

CHAPTER 8

Licensing of Livestock Facilities

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7-8-1 Authority

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

7-8-2 Purpose and Findings

The purpose of this ordinance is to comply with requirements of section 93.90 of Wis. Statutes and Ch. ATCP 51, Wis. Adm. Code (ATCP 51), and to establish standards and authority to protect the public health and safety of the town of Packwaukee, Marquette County. This ordinance sets forth the procedure for obtaining a license for the siting of new and expanded livestock facilities in the Town of Packwaukee, Marquette County.

7-8-3 Definitions

Note the number corresponds to the section in ATCP 51 and are included for ease of use by local officials.

1. Adjacent
2. Animal Unit

- 9. Complete application for local approval
- 13. Expanded livestock facility
- 14. Expansion
- 18. Livestock
- 19. Livestock facility
- 20. Livestock structure
- 23. Manure
- 26. New Livestock Facility
- 28. Operator
- 30. Person
- 32. Populate
- 33. Property Line
- 36. Related Livestock Facilities
- 37. Separate Species Facility
- 43. Waste Storage Facility
- 44. Waste Storage Structure
- 47. WPDES Permit

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

7-8-4 License Required

A. General

A license issued by the Town of Packwaukee in the County of Marquette 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 preexisting or previous 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 licenses
- b. The maximum number previously approved or, if no number was previously approved, a number that is 20% higher than the number kept on August 1st, 2007

2) A license is not required for a livestock facility that existed before August 1st, 2007

3) A license is not required for a 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 approval of an entire livestock facility.

7-8-5 Licensing Administration

The Town of Packwaukee may at its discretion create the position of Livestock Facility Siting Administrator who shall have the primary responsibility of administering this ordinance and related matters hereto. The Livestock Siting Administrator shall be appointed by the Town Board to serve at the pleasure of said Board.

7-8-6 Licensing Standards

The standards for issuing a license are as follows:

1. The state livestock facility siting standards adopted under ATCP 51, Wis. Code, inclusive of all appendixes and worksheets and any future amendments to this chapter, except as may be noticed in this section of the ordinance, without reproducing them in full.
2. The following setback shall apply to livestock structures:

a) 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 1000 animal units, and 150 feet from the property line if the livestock facility will have 1000 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 structure may not be expanded closer to the property line.

b) Public Road Right-of-Way

Except as provided for waste storage structures, livestock structures must be located a minimum of 100 feet from a public road right-of-way if the livestock facility will have fewer than 1000 animal units, and 150 feet from a public road right-of-way if the livestock facility will have 1000 or more animal units. The set back requirement does not prevent the use of expansion of a livestock structure that was located within the setback area prior to the effective date of the setback requirement, except that 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 150 feet from a property line, or within 150 feet of the nearest point of any road right-of-way. A single new storage structure may be constructed closer to the property line or public road if a new structure is:

- Located on the same tax parcel as a waste storage structure in existence before August 1, 2007.
- No larger than the existing structure.
- No further than 50 feet from the existing structure.
- No closer to the road or property line than the existing structure.

This setback requirement does not apply to existing waste storage structures, except that an existing structure within 150 feet of a property line or road may be not expanded toward the property line or road.

7-8-7 License Application

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

7-8-8 License Application Fee

A non refundable application fee of \$150 payable to the Town of Packwaukee shall accompany an application for the purpose of offsetting the town cost to review and process the application.

7-8-9 Application Procedure

1. 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.

2. 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 the adjacent landowners of the application. The political subdivision shall use the approved 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 a notice of a public hearing to receive information from the applicant and receive public input on the application. Public notice should be a class 2 notice the last of which is 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. Pursuant to ATCP 51.32, a political subdivision shall grant or deny an application to an applicant within 90 days after the political subdivision gives notice that the application is complete under paragraph 2 above. A political subdivision may extend the time limit for good cause, including any of the following:

- The political subdivision needs additional information to act on the application.
- 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.

7-8-10 Criteria for issuance of a license

A license shall be issued if the application for the proposed livestock facility:

- Complies with this ordinance.
- Is complete, and

- contains sufficient 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 section 6 above.

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

- the application on its face, fails to meet the standard for approval in the previous paragraph,
- 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.
- other grounds authorized by s. 93.90 stats. That warrant disapproving the proposed livestock facility.

7-8-11 Record of Decision

A political subdivision must issue its decision in writing. The decision must be based on written finding of fact supported by evidence in the record. Findings may be based in part on the presumptions created by ATCP 51. 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 and other documents (other than engineering specifications) included in the application.

The town clerk as required by ATCP 51.36 within 30 days of the town's decision of the application shall do the following:

- Give the Department of Agriculture, Trade and Consumer Protection written notice of the town decision
- File with the Department a copy of the final application granted or denied, if the town 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 specifications)
- If the town has withdrawn a local approval under this ordinance, file with the Department a copy of the town final notice or order withdrawing the local approval. (Note the information in this paragraph shall be submitted to the Department of Agriculture, Trade and Consumer Protection at the following address:)

Wisconsin DATCP – Agricultural Resource Management Division
Bureau of Land and Water Resources
PO Box 8911
Madison, WI 53708-8911

7-8-12 Transferability of Licensees

A license and the privileges granted by this license run with the land approved under the license and remain in affect, 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 application may record with the registrar of deeds, at the applicants expense, the duplicate copy of the approved application. 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 name and address of the new owner and date of transfer of ownership.

7-8-13 Expiration of Licensees

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 two years after the issuance of the license:

- Begin populating or expanding livestock facility.
- Begin constructing all of the new or expanded livestock housing or waste storage structures proposed in the application for local approval.

7-8-14 License Terms and Modifications

A license and the privileges granted by a license granted under this ordinance is conditioned on the livestock operators compliance with the standards in this ordinance, and with the commitments made in the application for a license. The operator may make reasonable changes that maintain compliance with the standards in the ordinance, and the political subdivision shall not withhold authorizations for those changes. A violation of the license or failure to comply with the commitments made in the application may result in suspension and/or termination of the license as provided section 7-8-13 of this ordinance.

7-8-15 Compliance Monitoring

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

- a. Upon notice to the livestock facility owner request the right of the Town Livestock Facility Siting Administrator under section 7-8-5 of this ordinance to personally view the licensed premises at a reasonable time and date to ensure all commitments of the application as approved are being complied with.
- b. if the livestock facility owner refused 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 the public health and safety under section 66.0119 of Wis. Statutes.
- c. If a license 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 the noncompliance and directing that the compliance of the commitments of the approved application and license be complied with in a reasonable amount of time stated in the written notice.
- d. If noncompliance of the license conditions as described in the written notice given by the administrator passed the stated reasonable time to comply, the administrator may take further

action as provided in this ordinance, including but not limited to issuance of a citation seeking of injunctive relief.

e. If a livestock facility owner disputes the conditions of the license have not been complied with, the livestock facility owner may requires a hearing in writing within 5 days of receipt of notice of noncompliance. The Town Board shall schedule a hearing within 5 days to determine if the conditions of the license have complied with or whether noncompliance of the commitments of the approved application and local approval exist.

7-8-16 Penalties

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:

- upon conviction by a Court of law, pay a forfeiture of not less than \$250 nor more than \$1000, plus the applicable surcharges, assessments and costs for each violation
- Each day a violation exists or continues shall be considered a separate offense under this ordinance.
- In addition, the Town Board may seek injunctive relief from a Court of record to enjoin further violations.
- In addition, the Town Board 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.

A political subdivision shall exercise sound judgment I deciding whether to suspend or revoke a license. The political subdivision shall consider extenuation circumstances, such as adverse weather conditions, that may effect an operators ability to comply.

In addition to any other penalty imposed by this ordinance, the cost of abatement of any public nuisance on the licensed premises by the town may be collected under this ordinance or Sec. 823.06 Wis. Statues against the owner of the real estate upon which the public nuisance exists. Such cost of abatement may be recovered against the real estate as a special charge under Sec. 66.0627 Wis. Statues unless paid earlier.

7-8-17 Appeals

In addition to other appeal rights provided by law Sec. 93.90(5) Stats. Provides that any “aggrieved person” may request review by livestock facility siting review board of any decision by the (political subdivision) in connection with a permit application. An “aggrieved person” may challenge the decision on the grounds that the (political subdivision) incorrectly applied the standards under this ordinance or violated Sec. 93.90 Stats.

An “aggrieved person” under this section is defined in section 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 a 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.

An “aggrieved person” may request review of any decision of the livestock facility siting administrator decision or action of the Town Board.

Any appeal brought under this section must be requested within 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 section 93.90 of Wis. Statutes and administrative rules of said board.

7-8-18 Severability

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

7-8-19 Effective Date

This ordinance is effective as of August 1, 2007.