

ORDINANCE

TOWN OF CLEVELAND LIVESTOCK FACILITY LICENSING ORDINANCE

The Town Board of the Town of Cleveland, Chippewa County, does hereby ordain as follows: The following ordinance, Title 4, Chapter 6, is hereby adopted by the Town Board of the Town of Cleveland to be codified in the Town Code of Ordinances.

Chapter 6

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4-6-1 AUTHORITY

This ordinance is adopted pursuant to the powers granted under the Wisconsin Constitution and Wisconsin Statutes including but not limited to Sections 92.15 and 93.90, or any successor or administrative code. Further this ordinance is adopted pursuant to the powers granted to the Town Board of Cleveland under the grant of village powers pursuant to Section 60.22 of Wisconsin Statutes for the protection of public health and safety.

4-6-2 PURPOSE AND FINDINGS

The purpose of this ordinance is to comply with requirements of Section 93.90 of Wisconsin Statutes and Chapter ATCP 51 of the Wisconsin Administrative Code, and to establish standards and authority to protect the public health and safety of the people of the Town of Cleveland. This ordinance sets forth the procedures for obtaining a license for the siting of new and expanded livestock facilities in the Town of Cleveland. It also provides for the administration and enforcement of the ordinance and provides penalties for violations.

4-6-3 DEFINITIONS

Affected Neighbor: Anyone living within three miles of a new or expanded livestock facility.

Animal Unit: The meaning that is given in s NR 243.03(3).

Certified Agricultural Engineer Practitioner: An agricultural engineering practitioner who is certified under s. ATCP 50.46 with a rating under s. ATCP 50.46(5) that authorizes the practitioner to certify every matter that the practitioner certifies under this ordinance.

DNR: The Wisconsin Department of Natural Resources.

Expanded Livestock Facility: The entire livestock facility that is created by the expansion of an existing livestock facility. This includes all livestock structures in the expanded facility, regardless of whether those structures are new, existing, or altered.

Expansion: 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 an 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.

Livestock: Domestic animals traditionally used in the production of food, fiber, or other animal products. "Livestock" includes, but is not limited to, cattle, swine poultry, sheep, and goats. "Livestock" does not include animals kept for recreational purposes, such as equines.

Livestock Facility: 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 pasture or winter grazing areas. Related livestock facilities are collectively treated as a single "livestock facility" for the purposes of this ordinance, except that an operator may elect to treat a facility for a separate species as a separate "livestock facility."

Livestock Structure: A building or other structure used to house 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" does not include a pasture or winter grazing area, a fence surrounding a pasture or winter grazing area, a watering

facility in a pasture or winter grazing area, or a machine shed or other building not used for livestock.

Local Approval: An approval required by local ordinance of a new or expanded livestock facility. “Local Approval” includes any required license, permit, special exception, conditional use permit, or other form of local authorization.

Local Ordinance: An ordinance enacted by the Town of Cleveland.

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.

Minor Alteration of a Livestock Structure: A repair or improvement to an existing livestock structure that does not result in an expansion of the structure’s capacity for livestock.

New Livestock Facility: 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.

NRCS: The Natural Resource Conservation Service of the United States Department of Agriculture.

Operator: A person who applies for or holds a local approval for a livestock facility.

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

Populate: To add animal units for which local approval is required.

Related Livestock Facilities: 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 on 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 acreage.

Separate Species Facility: A livestock facility for a species of livestock that is not kept on any other related livestock facility, does not share manure storage structures with related livestock facilities, and does not have a combined total with related livestock facilities of more than 650 Animal Units.

Site that is susceptible to groundwater contamination: Any of the following:

- (a) An area within 250 feet of a private well
- (b) An area where the soil depth to groundwater or bedrock is less than 2 feet
- (c) An area where none of the following separates the ground surface from groundwater and bedrock:
 - a. A soil layer at least 2 feet deep that has at least 40 percent fine soil particles

- b. A soil layer at least 3 feet deep that has at least 20 percent fine soil particles
- c. A soil layer at least 5 feet deep that has at least 10 percent fine soil particles.

Substantially altered: A livestock structure that undergoes a material change in construction or use, including any of the following material changes:

- (a) An increase in the capacity of a waste storage facility
- (b) The addition of a liner to a waste storage facility
- (c) An increase in the area or capacity of a livestock structure used to house, feed, or confine livestock, such that the structure would be able to house more than 650 Animal Units, including those in related livestock facilities.
- (d) An increase in the number of animal units that will be kept in a livestock structure on at least 90 days in any 12-month period, such that the total would be greater than 650 Animal Units when combined with related livestock facilities.

Waste: Manure, waste from milking operations, and other organic waste generated by a livestock facility

Waste Storage Facility: 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.

Waste Storage Structure: 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.

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

4-6-4 LICENSE REQUIRED

A license issued by the Town of Cleveland is required for any new or expanded livestock facilities that will have 650 or more animal units.

4-6-5 LICENSING ADMINISTRATION

The Town of Cleveland Town Board shall administer this Ordinance and related matters, with review oversight and recommendation by the Town of Cleveland Plan Commission.

4-6-6 LICENSING STANDARDS

The standards for issuing a license are the state livestock facility siting standards adopted under ATCP 51, Wis. Adm. Code, inclusive of all appendixes and worksheets and any future

amendments. ATCP 51, Wisconsin Administrative Code, is here incorporated by reference, without reproducing it in full.

4-6-7 LICENSE APPLICATION

A livestock operator must complete the application form and worksheets prescribed by ATCP 51, including any justified local modifications.

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.

4-6-8 LICENSE APPLICATION FEE

The applicant shall pay a license application fee of \$1,000, submitted with the application, plus all costs incurred by the Town for review of the application, including the hiring of a Certified Agricultural Engineer Practitioner to determine if the application is complete and in compliance with ATCP 51, including any justifiable local modifications, and any field tests of soil and water determined to be necessary by the Practitioner.

4-6-9 APPLICATION PROCEDURE

The application procedure will be as prescribed by state law.

Upon receiving the completed application, the Town will:

1. Notify by mail within, two weeks, all residents within three miles of the proposed facility.
2. Post and conduct, within one month of receiving an application, a public hearing for the purpose of allowing Town residents to see and review the details of the proposed facility. The Town will request that the permit applicant(s) attend the hearing.

4-6-10 CRITERIA FOR ISSUANCE OF A LICENSE

1. A license for a new or expanded livestock facility shall be issued if the application for the proposed livestock facility meets all of the following criteria:

- The application complies with this ordinance
- The application is complete
- The applications 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.

2. 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 Town Board finds, based on clear and convincing information, that the proposed livestock facility does not or will not comply with applicable standards in this ordinance.
- Other grounds authorized by s. 93.90 that warrant disapproving the proposed livestock facility.

Other grounds authorized by law.

4-6-11 **RECORD OF DECISION**

Upon reaching a decision whether to approve or deny a license for a new or expanded livestock facility, the Town Board shall within 90 days issue its decision in writing to the applicant. If the application is approved, the Town Board shall also give the applicant a copy of the application, including all maps, worksheets, and other documents, marked "approved." A copy of any approved or denied application shall also be filed with DATCP

4-6-12 **TRANSFERABILITY OF LICENSE**

A Livestock Facility license issued by the Town of Cleveland shall run with the land and remain in effect despite any change in ownership of the livestock facility, as long as the new operator does not violate the terms of the local approval.

Upon any change of ownership of the livestock facility, the new owner of the facility shall provide the town clerk with the name, address, and phone number of the new owner, and the date of transfer of ownership.

4-6-13. **EXPIRATION OF LICENSE**

A Livestock Facility license issued by the Town of Cleveland shall be withdrawn should the license holder fail to do all of the following within 2 years after issuance of the license:

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

4-6-14 LICENSE TERMS AND MODIFICATIONS

A Livestock Facility license issued by the Town of Cleveland, and the privileges granted by such license, is conditioned on the livestock operator's continuing compliance with the standards in this Ordinance, and with commitments made in the application for a license.

Any violation of the license, or failure to comply with commitments made in the application, may result in suspension and/or termination of the license as provided in Sections 4-6-13 and 4-6-15 of this Ordinance.

4-6-15 COMPLIANCE MONITORING

The Town Board, or its designee, shall monitor compliance with the ordinance as follows:

- a. The Town Board or its designee may, upon written notice to the Livestock Facility owner, inspect the licensed premises at an agreed upon time and date in order to ensure that the facility is in compliance with the Ordinance.
- b. If the livestock facility owner refuses the Town Board or its designee the right to view the licensed premises, the Town Board 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 public health and safety, as allowed under s. 66.0119.
- c. If a licensed facility is found not to be in compliance with the requirements of and 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 that these conditions be rectified within a reasonable amount of time, which shall be stated in the written notice.
- d. If non-compliance as described in the written notice given by the Administrator continues past the stated reasonable time to comply, the Administrator may take further action, including but not limited to issuance of a citation or seeking of injunctive relief.
- e. If the livestock facility owner disputes that the conditions of the license have not been complied with, the livestock facility owner may request, in writing, a hearing in front of the Town Board within five days of receipt of the notice of non-compliance.
- f. The livestock facility owner shall pay for all engineering, legal, and other professional services involved with monitoring compliance.

4-6-16 PENALTIES

1. 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:

a. Upon conviction by a court of law, pay a forfeiture of not less than \$500 nor more than \$5,000, plus applicable surcharges, assessments and costs for each violation.

b. Each day a violation exists or continues shall be considered a separate offense under this ordinance.

c. Any costs incurred by the Town to abate violations of this Ordinance that threaten the public health or safety shall be collected by the Town from the owner of the Livestock Facility and/or from the owner of the real estate on which the facility is located, as specified in s. 66.0627.

2. The Town Board may suspend or revoke local approval of a license under this Ordinance, after due notice to the livestock facility owner and a public hearing.

3. The Town Board may seek injunctive relief from a court of record to enjoin further violations.

4-6-17 APPEALS

A Livestock Facility owner, affected neighbor, or any person living within 3 miles of a proposed Livestock Facility may challenge a decision by the Town Board regarding an application for a Livestock Facility license by requesting a review by the Wisconsin State Livestock Facility Siting Review Board. The request must be made within 30 days of the Town Board's decision, and shall comply with s. 93.90 and the administrative rules of the Review Board.

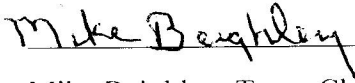
4-6-18 SEVERABILITY

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect 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.

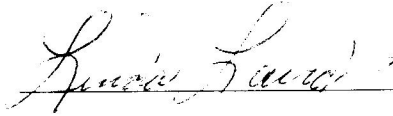
4-6-19 **EFFECTIVE DATE**

This ordinance is effective the day after publication.

Adopted this 11th day of November, 2019, by the Town of Cleveland Board of Supervisors.



Mike Beighley, Town Chair



Linda Laird, Town Clerk