the livestock housing and manure storage structures used by livestock facilities to which it is related.

(d) It meets one of the following criteria:

1. Its livestock housing and manure storage structures, if any, are located at least 750 feet from the nearest livestock housing or manure storage structure used by a livestock facility to which it is related.
2. It and the other livestock facilities to which it is related have a combined total of fewer than 1,000 animal units.

“Roadside Stand” means a building or part of a building no more than 500 square feet used for the retail sale of agricultural and related incidental products, excluding livestock, produced on the farm where the stand is located.

“Stable, Commercial” means a building or land where horses are kept for remuneration, hire, sale, boarding, riding, or show.

“Signage” mean outdoor advertising attached to, made a part of, or placed in front, rear, sides, or top of any structure or on any land to announce the name or nature of a farm business including a roadside stand. Signs are limited to 8 square feet of panel area, not to exceed eight feet (8’) in height above grade, unlighted.

“Single Family Residence” means the principal use of a lot only for one dwelling unit.

“Value Added Agriculture” means a small commercial, manufacturing or service operation, which is accessory to an agricultural use. Examples of value added agriculture include small scale food processing, handcrafting, product packaging and marketing, and agricultural tourism. These farm-based activities cannot exceed a certain size and scale, but may involve new structures. Additional permits and licenses may be required to carry on these activities.

“Waste” means manure, milking center waste and other organic waste generated by a livestock facility.

“Waste storage facility” means one or more waste storage structures. “Waste storage facility” includes stationary equipment and piping used to load or unload a waste storage structure if the equipment is specifically designed for that purpose and is an integral part of the facility. “Waste storage facility” does not include equipment used to apply waste to land.

“Waste storage structure” means a waste storage impoundment made by constructing embankments, excavating a pit or dugout, or fabricating a structure. “Waste storage structure” does not include equipment used to apply waste to land. For purposes of ss. ATCP 51.12(2) and 51.14, “waste storage structure” does not include any of the following:

- (a) A structure used to collect and store waste under a livestock housing facility.
- (b) A manure digester consisting of a sealed structure in which manure is subjected to managed biological decomposition.

“Winter grazing area” means cropland or pasture where livestock feed on dormant vegetation or crop residue, with or without supplementary feed, during the period October 1 to April 30. “Winter grazing area” does not include any of the following:

- (a) An area, other than a pasture, where livestock are kept during the period from May 1 to September 30.
- (b) An area which at any time has an average of more than 4 livestock animal units per acre.
- (c) An area from which livestock have unrestricted access to navigable waters of the state, such that the livestock access prevents adequate vegetative cover on banks adjoining the water.
- (d) An area in which manure deposited by livestock causes nutrient levels to exceed standards in ATCP 51.16.

“WPDES permit” means a Wisconsin pollutant discharge elimination system permit issued by DNR under ch. NR 243.