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ANIMAL WASTE MANAGEMENT ORDINANCE

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19.01 Introduction. (1) Title. This section may be referred to as the Animal Waste Management Ordinance.

(2) Authority. This section is adopted under authority granted by Wis. Stat. secs. 59.02, 59.03, and 92.11.

(3) Purpose. The purpose of this ordinance is to promote the health and general welfare of the public by protecting the surface and groundwater of the County by regulating local land and water resource management practices.

(4) Applicability. This ordinance applies to all unincorporated areas of the County.

(5) Construction. This ordinance is to be interpreted liberally to effect the purposes of the ordinance. 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. The provisions of this ordinance are severable. If any provision or its application to any person or circumstance is determined to be invalid, that invalidity will not affect any other provision or application that can be given effect without the invalid provision or application.

19.02 Definitions. In this ordinance:

“Agricultural land” means land in agricultural use as defined in Wis. Stat. sec. 91.01(1).

“Animal waste” means manure from livestock, poultry or other animals; manure processing derivatives; leachate from manure piles, manure storage, or feed storage; and runoff or wastewater that contains manure.

“Best Management Practice” or “BMP” means a practice that has been determined to be the most effective, practicable means of preventing or reducing soil erosion or pollution from agricultural nonpoint sources to a level compatible with soil and water resource objectives. A best management practice may be identified by the United States Department of Agriculture, Natural Resources Conservation Service; the Wisconsin Department of Agriculture, Trade and Consumer Protection; the Wisconsin Department of Natural Resources; or Manitowoc County.

“Channel” means an area of concentrated surface water flow from a drainage area.

“Chapter 19 Map” means a map on file with the Soil and Water Conservation Department that identifies the land and water features subject to this ordinance that are not shown on a United States Geological Survey 1:24,000 quadrangle map.

“Director” means the Director of the Soil and Water Conservation Department or the Director’s designee.

“Incorporated” or “incorporation” means to blend, combine, or mix into the soil by any means, such as disking, injection, plowing, or rototilling.

“Intermittent stream” means a watercourse with a bed and bank where water does not flow continuously and that is identified as an intermittent stream on a United States Geological Survey 1:24,000 quadrangle map or the Chapter 19 Map

“Land Conservation Committee” or “LCC” means the Land Conservation Committee created by sec. 2.04(7).

“Liquid manure” means any liquid that contains manure that consists of less than 12% solids.

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“Livestock” means all fenced-in animals on a property that have a combined weight of 1,000 pounds or more and all animals in an agricultural operation if the operation meets or exceeds one animal unit as calculated using the Wisconsin Department of Natural Resources Animal Units Worksheet.

“Manure” means excreta from livestock kept at a livestock facility and includes feathers, hair, livestock bedding, soil, water, and other debris that becomes intermingled with livestock excreta in normal manure handling operations.

“Natural Resources Conservation Service” or “NRCS” means the United States Department of Agriculture agency that provides technical assistance and information in order to help people conserve, maintain, and improve our natural resources and environment.

“Ordinary High-Water Mark” or “OHWM” means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark, such as the absence of land plants, erosion, the predominance of aquatic plants, or any other easily recognized characteristic.

“Perennial stream” means a channel where water flows continuously and that is identified as a perennial stream on a United States Geological Survey 1:24,000 quadrangle map or the Chapter 19 Map.

“Runoff” means any liquid containing animal waste that flows over land in a flat sheet and cannot be controlled, directed, or eliminated using normal field cultivation practices; that follows a channel or depression; that follows a man-made path other than a path created by normal cultivation practices; that forms in the same area on a recurring basis; or that flows through a drain tile.

“Sinkhole” means any naturally occurring geologic formation that provides a direct conduit for surface water to groundwater.

“SWCD” means the Soil and Water Conservation Department.

“Technical Guide” means the United States Department of Agriculture (USDA), Natural Resources Conservation Service, Wisconsin Field Office Technical Guide, Section IV, which contains

technical data and technical standards referenced in this chapter. The technical guide can be accessed through the USDA website.

“Technical Standard” means a numbered section in the Technical Guide.

“Unconfined manure pile” means a quantity of manure that is greater than 500 cubic feet in volume that is not confined within a barnyard runoff control facility, livestock housing facility, or manure storage facility; covered; or contained in a manner that prevents storm water access, direct runoff to surface water, or the leaching of pollutants to groundwater.

19.03 Standards. Manitowoc County adopts the conservation practice standards promulgated by the United States Department of Agriculture, Natural Resources Conservation Service, Wisconsin Field Office Technical Guide and by the Wisconsin Department of Natural Resources. In the event that these conservation practice standards are revised, the LCC is authorized to adopt the revised standard, which will then be applied prospectively.

19.04 Regulation of Local Soil and Water Resource Management Practices Pursuant to Wis. Stat. sec. 92.11. (1) Application of this section in any town is subject to approval by a majority of all votes cast in the town in a referendum conducted in accordance with Wis. Stat. sec. 92.11(4) using the following question:

Shall the town approve the application of Manitowoc County Code Chapter 19 to the town in order to prevent surface and groundwater pollution, protect human health, prevent the spread of disease, and promote the general welfare of the citizens of Manitowoc County by regulating local soil and water management practices in the town; controlling the application of manure or other animal waste near bedrock, channels, drainage tile surface inlets, groundwater, lakes, ponds, sink holes, sloped fields, streams, and wells; and regulating the access of livestock to channels, drainage ditches, intermittent streams, lakes, and perennial streams?

(2) General Application Standards. (a) Application of manure must stop whenever there is

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ponding or runoff, including runoff through a drain tile.

(b) Immediate remedial action must be taken to contain any ponding or runoff, including runoff through a drain tile, that occurs during or following the mechanical application of manure.

(3) Limits on Application. Mechanical application of manure is only permitted to meet crop needs and is subject to the following limitations at all times during the year:

(a) No manure may be mechanically applied to land that is within 50 feet of any channel that flows to an intermittent stream, lake, perennial stream, pond, or sinkhole unless it is incorporated into the soil within 48 hours of application.

(b) No manure may be mechanically applied to exposed bedrock or to land that is within 100 feet of exposed bedrock. Manure that is mechanically applied to land that is more than 100, but less than 300, feet from exposed bedrock and that drains to exposed bedrock must be incorporated into the soil within 48 hours of application.

(c) No manure may be mechanically applied to land within 100 feet of a sinkhole. Manure that is mechanically applied to land that is more than 100, but less than 300, feet of a sinkhole or that drains to a sinkhole must be incorporated into the soil within 48 hours of application.

(d) No manure may be mechanically applied to land within 100 feet of a well. Manure that is mechanically applied to land that is more than 100, but less than 300, feet of a well and that drains to a well must be incorporated into the soil within 48 hours of application.

(e) No manure may be mechanically applied to land that is within 300 feet of and that drains to a drainage tile surface inlet, intermittent stream, perennial stream, or pond unless it is incorporated into the soil within 48 hours of application.

(f) No manure may be mechanically applied to land that is within 1,000 feet of a lake and that drains to the lake unless it is incorporated into the soil within 48 hours of application.

(4) Winter Application Standards. In addition to the limits on application contained in sub. (3),

mechanical application of manure during the period beginning on December 1 and ending on April 15 of the following year must comply with the following standards:

(a) Manure may be applied to land with a slope of less than 6% without being incorporated.

(b) Liquid manure that is applied to land with a slope that is 6% or greater must be incorporated within 48 hours of application.

(c) Manure other than liquid manure that is applied to land with a slope that is 6% or greater, but less than 12%, must be incorporated within 48 hours of application unless the field has contour strips, is in hay, or has 40% crop residue.

(d) All manure that is applied to land with a slope of 12% or greater must be incorporated within 48 hours.

(5) Spring, Summer, and Fall Application Standards. In addition to the limits on application contained in sub. (3), mechanical application of manure during the period beginning on April 16 and ending on November 30 of the same year must comply with the following standards:

(a) Manure may be applied to land with a slope of less than 6% without being incorporated.

(b) Manure that is applied to land with a slope that is 6% or greater, but less than 12%, must be incorporated within 48 hours of application unless the field has contour strips, is in hay, or has 40% crop residue.

(c) All manure that is applied to land with a slope of 12% or greater must be incorporated within 48 hours of application.

(6) Unconfined Manure Piles. Unconfined manure piles must comply with Technical Standard 313.

(7) Livestock and Grazing. Livestock are not permitted to access an intermittent stream, perennial stream, or lake except as authorized in a grazing permit issued by SWCD. The LCC is authorized to adopt procedures and standards for any grazing permit authorized in this subsection. LCC may seek advice from a Local Grazing Management Team that will consist of the Director and any other person

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LCC deems appropriate. The following permits are authorized:

(a) **Minimum Impact Grazing Permit.** A Minimum Impact Grazing Permit may be issued to any applicant that certifies that the applicant has no more than one animal unit for each contiguous 5 acres of pasture. An applicant must meet all standards established by LCC, but is not required to submit a grazing plan.

(b) **Low Density Grazing Permit.** A Low Density Grazing Permit may be issued to any applicant that certifies that the applicant has no more than 1 animal unit for each contiguous 3 acres of pasture. An applicant must meet all standards established by LCC and is required to submit a best management practices grazing plan.

(c) **Special Grazing Permit.** A Special Grazing Permit is required for all operations that do not qualify for a Minimum Impact Grazing Permit or a Low Density Grazing Permit. A Special Grazing Permit may be issued to any applicant that meets all standards established by LCC, complies with Technical Standard 528, and submits a best management practice grazing plan.

19.05 Land Conservation Committee Powers.

(1) The LCC is authorized to establish procedures and standards for the issuance of grazing permits.

(2) The LCC is authorized to hear and decide appeals where it is alleged there is error in any decision, determination, or order issued by the Director, except that this authority does not include the authority to hear appeals from a citation or any decision, determination, or order that may be appealed to the circuit court or that is otherwise subject to judicial review. Appeals under this ordinance will be conducted in accordance with Wis. Stat. Ch. 68.

(3) The LCC is authorized to hear and decide special exceptions to the terms of this ordinance. Such a variance may be granted based on one or more of the following findings:

(a) Staff are not available to develop conservation plans or schedules of implementation.

(b) Severe weather or other catastrophic events beyond the control of the land owner or operator make implementation impractical.

(c) Implementation of all components of the conservation plan and schedule does not result in full compliance with this ordinance. A variance under this paragraph may be granted only if all components of the conservation plan and schedule are implemented.

19.06 Administration. (1) Department Responsibilities. This Ordinance will be administered by the Soil and Water Conservation Department and the Director shall:

(a) Keep an accurate record of all permit applications, permits issued, plans, inspections, and other official actions.

(b) Review permit applications and issue permits under sec. 19.04(7).

(c) Investigate complaints relating to compliance with this ordinance.

(d) Assure that cost-share funds are made available as required by law.

(e) Perform any other duties specified in this ordinance.

(2) **Inspection Authority.** The Director is authorized pursuant to Wis. Stat. sec. 92.07(14) to enter upon any lands affected by this ordinance to inspect the land prior to or after issuance of a permit to determine compliance with this ordinance. If permission to enter lands is not given by the applicant or permit holder, entry may be gained pursuant to Wis. Stat. sec. 66.0119. Refusal to grant permission to enter lands affected by this ordinance for purposes of inspection is grounds for denial or revocation of a permit.

(3) **Required Notice.** (a) Prior to taking any other enforcement action, the Director must mail a notice of the problem to the land owner or operator stating that the requirements of this ordinance have not been met; describing the nature of the problem; listing relevant best management practices and associated average costs; describing the action necessary to correct the problem; stating that SWCD will provide a conservation plan, including a schedule of implementation, upon request; and providing notice of the availability of cost-share funds under Wis. Stat. sec. 92.14 to address the problem. The notice will also inform the owner or operator of the right to appeal and the appeal

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procedure. The notice of problem and notice of availability of funds must be sent by certified mail, return receipt requested.

(b) Paragraph (a) does not limit or prevent the Director from taking emergency or interim action to prevent or mitigate imminent harm to the waters of the state, action to suspend eligibility for farmland preservation tax credits for noncompliance with conservation standards, or enforcement of an existing cost-share agreement.

(4) **Stop Work Order Authority.** The Director is authorized to post an order stopping work upon any land whenever the Director has reason to believe that such work violates this ordinance or whenever a permit authorizing such work has been revoked. Notice will be given by posting one or more copies of an order describing the violation on the land where the violation occurs and by mailing a copy of the order by certified mail to the person whose activity is in violation of this ordinance. The order will specify that the activity must cease or be brought into compliance within a specified time period. Any order stopping work will remain in effect until withdrawn by the Director or vacated by a court of competent jurisdiction. Any permit revocation will be permanent, but the Director may issue a new permit upon a showing that all violations have been or will be corrected and that any future activity will be in compliance with this ordinance.

(5) **Abatement Order Authority.** The Director may issue an order to abate any violation of this ordinance.

(6) **Citation Authority.** The Director may issue a citation for any violation of this ordinance.

(7) **Referral Authority.** The Director may refer a violation of this ordinance to Corporation Counsel for legal action.

(8) **Other Enforcement Means.** Nothing in this section may be construed to prevent the county from using any other lawful means to enforce this ordinance.

19.07 Violations. (1) It is unlawful for a person to violate any provision of this ordinance or any condition contained in a permit issued pursuant to this ordinance.

(2) It is unlawful for any person to knowingly

provide false information, make a false statement, or fail to provide or misrepresent any material fact to a county agent, board, commission, committee, department, employee, officer, or official acting in an official capacity under this ordinance

(3) It is unlawful for a person to disobey; fail, neglect, or refuse to comply with; or otherwise resist an order issued pursuant to this ordinance.

(4) A separate offense is deemed committed on each day that a violation occurs or continues.

(5) The failure of any agent, board, commission, committee, department, employee, officer, or official to perform any official duty imposed by this code will not subject the agent, board, commission, committee, department, employee, officer, or official to the penalty imposed for a violation of this code unless a penalty is specifically provided.

19.08 Penalties. (1) Except as provided in subs. (2) through (5), a person will, upon conviction for a violation of this ordinance, forfeit not less than \$250 nor more than \$500 for each offense, together with the costs of prosecution for each violation, and may be ordered to take such action as is necessary to abate the offense within a specified time.

(2) A person will, upon conviction for a violation of any provision contained in sec. 19.04, forfeit not less than \$500 nor more than \$1,000 for each offense, together with the costs of prosecution for each violation, and may be ordered to take such action as is necessary to abate the offense within a specified time.

(3) A person will, upon conviction for a violation of any provision contained in sec. 19.04 involving the discharge of animal waste from a subsurface drain, such as field tile, that results in loss of fish and aquatic life, forfeit not less than \$1,000 nor more than \$5,000 for each offense, together with the costs of prosecution for each violation, and may be ordered to take such action as is necessary to abate the offense within a specified time.

(4) A person will, upon conviction for a violation of any provision contained in sec. 19.04 involving the direct discharge of animal waste that results in the loss of fish or aquatic life, forfeit not less than \$1,000 nor more than \$10,000 for each offense, together with the costs of prosecution for

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each violation, and may be ordered to take such action as is necessary to abate the offense within a specified time.

(5) The minimum and maximum forfeitures specified in this section are doubled each time that a person is convicted for the same violation of this ordinance within a 24 month period.

(6) A person who has the ability to pay a forfeiture entered pursuant to this ordinance, but who fails or refuses to do so may be confined in the county jail until the forfeiture and costs are paid, but the period of confinement may not exceed 30 days. In determining whether a person has the ability to pay, all items of income and all assets may be considered regardless of whether the income and assets are subject to garnishment, lien, or attachment by creditors.

(7) In the event an offense is not abated as ordered, Manitowoc County may take such action as is necessary to abate the offense and the cost of such abatement will become a lien upon the person's property and may be collected in the same manner as other taxes.

HISTORY

1/16/07: Chapter 19 repealed and recreated by Ord. 2006/2007-110 effective May 1, 2007.