

TXT-23-05
CHAPTER 18 LIVESTOCK FACILITY SITING - For 10/12/2023 Public
Hearing

Green strike through = Items proposed to be removed
Yellow = Items proposed to be added

LIVESTOCK FACILITY LICENSING ORDINANCE

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1. Introduction.

- (1) Title. This ordinance may be referred to as the Livestock Facility Licensing Ordinance.
- (2) Authority. This ordinance is adopted pursuant to authority granted by Wis. Stat. §§. 92.15 and 93.90.
- (3) Purpose. The purpose of this ordinance is to protect the public health and safety of the people of Burnett County by establishing standards and procedures for the issuance of licenses for new and expanded livestock facilities.
- (4) Applicability. This ordinance applies to all lands within the boundaries of Burnett County lying outside the limits of incorporated cities and villages.
- (5) Construction. This ordinance is to be interpreted liberally to effect the purposes of the ordinance. This ordinance does not abrogate, annul, impair, interfere with, limit, or repeal any existing ordinance or any other power granted by the Wisconsin Statutes.
- (6) Severability. The provisions of this ordinance are severable and the invalidity of any section, subsection, paragraph, or subdivision will not affect the validity or effectiveness of the remainder of the ordinance.

2. Definitions.

- (1) In this ordinance:

“Aggrieved person” means a person who applied to a political subdivision for approval of a livestock facility siting or expansion, a person who lives within 2 miles

of a 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. “Committee” means the Natural Resources Committee.

“Director” means the director of the Land Services Department or his or her designee.

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

“Owner” means any person with an ownership interest in a livestock facility or the land on which a livestock facility is located.

“Pre-existing livestock facility” means a livestock facility that existed before June 21st, 2007.

“Previously approved livestock facility” means either a livestock facility that was issued a conditional use permit, license, or other local siting approval before the effective date of this ordinance or a livestock facility that has been issued a siting approval under this ordinance or a previous County ordinance.

- (2) Unless defined differently in this ordinance, the definitions in Wis. Admin. Code Ch. ATCP 51 are incorporated by reference and adopted by this ordinance.

3. License Requirements.

- (1) A license is required for any new livestock facility with ~~500~~ 250 or more animal units.
- (2) Subject to sub. (3), a license is required for an expanded livestock facility if the number of animal units at the expanded livestock facility will exceed ~~500~~ 250 and the number of animal units will exceed the maximum number previously approved or, if no maximum number was previously approved, will exceed a number that is 20% higher than the number kept on June 21st, 2007.

Note: The 250-animal unit threshold for applicability of this ordinance is permissible under Wis. Stat. s. 93.90(3)(a) 8. and 9. And (ae) 2. because permits were required for livestock facilities with 250 or more animal units, by county ordinance, prior to July 19, 2003.

- (3) A license is not required for a pre-existing or previously-approved livestock facility except as provided in sub. (2).

4. License Conditions.

- (1) General Condition. A license issued under this ordinance is conditioned on compliance with the terms of this ordinance.

- (2) **Implementation.** An operator must begin populating an approved livestock facility and must begin construction on every approved new or expanded livestock housing structure and every approved new or expanded waste storage structure within two years of the issuance of a license or other local approval.
- (3) **Modification.** An operator must provide written notice to the Land Services Department and obtain written approval from the Land Services Department before making changes, other than minor alterations, as determined in sole discretion of the Land Services Department, to a licensed facility or deviating from any commitment made in an approved application.
- (4) **Transfer.** A license is transferable to a new owner or operator. The new owner or operator must provide the Land Services Department with the new owner or operator's name and address within 30 days of the date of any change in the owner or operator.

5. Licensing Standards.

- (1) **State Standards Adopted.** Except as otherwise provided in this ordinance or Ch. 30 of the County ordinances, the livestock facility siting standards established in Wis. Admin. Code Ch. ATCP 51, including all appendixes, worksheets, and any future amendments to that chapter, are incorporated by reference and adopted by this ordinance.
- (2) **Manure Storage.** A livestock facility must provide for at least 220 days of manure storage capacity for the number and type of animals that will be fed, maintained, confined, or stabled at the livestock facility. This standard is adopted pursuant to Wis. Stat. § 93.90 (3) (a) 6.b. The County Board hereby finds that this Standard, which is more stringent than those applicable under state law, is based upon reasonable and scientifically defensible findings of fact as documented by Board findings dated June 8th, 2023 and appended to this ordinance as Exhibit A, and that this standard is necessary to protect public health and safety.
- (3) **Zoning Standards Applicable.** Except as otherwise provided in this ordinance, the standards and requirements of the Burnett County Ordinances as applicable to a livestock facility are hereby incorporated as standards that must be met for licensure under this ordinance.
- (4) **Setbacks.** Notwithstanding any lesser setback requirement in county ordinances that may otherwise be applicable to a property, livestock structures shall be set back from property lines, public road rights-of-way, and any other measurable landscape feature or improvement by the maximum distance provided under Wis. Admin. Code §. ATCP 51.12.

6. Application Procedure.

- (1) **General.** An operator must complete and submit the application form and worksheets prescribed by Wis. Admin. Code Ch. ATCP 51.

- (2) Fee; Cost of Review. A non-refundable application fee of \$1,000 must accompany the application. In addition, the applicant is required to pay the cost of review of an application by the County, including staff time and third party legal and consulting fees for services retained by the County in review of the application. The applicant will be required to enter into a fee reimbursement agreement with the County before an application will be considered complete, and to pay a deposit toward application review costs in an amount to be determined by the County.
- (3) Notice of Complete Application.
 - (a) The Land Services Department will notify the applicant within 45 days of receipt of an application whether the application is complete. If the application is not complete, the Land Services Department will specify what additional information is needed. Notice of a complete application does not constitute approval.
 - (b) The Land Services Department will notify the applicant within 14 days of receipt of additional information whether the application is complete. If the application is not complete, the Land Services Department will specify what additional information is needed. Notice of a complete application does not constitute approval.
- (4) Notice to Town Board and Adjacent Landowners. The Land Services Department will send a copy of the notice of complete application to the town board for the town in which the proposed livestock facility is located and to adjacent landowners by first class mail within 14 days of issuing the notice to the applicant.
- (5) Timely Action; Extensions.
 - (a) The Land Services Department shall grant or deny an application within 90 days after it issues a notice of complete application.
 - (b) The Land Services Department may extend the time in which to grant or deny the application if additional information is needed to act on the application, if the applicant materially modifies the application, or if the applicant agrees to an extension. Land Services Department shall provide the applicant with a written notice of any extension containing the reason for the extension and the date by which the Land Services Department will act on the application.
- (6) Granting or Denying an Application.
 - (a) Except as permitted by par. (b), the Land Services Department shall grant a license if the application complies with the requirements of Wis. Admin. Code § ATCP 51.30 and the application contains sufficient credible information to show, in the absence of clear and convincing evidence to the contrary, that the proposed livestock facility meets or is exempt from the

standards contained in subchapter II of Wis. Admin. Code Ch. ATCP 51 and the standards contained in this ordinance.

- (b) The Land Services Department shall deny an application if it finds that the application fails to meet the standard for approval under par. (a) or finds, based on clear and convincing information in the record, that the proposed livestock facility does not comply with an applicable standard under subchapter II of Wis. Admin. Code Ch. ATCP 51.

(7) Written Decision.

- (a) The Land Services Department's decision to grant or deny a license must be made in writing. The decision must be based on written findings of fact that are included in the decision and the findings must be supported by evidence in the record. Findings may be based on presumptions created by Wis. Admin. Code Ch. ATCP 51.
- (b) The Land Services Department, within 30 days of its decision granting or denying an application, shall provide the Department with a copy of the decision and a copy of the application as approved or denied, including all worksheets, maps, and other documents included with the application, except that the copy does not need to include engineering design specifications.

7. Administration and Enforcement.

- (1) This ordinance will be administered by the Land Services Department, and the Director or designated staff shall:
 - (a) Keep an accurate record of all license applications, licenses issued, plans, inspections, and other official actions.
 - (b) Review license applications and make recommendations to the Natural Resources Committee regarding issuance of licenses under this ordinance.
 - (c) Investigate complaints relating to compliance with this ordinance.
 - (d) Perform any other duties specified in this ordinance or by the County Board.
- (2) Inspection Authority. The Land Services Department may, upon notice to the owner or operator, request permission to inspect, at a reasonable time and date, any livestock facility premises to determine compliance with this ordinance. If permission is not given, the Land Services Department may seek an inspection warrant under Wis. Stat. § 66.0119. Refusal by an owner or operator of a livestock facility to allow access to property under an inspection warrant is considered constructive withdrawal by the applicant of any application submitted with respect to the property, may be grounds for revocation of a previously-issued siting approval, and may result in penalties or other enforcement action.

- (3) Notice of Noncompliance. If a licensed facility is found not to be in compliance with an approved application, state law, or this ordinance, the Land Services Department may issue a written notice of noncompliance to the owner or operator stating the conditions of non-compliance, directing the action required to come into compliance, and providing a reasonable amount of time within which compliance is required. The notice of noncompliance may include a stop work/operations order. An owner or operator who disputes the alleged noncompliance may, within 30 days of receipt of the notice of noncompliance, appeal the notice of noncompliance and request a hearing before the Natural Resources Committee.
- (4) Citation Authority. The Director or designated staff may issue a citation for any violation of this ordinance if an owner or operator fails to comply with a notice of noncompliance.
- (5) Revocation Authority. The Director or designated staff may recommend to the Natural Resources Committee that it revoke a license for substantial noncompliance with any provision of this ordinance, substantial noncompliance with any commitment made in an application, violation of a condition contained in a license, refusal to permit inspection of a premises for which a license has been applied for or granted, or failure to comply with the action requirement contained in a notice of noncompliance. The Natural Resources Committee shall hold a hearing on the Director's or designated staff's recommendation.
- (5) Legal Referral. The Director, designated staff, or the Committee may refer a violation of this ordinance to Corporation Counsel for legal action, including an action seeking injunctive relief, if an owner or operator fails to comply with any action requirement contained in a notice of noncompliance.
- (6) Nothing in this section may be construed to prevent the county from using any other lawful means to enforce this ordinance.

8. Hearings and Appeals.

- (1) The Natural Resources Committee is authorized to hear and decide appeals by an applicant or licensee where it is alleged that there is an error in any decision, determination, notice, order, or requirement issued by the Director or designated staff.
- (2) The Natural Resources Committee is authorized to hear and decide upon any recommendation from the Director or designated staff to revoke a license. The Natural Resources Committee may revoke a license if, after due notice to the livestock facility owner and a public hearing, it determines that revocation is appropriate.
- (3) In addition to any other appeal rights, an appropriate party may appeal a decision under Wis. Stat. § 93.90.

9. Violations.

- (1) It is unlawful for any person to own or operate a livestock facility without a license that is required by this ordinance, to violate any provision of this ordinance, to violate any condition contained in a license issued pursuant to this ordinance, or to fail to fulfill any commitment made in an approved license application.
- (2) It is unlawful for any person to knowingly provide false information, make a false statement, or fail to provide or misrepresent any material fact to a county agent, board, commission, committee, department, employee, officer, or official acting in an official capacity under this ordinance
- (3) It is unlawful for a person to disobey, fail, neglect, or refuse to comply with, or otherwise resist an order issued pursuant to this ordinance.
- (4) A separate offense is deemed committed on each day that a violation occurs or continues.

10. Penalties.

- (1) A person will, upon conviction for a violation of this ordinance, forfeit not less than \$500 nor more than \$1,000 for each offense, together with any applicable assessments, costs, surcharges, and the costs of prosecution for each violation, and may be ordered to take such action as is necessary to abate the offense within a specified time.
- (2) The minimum and maximum forfeitures specified in this section are doubled each time that a person is convicted for the same violation of this ordinance within any 24-month period.
- (3) In the event an offense is not abated as ordered, Burnett County may take such action as is necessary to abate the offense and the cost of such abatement will become a lien upon the person's property and may be collected in the same manner as other taxes.

11. Effective Date. This ordinance is effective on _____, 2023.