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LIVESTOCK FACILITY LICENSING

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28.01 Introduction. (1) Title. This ordinance may be referred to as the Livestock Facility Licensing Ordinance.

(2) Authority. This ordinance is adopted pursuant to authority granted by Wis. Stat. secs. 92.15 and 93.90.

(3) Purpose. The purpose of this ordinance is to protect the public health and safety of the people of Manitowoc County by establishing standards and procedures for the issuance of licenses for new and expanded livestock and waste storage facilities.

(4) Applicability. This ordinance applies to all lands within the boundaries of Manitowoc County lying outside the limits of incorporated cities and villages.

(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 and the invalidity of any section, subsection, paragraph, or subdivision will not affect the validity or effectiveness of the remainder of the ordinance.

28.02 Definitions. (1) In this ordinance:

“Aggrieved person” means a person who applied to a political subdivision for approval of a livestock facility siting or expansion, a person who lives within 2 miles of a 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.

“Committee” means the Land Conservation Committee.

“Director” means the director of the Soil and Water Conservation Department or his or her designee.

“Department” means the Wisconsin Department of Agriculture, Trade and Consumer Protection.

“Owner” means any person with an ownership interest in a livestock facility or the land on which a livestock facility is located.

“Pre-existing livestock facility” means a livestock facility that existed before the effective date of this ordinance.

“Previously approved livestock facility” means either a livestock facility that was issued a conditional use permit, license, or other local approval before the effective date of this ordinance or a livestock facility that has been issued a license under this ordinance.

“Review Board” means the livestock facility siting review board defined in Wis. Stat. sec. 93.30(1)(b).

“Safety Device” means a device that is designed to protect people and livestock from the hazards associated with an animal waste storage facility or transfer system. Safety devices include fences and other devices required by Technical Standards 313, 360, 382, and 634.

“SWCD” means the Soil and Water Conservation Department.

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(2) The definitions contained in Wis. Admin. Code Ch. ATCP 51 are incorporated by reference and adopted by this ordinance.

28.03 License Requirements. (1) A license is required for any new livestock facility with 750 or more animal units.

(2) A license is required for an expanded livestock facility if the number of animal units at the expanded livestock facility will exceed 750 and the number of animal units will exceed the maximum number previously approved or, if no maximum number was previously approved, will exceed a number that is 20% higher than the number kept on the effective date of this ordinance.

(3) A license is not required for a pre-existing or previously approved livestock facility except as provided in sub. (2).

28.04 License Conditions. (1) General Condition. A license issued under this ordinance is conditioned on compliance with the terms of this ordinance.

(2) 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.

(3) Modification. An operator must provide written notice to SWCD and obtain written approval from SWCD before making changes, other than minor alterations, to a licensed facility or deviating from any commitment made in an approved license application.

(4) Transfer. A license is transferable to a new owner or operator. The new owner or operator must provide SWCD with the new owner or operator's

name and address within 30 days of the date of any change in the owner or operator.

(5) 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.

28.05 Licensing Standards. (1) 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.

(2) Property Line Setbacks. (a) 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.

(b) 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.

(c) 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.

(d) 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 nonconforming setback.

(3) Public Road Right-of-Way Setbacks. (a) 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.

(b) 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.

(c) The public road right-of-way setback requirement does not prevent the use of a livestock structure that was located within the setback area

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prior to the effective date of the setback requirement.

(d) 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.

(4) Waste Storage Structure Setbacks. (a) Except as provided in par. (b), a new waste storage structure may not be located within 350 feet of a property line or a public road right-of-way.

(b) 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 1, 2006, 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 nonconforming setback, is no larger than the existing structure, and is located within 50 feet of the existing structure.

(c) 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.

(d) The waste storage structure setback requirement does not prevent the expansion of a waste storage 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 nonconforming setback.

(5) Safety Devices. Safety devices are required on all animal waste storage facilities. A safety fence must be constructed around the storage facility. The fence must be at least 4 feet in height and constructed of woven or welded wire or livestock panel; the fence must be of a design that provides people and livestock protection from the hazards associated with a storage facility; or the fence must comply with state standards. Any fence, gate, and other safety device must be installed in compliance with Technical Standards 313, 360, 382, and 634.

28.06 Application Procedure. (1) General. An

operator must complete the application form and worksheets prescribed by Wis. Admin. Code Ch. ATCP 51.

(2) Additional Copies. The operator must file 4 duplicate copies of the application form, including worksheets, maps, and other documents included with the application, with SWCD.

(3) Fee. A non-refundable application fee of \$1,000 must accompany the application.

(4) Notice of Complete Application. (a) SWCD will notify the applicant within 45 days of receipt of an application whether the application is complete. If the application is not complete, SWCD will specify what additional information is needed. Notice that the application is complete does not constitute approval.

(b) SWCD will notify the applicant within 14 days of receipt of additional information whether the application is complete. If the application is not complete, SWCD will specify what additional information is needed. Notice that the application is complete does not constitute approval.

(5) Notice to Town Board and Adjacent Landowners. SWCD will send a copy of the notice of complete application to the town board for the town in which the proposed livestock facility is located and to adjacent landowners by first class mail within 14 days of issuing the notice to the applicant. Failure to notify an adjacent landowner does not invalidate any approval of a proposed livestock facility or create a cause of action by a property owner against the county.

(6) Timely Action and Extensions. (a) SWCD shall grant or deny an application within 90 days after it issues a notice of complete application.

(b) SWCD may extend the time in which to grant or deny the application if additional information is needed to act on the application, if the applicant materially modifies the application, or if the applicant agrees to an extension. SWCD shall provide the application with a written notice of any extension that contains the reason for the extension and the date by which it will act on the application.

(7) Granting or Denying an Application. (a)

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Except as permitted by par. (b), SWCD shall grant a license if the application complies with the requirements of Wis. Admin. Code § ATCP 51.30 and the application contains sufficient credible information to show, in the absence of clear and convincing evidence to the contrary, that the proposed livestock facility meets or is exempt from the standards contained in subchapter II of Wis. Admin. Code Ch. ATCP 51.

(b) SWCD may deny an application if it finds that the application fails to meet the standard for approval under par. (a) or finds, based on clear and convincing information in the record, that the proposed livestock facility does not comply with an applicable standard under subchapter II of Wis. Admin. Code Ch. ATCP 51.

(8) Written Decision. (a) SWCD's decision to grant or deny a license must be made in writing. The decision must be based on written findings of fact that are included in the decision and the findings must be supported by evidence in the record. Findings may be based on presumptions created by Wis. Admin. Code Ch. ATCP 51.

(b) If SWCD grants the application, it shall provide the applicant with a copy of the application marked "APPROVED." The copy must include the application form and all of the worksheets, maps, and other documents included with the application form, except that the copy does not need to include engineering design specifications.

(c) SWCD shall, within 30 days of its decision granting or denying an application, provide the Department with a copy of the decision and a copy of the application as approved or denied, including all worksheets, maps, and other documents included with the application, except that the copy does not need to include engineering design specifications.

28.07 Administration and Enforcement. (1)

This ordinance will be administered by the SWCD, and the Director shall:

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

(b) Review license applications and issue licenses under this ordinance.

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

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

(2) Inspection Authority. The Director 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.

(3) 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.

(4) Citation Authority. The Director 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 noncompliance.

(5) Revocation Authority. The Director may recommend to the Committee that it revoke a license for substantial noncompliance with any provision of this ordinance, substantial noncompliance 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 Committee shall hold a hearing on the Director's recommendation.

(6) Legal Referral. The Director or the Committee may refer a violation of this ordinance to Corporation Counsel for legal action, including an

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action seeking injunctive relief, if an owner or operator fails to comply with any action requirement contained in a notice of noncompliance.

(7) Nothing in this section may be construed to prevent the county from using any other lawful means to enforce this ordinance.

28.08 Hearings and Appeals. (1) The Committee will conduct hearings on any appeals under this ordinance in accordance with Wis. Stat. Ch. 68.

(2) The Committee is authorized to hear and decide appeals by an applicant or licensee where it is alleged that there is an error in any decision, determination, notice, order, or requirement issued by the Director.

(3) The Committee is authorized to hear and decide upon any recommendation from the Director to revoke a license. The Committee may revoke a license if, after due notice to the livestock facility owner, a public hearing, and consideration of any extenuating circumstances that may affect an operator's ability to comply, it determines that revocation is appropriate.

(4) In addition to any other appeal rights, an aggrieved person may request that the Review Board review any decision made by the Director, SWCD, or the Committee in connection with a license application. An appeal under this subsection must be requested within 30 days of the action being appealed and must comply with the requirements of Wis. Stat. § 93.30, Wis. Admin. Code Ch. ATCP 51, and the Review Board's administrative rules.

28.09 Violations. (1) It is unlawful for any person to own or operate a livestock facility without a license that is required by this ordinance, to violate any provision of this ordinance, to violate any condition contained in a license issued pursuant to this ordinance, or to fail to fulfill any commitment made in an approved license application.

(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 employee, official, or officer of the County to perform any official duty imposed by this code will not subject the employee, official, or officer to the penalty imposed for violation of this code unless a penalty is specifically provided.

28.10 Penalties. (1) A person will, upon conviction for a violation of this ordinance, forfeit not less than \$500 nor more than \$1,000 for each offense, together with any applicable assessments, costs, surcharges, and 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) 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 any 24-month period.

(3) 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 for each offense. 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.

(4) 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.

28.11 Effective Date. This ordinance is effective on January 1, 2007.

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HISTORY

11/21/2006: Created by Ord. No. 2006/2007-78 effective January 1, 2007.

2/13/07: Secs. 28.02(1), 28.04(2), 28.05(5), and 28.08(2) amended by Ord. No. 2006/2007-119 effective February 21, 2007.