

Title 14 Chapter 1

Livestock Facilities Licensing

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Sec. 14-1-1 Title/Purpose

The title of this Chapter is Livestock Facilities Licensing. The purpose of this Chapter is to comply with the requirements of § 93.90 of Wis. Statutes and ch. ATCP 51, Wis. Adm. Code (ATCP 51), establishing Livestock Facilities licensing standards and procedures in the Town of Arlington and providing the authority to protect the public health and safety of the people of the Town of Arlington. This Chapter sets forth the procedures for obtaining a license for the siting of new and expanded Livestock Facilities in the Town of Arlington.

Sec. 14-1-2 Authority

The Town Board of the Town of Arlington has the specific authority to adopt this ordinance pursuant to the powers granted under the Wisconsin Constitution and Wisconsin Statutes, including, but not limited to Wis. Stat. §§ 93.90, 92.15 and ch. ATCP 51, Wis. Adm. Code (ATCP 51).

Sec. 14-1-3 Definitions

- (A) The following definitions found in ATCP 51 are applicable to this Chapter:

- (1) 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.
- (2) Animal Unit has the meaning that was given in § NR 243.03 (3) as of April 27, 2004.
- (3) Complete Application For Local Approval means an application that contains everything required under § ATCP 51.30 (1) to (4).
- (4) Expanded Livestock Facility means the entire Livestock Facility that is created by the Expansion, after May 1, 2006, of an existing Livestock Facility. Expanded Livestock Facility includes all Livestock Structures in the expanded facility, regardless of whether those structures are new, existing or altered.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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.

(9) Manure means excreta from Livestock kept at a Livestock Facility. Manure includes Livestock bedding, water, soil, hair, feathers, and other debris that becomes intermingled with Livestock excreta in normal Manure handling operations.

(10) 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.

(11) Operator means a Person who applies for or holds a local approval for a Livestock Facility.

(12) Person means an individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity.

(13) Populate means to add Animal Units for which local approval is required.

(14) Property Line means a line that separates parcels of land owned by different Persons.

(15) 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:

- i. They are located on the same tax parcel or Adjacent tax parcels of land.
- ii. They use one or more of the same Livestock Structures to collect or store Manure.
- iii. At least a portion of their Manure is applied to the same landspreading acreage.

(16) Separate Species Facility means a Livestock Facility that meets all of the following criteria:

- i. 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 under sub. (15):
 - a. Cattle.
 - b. Swine.
 - c. Poultry.
 - d. Sheep.
 - e. Goats.
- ii. It has no more than 500 Animal Units.

- iii. 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 under sub. (15).
- iv. It meets one of the following criteria:
 - a. 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 under sub. (15).
 - b. It and the other Livestock Facilities to which it is related under sub. (15) have a combined total of fewer than 1,000 Animal Units.

(17) 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.

(18) 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 §§ ATCP 51.12 (2) and 51.14, Waste Storage Structure does not include any of the following:

- i. A structure used to collect and store waste under a Livestock housing facility.
- ii. A Manure digester consisting of a sealed structure in which Manure is subjected to managed biological decomposition.

(19) WPDES Permit means a Wisconsin pollutant discharge elimination system permit issued by DNR under ch. NR 243.

(20) Town means the Town of Arlington, Columbia County, Wisconsin.

(B) The remaining definitions in ATCP 51 are hereby incorporated by reference without reproducing them in full in this Chapter.

Sec. 14-1-4 License Required

(A) General. A license issued by the Town 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:

- i. The applicable size threshold for a license.
- ii. 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 a Livestock Facility that existed before May 1, 2006 or before the effective date of the license requirement in this Chapter, 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.

Sec. 14-1-5 Licensing Administration

The Town Board or its designee shall be the Livestock Facility Siting Administrator who shall have the primary responsibility of administering this Chapter and matters related thereto.

Sec. 14-1-6 Licensing Standards

The standards for issuing a license are as follows:

(A) General. 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 Chapter, are incorporated by reference in this Chapter, without reproducing them in full.

(B) Setbacks. The following setbacks shall apply to Livestock Structures:

(1) Property lines. Except as provided for Waste Storage Structures, Livestock Structures must be located a minimum of 100 feet from the Property Line if the Livestock Facility will have fewer than 1,000 Animal Units, and a minimum of 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.

(2) Public road right-of-way. Except as provided for Waste Storage Structures, Livestock Structures must be located a minimum of 100 feet from public road right-of-way if the Livestock Facility will have fewer than 1,000 Animal Units, and 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.

(C) Waste Storage Structure. A new Waste Storage Structure may not be located within 350 feet of a Property Line, or within 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:

- (1) Located on the same tax parcel as a Waste Storage Structure in existence before May 1, 2006.
- (2) No larger than the existing structure.
- (3) No further than 50 ft. from the existing structure.
- (4) No closer to the road or Property Line than the existing structure.
- (5) This setback requirement does not apply to existing Waste Storage Structures, except that an existing structure within 350 feet of a Property Line or road may not expand toward that Property Line or road.

Sec. 14-1-7 License Application

Requirements. 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 Chapter. The Operator must file 4 duplicate copies of the application form, including worksheets, maps and documents (other than engineering design specifications) included in the application.

Sec. 14-1-8 License Application Fee

Application Fee. A non-refundable application fee of \$1000.00 payable to the Town of Arlington shall accompany an application for the purpose of offsetting the Town's costs to review and process the application.

Sec. 14-1-9 Application Procedure

(A) Completion. 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.

(B) Notice to Landowners. 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.

(C) Public Hearing. Upon determination of completeness the Town 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.

(D) Action. 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:

- (1) The political subdivision needs additional information to act on the application.
- (2) 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.

Sec. 14-1-10 Criteria for Issuance of a License

(A) Issuance. 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. A license shall be issued if the application for the proposed Livestock Facility:

- (1) Complies with this Chapter; and
- (2) Is complete; and
- (3) 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 Chapter, specifically § 14-1-6 above.

(B) Denial. A license shall be denied if any of the following apply:

- (1) The application, on its face, fails to meet the standard for approval in the previous paragraph,

(2) 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.

(3) Other grounds authorized by § 93.90, Stats., that warrant disapproving the proposed Livestock Facility.

Sec. 14-1-11 Record of Decision

(A) Written. 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.

(B) Applicant to Receive Copy. 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.

(C) Filing/Notice Requirements. The Town Clerk as required by ATCP 51.36 within 30 days of the Town's 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's decision.
- (2) File with the Department a copy of the final application granted or denied, if the Town has granted or denied an application under this Chapter. (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 has withdrawn a local approval under this Chapter, file with the department a copy of the Town's final notice or order withdrawing the local approval.

Sec. 14-1-12 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.

Upon change of ownership of the Livestock Facility, the new owner of the facility shall file information with the Town 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.

Sec. 14-1-13 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:

- (A) Begin populating the new or expanded Livestock Facility.
- (B) Begin constructing all of the new or expanded Livestock housing or Waste Storage Structures proposed in the application for local approval.

Sec. 14-1-14 License Terms and Modifications

A license and the privileges granted by a license issued under this Chapter is conditioned on the Livestock Operator's compliance with the standards in this Chapter, and with commitments made in the application for a license. The Operator may make reasonable changes that maintain compliance with the standards in this Chapter, 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 §14-1-13 of this Chapter.

Sec. 14-1-15 Compliance Monitoring

The Town shall monitor compliance with the Chapter as follows:

(A) Siting Administrator Inspection. Upon notice to the Livestock Facility Operator the Town may request the right of the Town Livestock Facility Siting Administrator under §14-1-5 of this Chapter 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) Inspection by warrant. If the Livestock Facility Operator refuses the Town 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 § 66.0119 of Wis. Statutes.

(C) Non-compliance. 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 Operator 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) Enforcement. 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 Chapter, including but not limited to issuance of a citation or seeking of injunctive relief.

(E) Disputes. If the Livestock Facility Operator disputes that the conditions of the license have not been complied with, the Livestock Facility Operator may request a hearing in writing within five days of receipt of the notice of non-compliance. The Town Board 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.

Sec. 14-1-16 Variances

(A) Variance Application and Standards. Where, in the judgment of the Town Board, on the recommendation of the Plan Commission, it would be inappropriate to apply literally the provisions of this Chapter because exception or undue hardship would result, the Town Board may waive or modify any requirements to the extent deemed just and proper. Application for any such variance shall be made in writing by the Operator at the time when the Complete Application For Local Approval is filed, stating fully all facts relied upon by the Operator and shall be supplemented with maps, plans or other additional data which may aid the Town Board in its decision to grant or deny the variance.

(B) Findings Necessary to Support Variance. The Plan Commission shall not recommend nor shall the Town Board grant a variance to the regulations of this Chapter unless it shall make findings based upon the evidence presented to it in each specific case that:

(1) Public Health and Safety. The granting of the variance will not be detrimental to the public safety, health or welfare or injurious to other property or improvements in the neighborhood in which the Livestock Facility is located.

(2) Uniqueness. The conditions under which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.

(3) Particular Property Features. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the Operator would result, as distinguished from a mere inconvenience, financial hardship or self-imposed hardship, if the strict letter of the regulations were carried out.

(C) Approval and Notice of Variance. The Town Board, if it approves the variance, shall do so by motion or resolution and instruct the Town Clerk to notify the Operator.

(D) Voting Requirements. Such relief shall be granted without detriment to the public good, without impairing the intended purpose of this Chapter or the desirable general development of the Town in accordance with any Town land use plan or

component thereof, this Chapter, or the Zoning Code of Columbia County. A majority vote of the entire membership of the Town Board shall be required to grant any modification of this Chapter, and the reason shall be entered in the minutes of the Board.

Sec. 14-1-17 Penalties

Any Person who violates any of the provisions of this Chapter, or who fails, neglects or refuses to comply with the provisions of this Chapter, 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 citation as provided in Title 9, Chapter 3 of the Town's Code of Ordinances with the following penalties:

(A) Fine. Except as otherwise specified, any Person violating any provision of this Chapter shall be subject to a fine of not less than \$200.00 nor more than \$350.00 as a first offense and a fine of not less than \$350.00 nor more than \$500.00 for any subsequent offense

(B) Cash Deposit. In the event of violation of this Chapter, a cash deposit for inclusion in the citation is established as follows: 1st offense: \$275.00; 2nd offense (and each subsequent day or offense) \$425.00.

(C) Repeated Violations. Each day a violation exists or continues shall be considered a separate offense under this Chapter.

(D) Injunctive Relief. In addition, the Town Board may seek injunctive relief from a court of record to enjoin further violations.

(E) Suspension or Revocation of License. In addition, the Town Board may suspend or revoke the local approval of a license under this Chapter after due notice to the Livestock Facility Operator 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 Chapter, the cost of abatement of any public nuisance on the licensed premises by the Town may be collected under this Chapter or § 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 § 66.0627 of Wis. Statutes unless paid earlier.

Sec. 14-1-18 Appeals

In addition to other appeal rights provided by law, § 93.90 (5), Stats, provides that any "aggrieved person" may request review by the Livestock Facility Siting Review Board of any decision by the Town in connection with a permit application. An "aggrieved person"

may challenge the decision on the grounds that the Town incorrectly applied the standards under this Chapter or violated § 93.30, Stats.

An “aggrieved person” under this section as defined in § 93.90 (5) of Wis. Statutes means a person who applied to the Town 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.

Any appeal brought under this section must be requested with 30 days of the Town approval or disapproval or within 30 days after the decision on appeal before the Town Board.

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

Sec. 14-1-19 Severability

If any provision of this Chapter or its application to any Person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Chapter that can be given effect without the invalid provision or application, and to that end, the provisions of this Chapter are severable.