

**TOWN OF MOUNT PLEASANT
GREEN COUNTY, WISCONSIN**

ORDINANCE 12-14-2015

CONCENTRATED ANIMAL FEEDING OPERATION ORDINANCE

1. AUTHORITY.

This ordinance is adopted pursuant to the general police powers granted under Wis. Stat. §§60.22(3) and 61.34(1), and specific authority under Wis. Stat. §§92.15 and 93.90.

2. PURPOSE.

The purpose of this ordinance is to comply with requirements of Wis. Stat. §93.90 and Wis. Adm. Code, ATCP 51 (ATCP 51), and to establish standards and authority to protect the public health and safety of the people of the Town of Mount Pleasant, Green County, Wisconsin (the "Town"). This ordinance sets forth the procedures for obtaining a license for the siting of new and expanded livestock facilities in the Town.

3. DEFINITIONS.

The definitions in ATCP 51 are incorporated by reference into this ordinance, as the same may be in effect as of any relevant time under this ordinance.

4. LICENSE REQUIRED.

4.1. General.

A license issued by the Town is required for new or expanded livestock facilities that will have 500 or more animal units.

4.2. Licenses for Existing Livestock Facilities

4.2.1. 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; and (b) The maximum number previously approved or, if no maximum number was previously approved, a number that is 20% higher than the number kept on the effective date of this ordinance.

4.2.2. A license is not required for livestock facility that existed before May 1, 2006 or before the effective date of the license requirement in this ordinance, except as provided in §4.2.1.

4.2.3. 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 §4.2.1. 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.

Section 5. Licensing Standards.

The Town adopts the following standards:

5.1. The state livestock facility siting standards adopted under Wis. Adm. Code, ATCP 51, inclusive of all appendices and worksheets and any future amendments to this chapter, as in effect on the date the applicant is notified that the application is complete, except as may be noted in this Section 5 of the ordinance. Such standards are incorporated by reference in this ordinance, without reproducing them in full.

5.2. The following setbacks shall apply to livestock structures:

5.2.1. 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 1,000 animal units, and 200 feet from the property line if the livestock facility will have 1,000 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 a structure may not be expanded closer to the property line.

5.2.2. Public road right-of-way. Except as provided for waste storage structures, livestock structures must be located a minimum of 100 feet from public road right-of-way if the livestock facility will have fewer than 1,000 animal units, and 150 feet from a public road right-of-way if the livestock facility will have 1,000 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 a structure may not be expanded closer to the public road right-of-way.

5.2.3. Waste Storage Structure. A new waste storage structure may not be located within 350 feet of a property line, or within 350 feet of the nearest point of any public road right-of-way. A single new waste storage structure may be constructed closer to the property line or public road if a new structure satisfies all of the following requirements: (a) Located on the same tax parcel as a waste storage structure in existence before May 1, 2006, (b) No larger than the existing structure, (c) No further than 50 ft. from the existing structure, and (d) 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 350 feet of a property line or road may not expand *toward* that property line or road.

[This draft ordinance does not adopt standards more stringent than the state standards, since there is no science-based justification for such standards provided to the Town board at this time.]

6. License Application.

6.1. Application Contents. A livestock operator must complete the application form and worksheets prescribed by ATCP 51. The application form and worksheets demonstrate compliance with standards in ATCP 51 and this ordinance.

6.2. Four Copies To Be Filed. The operator must file with the Town Clerk four duplicate copies of the application form, including all worksheets, maps and documents (other than engineering design specifications) included in the application. The Town Clerk shall write the date of filing on the Town's copy of the form. One copy must be filed after a final decision on the application with DATCP. If the application is approved, one duplicate copy marked approved must be returned to the applicant. The applicant may wish to record the approved application with the register of deeds.

6.3. Additional Application Materials. If the operator files additional application materials in support of its application, either on its own behalf or in response to a request from the Town, each such filing shall be made with the Town Clerk in four copies (other than engineering design specifications), who shall write the date of filing on the Town's copy of such materials.

7. License Application Fee.

A non-refundable application fee of \$1,000 payable to the Town of Mount Pleasant shall accompany an application, all of which shall be applied to the Town's costs to review and process the application.

8. Application Procedure.

8.1. Notification of Completeness. Pursuant to ATCP 51.30 (5), within 45 days after the Town receives an application, the chairperson of the Town Board of Supervisors, after consulting with the Town Board, shall notify the applicant whether or not 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 chairperson of the Town Board of Supervisors shall notify the applicant that the application is complete. This notice does not constitute an approval of the proposed livestock facility.

8.2. Notice to Adjacent Landowners. Pursuant to ATCP 51.30 (6), within 14 days after the Town notifies an applicant that the application is complete, the Town shall notify adjacent landowners of the application. The Town shall use the approved notice form in ATCP 51, and mail by first class mail a written notice to each adjacent landowner.

8.3 Referral to Plan Commission. At any time after filing, the chairperson of the Town Board of Supervisors may refer the application to the Town Plan Commission for its review and recommendation. The Plan Commission may not hold a public hearing on the application, but may hold a public meeting at which it may discuss the application and its recommendation.

8.4. After determination of completeness the Town Clerk shall give notice of a public hearing before the Town Board of Supervisors to receive information from the applicant and receive public input on the application. The date for the hearing shall be set by the Town Board after consulting with the applicant. 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 the next paragraph.

8.4. Pursuant to ATCP 51.32, the Town Board of Supervisors shall grant or deny an application within 90 days after the Town Clerk gives notice that the application is complete under Section 8.2 above. The Town Board of Supervisors may extend this time limit for good cause, including any of the following: (a) The Town needs additional information to act on the application, or (b) The applicant materially modifies the application or agrees to an extension. The Town Clerk shall give written notice of any extension. The notice shall specify the reason for the extension, and the extended deadline date by which the Town Board of Supervisors will act on the application.

9. Reimbursement of Town Expenses.

9.1 Additional Town Expenses. If the license application fee in Section 7 is not adequate for the Town's expenses of reviewing an application, the chairperson of the Town Board of Supervisors shall notify the applicant in writing of any additional expenses the Town has incurred or expects to incur in reviewing the application and holding meetings or hearings thereon, including, but not limited to, fees of technical consultants and attorneys. The notice shall identify any proposed technical consultants or attorneys and summarize their qualifications to participate in the application review process.

9.2. Reimbursable Town Expenses of Consultants. The Town Board of Supervisors may retain technical consultants of its choosing, but the applicant shall not be obligated to reimburse the Town for expenses of technical consultants who do not satisfy the following standard: (a) The consultant shall be qualified as an expert by having knowledge, skill, experience, training, or education in the subject matter for which he is retained, which must be relevant to the application and its review, (b) the consultant's scientific, technical, or other specialized knowledge will help the Town Board of Supervisors to understand the evidence or to determine a fact in issue; (c) the expert's report or testimony is or shall be based on sufficient facts or data; (d) the expert's report or testimony is or shall be the product of reliable principles and methods; and (e) the expert has applied or will reliably apply the principles and methods to the facts of the application and its review. If the consultant has not completed his or her work at the time the notice under Section 9.1 is given to the applicant, the

Town Board shall nevertheless be entitled to obtain reimbursement of expenses reasonably expected to be incurred unless the applicant objects thereto under Section 9.3. The Town may only claim reimbursement for substantiated expenses incurred or expected to be incurred in the review of an application that are in excess of the fee provided in Section 8. The applicant is not obligated to reimburse the Town for consultant expenses that are duplicative or cumulative of work of any other consultant so engaged, or for any unreasonable expenses. If any expenses for which the applicant has reimbursed the Town are not incurred, the Town shall promptly refund such reimbursement to the applicant.

9.3. **Objection by Applicant to Reimbursement.** If the applicant objects to reimbursing the Town for any expenses claimed by the Town in any notice under Section 9.1, the applicant shall do so in writing within five business days of its receipt of such notice, stating the grounds for its objection. The Board of Supervisors shall consider and rule on the objection within five days of its receipt of the written objection. The applicant's failure to reimburse the Town for expenses under this section shall be grounds for the Town Board of Supervisors to suspend proceedings on the application until the Town receives reimbursement.

9.4. **Review of Town Board Decision on Reimbursement.** Upon appeal or other judicial review, the decision of the Town Board of Supervisors under Section 9.3 as to the consultant's qualifications and his actual or proposed report or testimony shall be affirmed if it was based on credible evidence and was not arbitrary or capricious. A subsequent ruling that the consultant's report or testimony failed to meet the standard in Section 9.2 shall not be grounds for recovery by the applicant of reimbursed Town expenses. The applicant shall be entitled to recover from the Town any expenses that the applicant has reimbursed and that, on appeal or other judicial review, are determined to have been unreasonable.

9.5. **Agreement for Reimbursement of Town Expenses.** Nothing in this section shall prevent the Town Board of Supervisors and the applicant from entering into an agreement for reimbursement of Town expenses, in which either party may waive its right to contest any aspect of one or more of the reimbursed expenses.

Section 10. Criteria for Issuance of a License.

10.1 **Basis for Approval.** The Town Board of Supervisors shall issue a license if the application for the proposed livestock facility: (a) Complies with this ordinance, and (b) Is complete, and (c) 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 Section 5 above. The Town Board may impose such reasonable conditions upon its approval to insure that the proposed livestock facility shall meet and shall continue to meet the standards specified in Section 5 above.

{Note: If the application and worksheets prescribed by ATCP 51 are properly completed, there is a rebuttable presumption that the applicant has meet the application requirements.}

10.2. Basis for Disapproval. The Town Board of Supervisors shall deny a license if any of the following apply: (a) The application, on its face, fails to meet the standard for approval in the previous paragraph, or (b) The Town Board of Supervisors 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, or (c) Other grounds authorized by Wis. Stat. §93.90, that warrant disapproving the proposed livestock facility.

Section 11. Record of Decision.

11.1. Written Decision. The Town Board of Supervisors 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. If the Town approves 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.

11.2. Action by Town Clerk Following Approval. The Town Clerk as required by ATCP 51.36 within 30 days of the Town Board of Supervisors decision on the application shall do all of the following: (a) Give the Department of Agriculture, Trade and Consumer Protection written notice of the Town decision, (b) 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 design specifications.)

11.3. Action by Town Clerk Following Withdrawal of Approval. If the Town Board of Supervisors has withdrawn a local approval under this ordinance, the Town Clerk shall file with the department a copy of the Town's final notice or order withdrawing the local approval.

11.4. Place of Filing. The information in this paragraph may 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
P.O. Box 8911
Madison, Wis. 53708-8911
Fax (608) 224-4615

Section 12. Transferability of License. A license and the privileges granted by such license run with the land for which the license has been approved and remain in effect, 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 applicant may record with the register of deeds, at the applicant's expense, the duplicate copy of the approved application. The town/county requests that upon change of

ownership of the livestock facility, the new owner of the facility shall file information with the town/county clerk providing pertinent information, including but not limited to such information as the name and address of the new owner and date of transfer of ownership.

Section 13. Expiration of License. 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 Town may treat a license as lapsed and withdraw the license if the license holder fails to do all of the following within 2 years after issuance of license: (a) Begin populating the new or expanded livestock facility, and (b) Begin constructing all of the new or expanded livestock housing or waste storage structures proposed in the application for local approval.

Section 14. License Terms and Modifications. A license and the privileges granted by a license issued under this ordinance is conditioned on the livestock operator's compliance with the standards in this ordinance, and with commitments made in the application for a license. The operator may make reasonable changes that maintain compliance with the standards in this ordinance, and the Town shall not withhold authorization for those changes. A violation of the license or a failure to comply with the commitments made in the application may result in suspension and/or termination of the license as provided in Section 13 of this ordinance.

Section 15. Compliance Monitoring. The Town shall monitor compliance with the ordinance as follows:

15.1. Notice and Reimbursement. Upon notice to the livestock facility owner request the right of one or more representatives of the Town to personally view the licensed premises at a reasonable time and date to insure that all commitments of the application as approved are being complied with. If the Town Board of Supervisors determines that it needs to retain a consultant to perform such inspection, the reasonable expenses of the Town in engaging such consultant shall be reimbursed by the livestock facility owner. The livestock facility owner shall not be obligated to reimburse the Town for the cost of any consultant not meeting the standard of Section 9.2, as applied to the issues that are the subject of the inspection (rather than an application).

15.2. Failure to Permit Inspection. If the livestock facility owner refuses the Town representatives 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 protection of the public health and safety under Sec. 66.0119 of Wis. Statutes.

15.3. Written Notice of Noncompliance. If a licensed premises is found not to be in compliance with the commitments made in the approved application, with the requirements of ATCP 51, or with conditions specified in any Town approval, the Town Board of Supervisors shall issue a written notice to the livestock facility owner stating the conditions of non-compliance and directing that

compliance of the commitments of the approved application and license be complied with in a reasonable amount of time stated in this written notice.

15.4. **Additional Enforcement Powers.** If non-compliance as described in the written notice given by the Administrator continues past the stated reasonable time to comply, the Town Board of Supervisors may take further action as provided in this ordinance, including but not limited to issuance of a citation or seeking of injunctive relief.

15.5. **Hearing.** If the livestock facility owner disputes the notice of noncompliance the livestock facility owner may request a hearing before the Town Board of Supervisors in writing within five days of receipt of the notice of non-compliance. The Town Board of Supervisors shall schedule a hearing within five days to determine if the notice of noncompliance is supported by clear and convincing evidence and states a valid basis for relief under this Section 15.

Section 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:

(a) 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.

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

(c) In addition, the Town Board of Supervisors may seek injunctive relief from a court of record to enjoin further violations.

(d) In addition, the Town Board of Supervisors 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.

(e) A Town Board of Supervisors shall exercise reasonable discretion in deciding whether to suspend or revoke a license. The Town shall consider extenuating circumstances, such as adverse weather conditions, that may affect an operator's ability to comply.

(f) 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 Board of Supervisors may be collected under this ordinance or Wis. Stat. §823.06 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 Wis. Stat. §66.0627 of Wis. Statutes unless paid earlier.

Section 17. Appeals.

17.1. Review by the Livestock Facility Siting Review Board. In addition to other appeal rights provided by law, Wis. Stat. §93.90 (5) provides that any “aggrieved person” may request review by the Livestock Facility Siting Review Board of any decision by the Town Board of Supervisors in connection with a permit application. An “aggrieved person” may challenge the decision on the grounds that the Town incorrectly applied the standards under this ordinance or violated Wis. Stat. §93.30.

17.2. An “aggrieved person” under this Section 17 as defined in Wis. Stat. §93.90 (5) means a person who applied to a Town for approval of a livestock siting or expansion, a person who lives within 2 miles of the 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.

17.3. An “aggrieved person” may request review of any decision of the Town Board of Supervisors.

17.4. Any appeal brought under this Section 17 must be requested with 30 days of the town/county approval or disapproval or within 30 days after the decision on appeal before the town board/county committee.

17.5. Any appeal to the State Livestock Facility Siting Review Board shall comply with Wis. Stat. §93.90 of Wis. Statutes and administrative rules of said board.

17.6. Judicial Review. The Town Board of Supervisors or any aggrieved person may seek judicial review of any decision of the State Livestock Facility Siting Review Board as provided in Wis. Stat. §93.90(5)(e) or otherwise as provided or permitted by applicable law.

Section 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.

Section 19. Effective Date. This ordinance is effective the day after publication.

Michael P. Gengler

Michael Gengler, Chairman

Edward Riese

Ed Riese, Supervisor

Roger Brugger

Roger Brugger, Supervisor

Affidavit of publication:

Before me this ____ day of ____ appeared _____, and stated as follows:

I am the clerk of the Town of Mount Pleasant, Green County, Wisconsin, and on the ____ day of _____, 20____, I caused the attached notice and summary of the foregoing ordinance to be published by insertion in the Post Messenger Recorder newspaper on _____, a true copy of which is attached to this affidavit.

:

Joni Waelchli Buehl, Clerk

Subscribed and sworn to before me this ____
day of _____, 20____.

Notary Public
My Commission expires:_____

TOWN OF MOUNT PLEASANT, GREEN COUNTY

NOTICE OF ADOPTION OF ORDINANCE

The Board of Supervisors of the Town of Mount Pleasant, Green County, adopted an ordinance entitled “Concentrated Animal Feeding Operation Ordinance” on December 14, 2014, Ordinance No. 12-14-2015.

The purpose of the ordinance is to enable the Town of Mount Pleasant Board of Supervisors to accept and rule on applications for the siting of concentrated animal feeding operations (“CAFOs”) under the Wisconsin CAFO siting statute, Wis. Stat. §93.90. Under that statute, applications must contain a correct determination of animal units at the proposed CAFO, an odor management plan, a waste and nutrient management plan, waste storage facilities and a runoff management plan that meet state standards. CAFO applicants and neighboring landowners and residents aggrieved by town board decisions on CAFO applications may appeal to the state Livestock Facilities Siting Board. The ordinance also enables town officials or contractors to inspect approved CAFOs for compliance with state standards. The town board may obtain from the circuit court penalties of \$100 to \$1,000 per day of noncompliance with the ordinance by a CAFO, and may obtain other legal remedies from the circuit court.

The full text of the ordinance may be obtained from the town clerk by calling 608-938-4657, or viewed at N6903 Marshall Bluff Road, Monticello, WI 53570. The ordinance may also be viewed on the Town of Mount Pleasant website, www.townofmtpleasantwi.com.

Joni Waelchli Buehl
Clerk, Town of Mt. Pleasant