

REPEAL OF CHAPTER 6-11 ORDINANCE FOR LICENSING LIVESTOCK FACILITIES AND RECREATION AS CHAPTER 14 LIVESTOCK FACILITY LICENSING ORDINANCE

WHEREAS, authority is granted to Lafayette County to establish an ordinance for new and expanding livestock facilities by Sections 92.15 and 93.90, Wis. Stats.; and

WHEREAS, the ordinance establishes standards and procedures for the issuance of licenses for new and expanded livestock facilities housing 750 animal units or greater in compliance with Sec. 93.90 of Wis. Stats. and Ch. ATCP 51, Wis. Adm. Code; and

WHEREAS, on May 17, 2016, Lafayette County adopted its current Ordinance for Licensing Livestock Facilities; and

WHEREAS, the Land Conservation Committee (LCC) have reviewed the need for revisions to the current ordinance and chapter number; and

WHEREAS, at the January 9, 2024 meeting of the Land Conservation Committee it was voted to approve the current revision of the proposed Chapter 14 Livestock Facility Licensing Ordinance.

NOW, THEREFORE, BE IT RESOLVED, by the Lafayette County Board of Supervisors that Chapter 6-11 Ordinance for Licensing Livestock Facilities is repealed and a new Chapter 14 Livestock Facility Licensing Ordinance is created and is attached as Exhibit A.

Respectfully submitted

LAND CONSERVATION COMMITTEE

Carmen K McDonald
Carmen McDonald, Chair

Jed Gant
Jed Gant

Lee A. Gill
Lee A. Gill

Larry Ludlum
Larry Ludlum

Luke McGuire
Luke McGuire

Joseph W Riechers
Joe Riechers

LEGAL NOTE: Within County Board Authority

FISCAL NOTE: The fiscal impact could not be determined. Any revenue and/or costs associated with this ordinance in the future will be included in the Land Conservation Department budget.

I, Carla Jacobson, Clerk of the County of Lafayette, State of Wisconsin, do certify that the Lafayette County Board of Supervisors at a meeting held on March 19, 2024 adopted this resolution.

Carla Jacobson
Carla Jacobson
Lafayette County Clerk

Chapter 14

Licensing Livestock Facilities

Date Approved: 5/17/2016
Revision, Name Change and Approved: 3/19/2024
Resolution: 62-23

1. Authority

This Ordinance is adopted pursuant to the powers granted by Sec. 92.15 and 93.90 of Wis. Stats.

2. Title

This ordinance shall be known as, referred to, and may be cited as Lafayette County Licensing Livestock Facilities Ordinance and is hereafter known as the Ordinance.

3. Purpose

The purpose of this Ordinance is to protect the public health and safety of the people of Lafayette County by establishing standards and procedures in compliance with Sec. 93.90 of Wis. Statutes and Ch. ATCP 51, Wis. Adm. Code (ATCP 51) for the issuance of licenses for new and expanded livestock facilities.

4. Applicability

This ordinance applies to all of the unincorporated areas of Lafayette County.

5. Interpretation

In its interpretation and applications, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of Lafayette County, and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes. 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

Each Section, paragraph, sentence, clause, word and provision of this Ordinance is severable and if any portion shall be deemed unconstitutional or invalid for any reason, such decision shall not affect the remainder of the Ordinance nor any part thereof other than the portion affected by such decision.

7. Definitions

- A. For the purposes of this Ordinance, the following definitions shall be used. The word "shall" is mandatory and not directory.
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 s. NR243.03 (3) as of April 27, 2004. *Note: See s. 93.90 (1m) (a), Stats., and s. ATCP 51.04. "Animal unit" equivalents, for different species and types of livestock, are shown in Appendix A, worksheet 1 (animal units). The "animal unit" equivalents are based on s. NR 243.03 (3) as it existed on April 27, 2004 (the date on which the livestock facility siting law, 2003 Wis. Act 235, was published).*
 3. **"Complete application for local approval"** means an application that contains everything required under s. ATCP 51.30(1) to (4).
 4. **"DATCP"** means Wisconsin Department of Agriculture, Trade and Consumer Protection.
 5. **"Department"** means the Lafayette County Land Conservation Department and Planning & Zoning Department who act in collaboration. The term "County" may be used in this Ordinance to represent the "Department".
 6. **"Expanded Livestock Facility"** means the entire livestock facility that is created by the expansion, after the date of acceptance of this ordinance, 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.
 7. **"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.
 8. **"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.

9. **“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”.
10. **“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.
11. **“Manager”** means the Department Manager of the Land Conservation and Planning & Zoning Departments or designee.
12. **“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.
13. **“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.
14. **“Operator”** means a person who applies for or holds a local approval for a livestock facility.
15. **“Person”** means an individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity.
16. **“Populate”** means to add animal units for which local approval is required.
17. **“Property Line”** means a line that separates parcels of land owned by different persons.
18. **“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.

- 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 land spreading acreage.

19. **“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 under sub. (15):
 - 1. Cattle
 - 2. Poultry
 - 3. Sheep
 - 4. Goats
- b. It has no more than 750 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 under sub. (15).
- 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 under sub. (15).
 - 2. It and the other livestock facilities to which it is related under sub. (15) have a combined total of a fewer than 1,000 animal units.

20. **“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.

21. **“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.

22. **“WPDES Permit”** means a Wisconsin pollutant discharge elimination system permit issued by the DNR under ch. NR243.

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

8. License Requirements

A. **General:** A license is required for New or Expanded livestock facilities that will have 750 or more animal units.

B. Licenses for Existing Livestock Facilities:

1. A license is required for the expansion of a pre-existing or previously approved livestock facility if the number of animal units kept at the expanded livestock facility will exceed all of the following:
 - a. The applicable size threshold for a license.
 - b. The maximum previously approved or, if no maximum number was previously approved, a number that is 20% higher than the number kept on May 17th, 2016.
2. A license is not required for livestock facility that existed before the effective date of the license requirement in this ordinance, except as provided in Sec 8(B)(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 Sec. 8(B)(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.

9. Licensing Standards

A. **State Standards Adopted:** 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.

B. Property Line Setbacks

1. A livestock structure may not be located within 100 feet of a property line if the livestock facility will have 750 or more, but less than 1,000 animal units.

2. A livestock structure may not be located within 200 feet of a property line if the livestock facility will have 1,000 or more animal units.
3. The property line setback requirement does not prevent the use of a livestock structure that was located within the setback area prior to the effective date of the setback requirement.
4. The property line setback requirement does not prevent the expansion of a livestock structure that was located within the setback area prior to the effective date of the setback requirement, except that the structure may not be expanded toward a property line in such a way as to reduce any prior non-conforming setback.

C. Public Road Right-of-Way Setbacks

1. A livestock structure may not be located within 100 feet of a public road right-of-way if the livestock facility will have 750 or more, but less than 1,000, animal units.
2. A livestock structure may not be located within 150 feet of a public road right-of-way if the livestock facility will have 1,000 or more animal units.
3. The public road right-of-way setback requirement does not prevent the use of a livestock structure that was located within the setback area prior to the effective date of the setback requirement.
4. The public road right-of-way setback requirement does not prevent the expansion of a livestock structure that was located within the setback area prior to the effective date of the setback requirement, except that the structure may not be expanded toward a public road right-of-way in such a way as to reduce any prior nonconforming setback.

D. Waste Storage Structure Setbacks

1. Except provided in Sec. 9(D)(2), a new waste storage structure may not be located within 350 feet of a property line or a public road right-of-way.
2. A single new waste storage structure may be constructed within the setback area if it is constructed on the same tax parcel as a waste storage structure that existed prior to May 17th, 2016, provided that it is constructed no closer to a property line or public road right-of-way in such a way as to reduce any prior non-conforming setback, is no larger than the existing structure, and is located within 50 feet of the existing structure.

3. The waste storage structure setback requirement does not prevent the use of a waste storage structure that was located within the setback area prior to the effective date of the setback requirement.

E. Setback Reductions

1. An applicable setback to a property line or public road right-of-way for a livestock structure or waste storage structure found in the above Sec. 9(B), Sec. 9(C) and Sec. 9(D) may be reduced to minimum of 50 feet, or no less than another applicable minimum for a livestock structure or waste storage structure as found in other Lafayette County Ordinances, whichever is greater, provided the all the following requirements are met:
 - a. Any proposed new livestock structure or waste storage to be built or expanded is for a livestock facility that existed before May 17th, 2016.
 - b. **For Reduced Setback for Property Lines:** An agreement, to be provided by the Manager, is signed by the applicant and by the adjacent property owner(s) whose property is adjacent to the property for which the reduced setback is being sought. The agreement must state the mutual agreed upon reduced setback, provided that it is no less than 50 feet or no less than another applicable minimum for a livestock structure or waste storage structure as found in another County ordinance, whichever is greater. The signed agreement must be submitted with the application. If the application is approved and the license is issued, said agreement shall be recorded with the Lafayette County Register of Deeds. Upon recording, the agreement shall be binding upon the property owner(s), their heirs, or assignees and shall run with the land until there is no longer a livestock facility at the premises, the livestock structure built or expanded with the reduced setback is demolished, the waste storage structure built or expanded with the reduced setback is properly abandoned, or by mutual agreement by the then adjacent property owners.
 - c. **For Reduced Setback for Public Road Right-of-Way:** An agreement, to be provided by the Manager, is signed by the applicant and by the governmental entity with jurisdiction whose public road right-of-way is adjacent to the property for which the reduced setback is being sought. The agreement must state the agreed upon applicable reduced setback, provided that it is no less than 50 feet or no less than another applicable minimum for a livestock structure or waste storage structure as found in another County regulation, whichever is greater. The signed agreement must be submitted with the application. If the application is approved and the license is issued, said agreement shall be recorded with the Lafayette County Register of Deeds. Upon recording, the agreement shall run with the land until there is no longer a livestock facility at the premises, the livestock structure built or expanded with the reduced setback is demolished, or

the waste storage structure built or expanded with the reduced setback is properly abandoned.

2. If an applicant meets the criteria and includes the required items as found in Sec. 9(E)(1) for a reduced setback in a submitted complete application for local approval, the reduced setback(s) as included in said application shall be considered a compliant setback for purposes of approval in lieu of the applicable setbacks in the above Sec. 9(B), Sec. 9(C), and Sec. 9(D).
3. Sec. 9(E)(1) shall apply to all subsequent applications for local approval with reduced setback being requested.
4. This subsection shall not otherwise alter the above Sec. 9(B), Sec. 9(C), and Sec. 9(D).

10. License Application

- A. A livestock operator must complete the application form and worksheets prescribed by ATCP 51, including any authorized local modifications. The application form and worksheets demonstrate compliance with standards in ATCP 51 and this ordinance.
- B. The operator must file 4 (four) duplicate copies of the application form, including worksheets, maps and documents (other than engineering design specifications) included in the application.

11. License Application Fee

A non-refundable application fee of \$1,000 payable to Lafayette County shall accompany an application for the purpose of offsetting the costs to review and process the application.

12. Application Procedure

- A. Pursuant to ATCP 51.30 (5) within 45 days after the Department 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 the Department shall notify the applicant that the application is complete. This notice does not constitute an approval of the proposed livestock facility.
- B. Pursuant to ATCP 51.30 (6) within 14 days after the Department notifies an applicant that the application is complete, the Department shall notify adjacent landowners of the application. The Department shall use the approved notice form in ATCP 51, and mail by first class mail a written notice to each adjacent landowner.

- C. Upon determination of completeness the Department 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 Sec. 12(D).
- D. Pursuant to ATCP 51.32, the Department shall grant or deny an application within 90 days after the Department gives notice that the application is complete under Sec. 12(B). The Department may extend this time limit for good cause, including any of the following:
 - 1. The Department needs additional information to act on the application.
 - 2. The applicant materially modifies the application or agrees to an extension.
- E. The Department 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.

13. Criteria for Issuance of a License

- A. A license shall be issued if the application for the proposed livestock facility:
 - 1. Complies with this ordinance, 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 ordinance, specifically Sec. 9.
- B. A license shall be denied if any of the following apply:
 - 1. The application, on its face, fails to meet the standard for approval outlined in Sec. 13(A).
 - 2. The Department 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 s. 93.90, Stats. that warrant disapproving the proposed livestock facility.

14. Record of Decision

- A. The Department 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. If the Department approve 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. The Department as required by ATCP 51.36 within 30 days of the county decision on the application shall do all of the following:
 - 1. Give DATCP written notice of the county decision.
 - 2. File with DATCP a copy of the final application granted or denied, if the 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 county has withdrawn a local approval under this ordinance, file with the DATCP a copy of the county final notice or order withdrawing the local approval.

15. License Conditions

- A. **General:** A license issued under this Ordinance is conditioned on compliance with the terms of this ordinance
- B. **Implementation:** An operator must begin populating the approved livestock facility and must begin construction on every new or expanded livestock housing structure and every new or expanded waste storage structure proposed in the application within two years of the issuance of a license or other local approval. If the operator begins to construct, expand or populate a livestock facility within two years, the license or local approval will continue in effect regardless of the rate at which the operator constructs, expands, or populates the facility and regardless of whether the operator exercises the full authority granted by the license or local approval.
- C. **Modification:** An operator must provide written notice to the County and obtain written approval from the County before making changes, other than minor alteration, to a license facility or deviating from any commitment made in an approved license application.

- D. **Transfer:** A license is transferable to a new owner or operator. The new owner or operator must provide the County with the new owner or operator's name and address within 30 days of the date of any change in the owner or operator.
- E. **Recording:** The owner or operator of a livestock facility may, at the owner or operator's expense, record the approved copy of the license application with the register of deeds.

16. Administration and Enforcement

- A. **Administrator:** This Ordinance shall be administered by the Department, and the Manager shall:
 - 1. Keep an accurate record of all license applications, licenses issued, plans, inspections, and other official actions.
 - 2. Review license applications and issue licenses under this ordinance
 - 3. Investigate complaints relating to compliance with this ordinance
 - 4. Perform any other duties specified in this ordinance.
- B. **Inspection Authority:** The Manager may, upon notice to the owner or operator, request permission to inspect, at a reasonable time and date, any premises for which a license has been applied for or granted to determine compliance with this ordinance. If permission is not given, entry onto the premises may be gained pursuant to Wis. Stat. sec. 66.0119. Refusal to grant permission to enter is grounds for denial or revocation of a license.
- C. **Notice of Noncompliance:** If a licensed facility is found not to be in compliance with any commitment contained in an approved application or any provision of this ordinance, the Director 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 order. An owner or operator who disputes that the conditions of the license have not been complied with may, within 30 days of receipt of a notice of noncompliance, appeal the notice of noncompliance and request a hearing before the Committee.
- D. **Citation Authority:** The Manager may issue a citation for any violation of this ordinance if an owner or operator fails to comply with the action requirement contained in a notice of non-compliance.

- E. **Revocation Authority:** The Manager may recommend to the Land Conservation Committee that it revoke a license for substantial non-compliance with any provision of this ordinance, substantial non-compliance 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 Land Conservation Committee shall hold a hearing on the Manager's recommendation.
- F. **Legal Referral:** The Manager or the Land Conservation 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 non-compliance.

17. Penalties

- A. Any person who violates any of the provisions of this Ordinance, or who fails, neglects or refuses to comply with the provisions of this ordinance, or who knowingly makes any material false statement or knowing omission in any document required to be submitted under the provisions hereof, shall be subject to the following penalties:
 - 1. Upon conviction by a court of law, pay a forfeiture of not less than \$100.00 nor more than \$1,000.00, plus the applicable surcharges, assessments and costs for each violation including attorney fees as allowable by law.
 - 2. Each day a violation exists or continues shall be considered a separate offense under this ordinance.
 - 3. In addition, the Land Conservation Committee may seek injunctive relief from a court of record to enjoin further violations.
 - 4. In addition, the Land Conservation Committee may suspend or revoke the local approval of a license under this ordinance after due notice to the livestock facility owner and a public hearing to determine whether the license should be suspended or revoked.
- B. The Department shall exercise sound judgment in deciding whether to suspend or revoke a license. The Department shall consider extenuating circumstances, such as adverse weather conditions, that may affect an operator's ability to comply.
- C. In addition to any other penalty imposed by this Ordinance, the cost of abatement of any public nuisance on the licensed premises by the 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.

18. Appeals

- A. In addition to other appeal rights provided by law, Sec. 93.90 (5), of Wis. Statutes provides that any “aggrieved person” may request review by the Livestock Facility Siting Review Board of any decision by the Lafayette County Land Conservation Committee in connection with a license application. An “aggrieved person” may challenge the decision on the grounds that the Lafayette County Land Conservation Committee incorrectly applied the standards under this ordinance or violated Sec. 93.90, of Wis. Statutes.
- B. 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 two miles of the livestock facility that is proposed to be sited or expanded, or a person who owns land within two miles of a livestock facility that is proposed to be sited or expanded.
- C. An “aggrieved person” may request review of any decision of the Manager or action by the Land Conservation Committee.
- D. Any appeal brought under this section must be requested within 30 days of the county approval or disapproval or within 30 days after the decision on appeal before the county committee.
- E. Any appeal to the State Livestock Facility Siting Review Board shall comply with Sec. 93.90 of Wis. Statutes and administrative rules of said board.

19. Effective Date

This Ordinance shall become effective upon its adoption by the Lafayette County Board of Supervisors and publication.