

Section 6.01 Livestock Facility Siting

6.01(A) Title/Purpose

The title of this Section is Livestock Facility Siting. The purpose of this Section is to comply with requirements of Wis. Stat. § 93.90 and Wis. Admin. Code ATCP ch. 51, and to establish standards and authority to protect the public health and safety of the people of the Town of Leeds. This Section sets forth the procedures for obtaining a license for the siting of new and expanded livestock facilities in the Town of Leeds.

6.01(B) Authority

This Section is adopted pursuant to the powers granted under Wisconsin Constitution, and Wisconsin Statutes including but not limited to Wis. Stat. §§ 92.15 and 93.90. Further this Section is adopted pursuant to the powers granted to the Town Board under the grant of village powers pursuant to Wis. Stat. § 60.22 for the protection of public health and safety.

6.01(C) Definitions

(1) Adjacent. 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. Equivalent units of livestock. The number of animals constituting an “animal unit” varies by species. For example, one milking dairy cow equals 1.4 “animal units.” A beef animal over 600 lbs. equals 1.0 “animal units.” A pig over fifty five (55) lbs. equals 0.4 “animal units.” A laying chicken equals 0.01 “animal unit.” The number of “animal units” kept at a livestock facility means the largest number of “animal units” that will be at the livestock facility on at least ninety (90) days in any twelve (12) month period. Calculate “animal units” according to worksheet

(3) Complete Application for Local Approval. An application that contains everything required under § ATCP 51.30(1) to (4).

(4) Expanded Livestock Facility. The entire livestock facility created by an expansion, including new, existing and altered livestock structures (existing structures are subject to less rigorous standards). Your application must indicate the maximum number of animal units that you will keep at the “expanded livestock facility.

(5) Expansion. An increase in the largest number of animal units kept at a livestock facility on at least ninety (90) days in any twelve (12) month period. The acquisition of an existing livestock facility, by the operator of an adjacent facility, is not

an “expansion” unless the operator increases the largest number of animal units kept at the combined livestock facilities on at least 90 days in any twelve (12) month period.

(6) Livestock. Cattle, swine, poultry, sheep or goats.

(7) Livestock Facility. A feedlot, dairy farm, or other operation where livestock are or will be fed, confined, maintained, or stabled for a total of forty five (45) days or more in any twelve (12) month period. A “livestock facility” includes all of the tax parcels on which the facility is located, but it does NOT include a parcel used only for pasture or as a winter grazing area. Related livestock facilities are considered a single “livestock facility,” except a livestock operator may elect to treat a separate species facilities as a separate livestock facility.

(8) Livestock Structure. A building or structure such as a barn, milking parlor, feed storage facility, feeding facility, animal lot or waste storage structure. Pastures, winter grazing areas and machine sheds are NOT “livestock structures.”

(9) Manure. 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. A livestock facility used for the first time, or for the first time in at least five (5) years.

(11) Operator. A person who applies for or holds a local approval for a Livestock Facility.

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

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

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

(15) Related Livestock Facilities. Two (2) or more livestock facilities that are owned or managed by the same person and meet any of the following criteria:

- (a) They are located on the same tax parcel or adjacent tax parcels.
- (b) They use any of the same livestock structures to collect or store manure.
- (c) They generate manure that is applied to the same parcel of land.

(16) Separate Species Facility. A distinct part of a livestock facility that meets all of the following criteria:

(a) It has only one of the following types of livestock, and that type is not found in any other part of the livestock facility:

- (i) Cattle
- (ii) Swine
- (iii) Poultry
- (iv) Sheep
- (v) Goats

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

(c) Its animal housing and manure storage structures, if any, are located at least seven hundred fifty (750) feet from livestock structures that are used by other parts of the livestock facility.

(17) Waste Storage Facility. A waste storage structure and any attached piping or equipment used to load or unload the structure.

(18) Waste Storage Structure. An embankment structure, excavated pit, dugout or fabricated structure that is used to store manure, milking center waste or other organic waste generated by a livestock facility. For the purposes of waste storage structure setback (application form, A-2) and worksheet 2, a “waste storage structure” does not include a structure used to collect and store waste under an animal housing facility, or a manure digester consisting of a sealed structure in which manure is subjected to managed biological decomposition.

(19) WPDES Permit. Wisconsin Pollutant Discharge Elimination System permit issued by DNR for a concentrated animal feeding operation over one thousand (1000) animal units, or for operations of any size that discharge pollutants directly to waters of the state.

(20) Remaining Definitions. The remaining definitions in ATCP 51 are hereby incorporated by reference without reproducing them in full in this Section.

6.01(D) License Required

(1) General. A license issued by the Town of Leeds is required for *new or expanded* livestock facilities that will have five hundred (500) or more animal units.

(2) Licenses for Existing Livestock Facilities

(a) 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.

(b) A license is not required for livestock facility that existed before May 1, 2006, except as provided in sub. 1.

(c) 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.

6.01(E) Licensing Administration

The Town of Leeds does hereby create the position of Livestock Facility Siting Administrator who shall have the primary responsibility of administering this Section and related matters thereto. The Livestock Facility Siting Administrator shall be appointed by the Town Board to serve at the pleasure of said Board.

6.01(F) Licensing Standards

The standards for issuing a license are as follows:

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

(2) The following setbacks shall apply to livestock structures:

(3) Property lines:

(a) Except as provided for waste storage structures, livestock structures must be located a minimum of one hundred (100) feet from the property line if the livestock facility will have fewer than one thousand (1,000) animal units, and two hundred (200) feet from the property line if the livestock facility will have one thousand (1,000) or more animal units.

(b) 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.

(4) Public road right-of-way:

(a) Except as provided for waste storage structures, livestock structures must be located a minimum of one hundred (100) feet from public road right-of-way if the livestock facility will have fewer than one thousand (1,000) animal units, and one hundred fifty (150) feet from a public road right-of-way if the livestock facility will have one thousand (1,000) or more animal units.

(b) 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.

(5) Waste Storage Structure:

(a) A new waste storage structure may not be located within three hundred fifty (350) feet of a property line, or within three hundred fifty (350) feet of the nearest point of any public road right-of-way.

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

(i) Located on the same tax parcel as a waste storage structure in existence before May 1, 2006.

(ii) No larger than the existing structure.

(iii) No further than fifty (50) feet from the existing structure.

(iv) No closer to the road or property line than the existing structure.

(c) This setback requirement *does not apply* to existing waste storage structures, except that an existing structure within three hundred fifty (350) feet of a property line or road may not expand *toward* that property line or road.

(d) A new waste storage structure may not be located within three hundred fifty (350) feet of a property line, or within three hundred fifty (350) feet of the nearest point of any public road right-of-way.

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

(i) Located on the same tax parcel as a waste storage structure in existence before May 1, 2006.

(ii) No larger than the existing structure.

(iii) No further than 50 ft. from the existing structure.

(iv) No closer to the road or property line than the existing structure.

6.01(G) License Application

(1) 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 Section.

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

6.01(H) License Application Fee

A non-refundable application fee as established by resolution in the Town's Fee Schedule shall be payable to the Town of Leeds shall accompany an application for the purpose of offsetting the town/county costs to review and process the application.

6.01(I) Application Procedure

(1) Pursuant to ATCP 51.30 (5), within forty five (45) days after the Town 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 fourteen (14) days after the applicant provides all of the required information, the Town shall notify the applicant that the application is complete. This notice does not constitute an approval of the proposed livestock facility.

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

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

(4) The Town Plan Commission shall review the application and make a recommendation to the Town Board prior to the Town issuing a License.

(5) Pursuant to ATCP 51.32, the Town shall grant or deny an application within ninety (90) days after the Town gives notice that the application is complete under paragraph 2 above. The Town may extend this time limit for good cause, including any of the following:

(a) The Town needs additional information to act on the application.

(b) The applicant materially modifies the application or agrees to an extension.

The Town 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.

6.01(J) Criteria for Issuance of a License

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

(a) Complies with this Section, and

(b) Is complete, and

(c) 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 Section, specifically Section 6.01(F) above.

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

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

(b) The Town finds, based on other clear and convincing information in the record, that the proposed livestock facility does not comply with applicable standards in this Section.

(c) Other grounds authorized by Wis. Stat. § 93.90, that warrant disapproving the proposed livestock facility.

6.01(K) Record of Decision

(1) Written Decision. The Town shall 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.

(2) Appeal. If the Town 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.

(3) Notice. The Town Clerk as required by ATCP 51.36 within thirty (30) days of the town decision on the application shall do all of the following:

(a) Give the Department of Agriculture, Trade and Consumer Protection written notice of the Town decision.

(b) File with the Department a copy of the final application granted or denied, if the Town has granted or denied an application under this Section.

(c) If the Town has withdrawn a local approval under this Section, file with the Department a copy of the Town final notice or order withdrawing the local approval.

6.01(L) Transferability of License

(1) Approved Application May be Recorded. 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.

(2) Request Ownership Charges. The Town requests that 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.

6.01(M) 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 Town may treat a license as lapsed and withdraw the license if the license holder fails to do all of the following within two (2) years after issuance of license:

(1) *Begin* populating the new or expanded livestock facility.

(2) *Begin* constructing all of the new or expanded livestock housing or waste storage structures proposed in the application for local approval.

6.01(N) License Terms and Modifications

A license and the privileges granted by a license issued under this Section is conditioned on the livestock operator's compliance with the standards in this Section, and with commitments made in the application for a license. The operator may make reasonable changes that maintain compliance with the standards in this Section, and the political subdivision shall not withhold authorization for those changes. A violation of the license or a failure to comply with the commitments made in the application may result in suspension and/or termination of the license as provided in Section 6.01(M) of this Section.

6.01(O) Compliance Monitoring

The political subdivision shall monitor compliance with this Chapter as follows:

(1) Upon notice to the livestock facility owner request the right of the Town Livestock Facility Siting Administrator under Section 6.01(E) of this Section 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.

(2) If the livestock facility owner 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 Wis. Stat. § 66.0119.

(3) If a licensed premises is found not to be in compliance with the commitments made in the approved application, the Livestock Facility Siting Administrator shall issue a written notice to the livestock facility owner stating the conditions of non-compliance and directing that compliance of the commitments of the approved application and license be complied with in a reasonable amount of time stated in this written notice.

(4) 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 Section, 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 license have not been complied with, the livestock facility owner may request a hearing in writing within five (5) days of receipt of the notice of non-compliance. The Town Board shall schedule a hearing within five (5) 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.

6.01(P) Violations

Any person who violates any of the provisions of this Section, or who fails, neglects or refuses to comply with the provisions of this Section, or who knowingly makes any material false statement or knowing omission in any document required to be submitted under the provisions hereof, shall be subject to the penalties provided in Section 3.02 of the Code.

(1) Each day a violation exists or continues shall be considered a separate offense under this Section.

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

(3) In addition, the Town Board may suspend or revoke the local approval of a license under this Section after due notice to the livestock facility owner and a public hearing to determine whether the license should be suspended or revoked.

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

(5) In addition to any other penalty imposed by this Section, the cost of abatement of any public nuisance on the licensed premises by the Town may be collected under this Section or Wis. Stat. § 823.06 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 Wis. Stat. § 66.0627 unless paid earlier.

6.01(Q) Appeals

(1) In addition to other appeal rights provided by law, Wis. Stat. § 93.90(5), 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 Section or violated Wis. Stat. § 93.30.

(2) An "aggrieved person" under this Section as defined in Wis. Stat. § 93.90(5), means a person who applied to a 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.

(3) An "aggrieved person" may request review of any decision of the Livestock Facility Siting Administrator decision or action by the Town Board.

(4) 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.

(5) Any appeal to the State Livestock Facility Siting Review Board shall comply with Wis. Stat. § 93.90 and administrative rules of said Board.