

**TOWN OF LINCOLN  
KEWAUNEE COUNTY, WISCONSIN**

**LIVESTOCK FACILITY SITING and LICENSING ORDINANCE**

**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 under the grant of village powers pursuant to Sec. 60.22 of Wis. Statutes for the protection of public health and safety.

**2. Purpose and Findings**

Purpose: The purpose of this ordinance is to comply with requirements of Sec. 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 people of the Town of Lincoln. This ordinance sets forth the procedures for obtaining a license for the siting of new and expanded livestock facilities in the Town of Lincoln.

**3. Applicability**

This Ordinance applies to all lands within the boundaries of Lincoln Township.

**4. General Regulations**

Livestock Facilities Restricted to Agricultural Zones: Livestock facilities shall only be located on land parcels that are zoned to allow for livestock.

A. A new or expanded livestock facility with 500 or more animal units shall be required to comply with the License Requirements in this ordinance.

B. All facilities, regardless of size, shall secure a building permit for any construction.

**5. Permit Requirement**

In order to secure a building permit, the owner or operator of an animal facility must comply with applicable building permit ordinances for the construction of any buildings to be used in connection with the animal facility.

**6. License Required**

## A. General

A license issued by the Town of Lincoln 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 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 (500 animal units).
  - 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 the license requirement.
2. A license is not required for livestock facility that existed before the effective date of the license requirement in this ordinance, unless the facility exceeds 500 animal units and the expansion seeks an increase of more animal units than previously approved or 20% higher than the number existing on the effective date of this ordinance.
3. 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.

## 7. Licensing Administration

The Town (meaning the Town Board, the Zoning Administrator, Town Constable, Plan Commission, or any other Town of Lincoln official(s) that are authorized by the Town Board to act on behalf of the Town of Lincoln) shall administer this ordinance and related matters thereto with review, oversight and recommendations provided by the Town Plan Commission. The Town Board shall authorize final approval.

## 8. Licensing Standards

The standards for issuing a license are as follows:

- A. The state livestock facility siting standards adopted under ATCP 51, Wis. Adm. Code, inclusive of all appendixes and worksheets and any future amendments to this chapter, except as may be noted in this section of the ordinance, are incorporated by reference in this ordinance, without reproducing them in full.
- B. Setbacks: The following setbacks shall apply to livestock structures:

### 1. Property lines

Except as provided for waste storage structures, livestock structures must be located the minimums as follows from property lines:

- a) 100 feet if the livestock facility will have fewer than 1,000 animal units; or
- b) 200 feet 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.

### 2. Road Right of Ways

Except as provided for waste storage structures, livestock structures must be located the minimums as follows from the nearest point of any road right of ways:

- a) 100 feet if the livestock facility will have fewer than 1,000 animal units; or
- b) 150 feet 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 a structure may not be expanded closer to the road right of way.

### 3. Waste Storage Structure-New Structures

a) A new waste storage structure may not be located:

- i. Within 350 feet of a property line, or
- ii. Within 350 feet of the nearest point of any public road right-of-way, or,

b) Waste storage structures shall comply with all requirements of other Town of Lincoln ordinances.

c) A single new waste storage structure may be constructed closer to the property line or public road if a new structure is:

- i. Located on the same tax parcel as a waste storage structure in existence before May 1, 2006 and,
- ii. No larger than the existing structure and,
- iii. No further than 50 ft. from the existing structure and,
- iv. No closer to the road or property line than the existing structure.

d) Existing Structures. 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.

C. All water quality setbacks specified in ATCP 51.12 (3), (4), and (5) shall be complied with.

D. 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.

E. The operator must file four (4) duplicate copies of the application form , including worksheets, maps and documents (other than engineering design specifications) included in the license application.

## **9. License Application Fee**

A non-refundable application fee of \$1,000 payable to the Town of Lincoln shall accompany an application for the purpose of offsetting the town costs to review and process the application.

## **10. License Application Procedure**

A. Pursuant to ATCP 51.30 (5), within 45 days after the Town 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 town shall notify the applicant that the application is complete. This notice does not constitute an approval of the proposed livestock facility.

B. Pursuant to ATCP 51.30 (6), within 14 days after the Town notifies the 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.

C. Upon determination of completeness the town clerk shall give notice of a public hearing to receive information from the applicant and receive public input on the application. Public notice shall be a class 2 notice the last of which shall be 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.

D. Pursuant to ATCP 51.32, the Town of Lincoln shall grant or deny an application within 90 days after the Town gives notice that the application is complete under paragraph B above. The Town of Lincoln may extend this time limit for good cause, including any of the following:

1. The Town needs additional information to act on the application.
2. The applicant materially modifies the application or agrees to an extension.
3. The Town 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 will act on the application.

## **11. Criteria for Issuance of a License**

- A. A license shall be issued if the application for the proposed livestock facility:
  - 1. Complies with this ordinance, and
  - 2. Is complete, and
  - 3. Contains sufficient credible information to show, in the absence of clear and convincing information to the contrary, that the proposed livestock facility meets or is exempt from the standards specified in this ordinance.
  
- B. A license shall be denied if any of the following apply:
  - 1. The application, on its face, fails to meet the standard for approval in the previous paragraph,
  - 2. The Town finds, based on other clear and convincing information in the record that the proposed livestock facility does not comply with applicable standards in Section 8 of this ordinance.
  - 3. Other grounds authorized by s.93.90 that warrant disapproving the proposed livestock facility.

## **12. Record of Decision on the License**

The Town will issue its decision in writing. The decision will 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 will give the applicant a duplicate copy of the approved application, marked “approved.” The duplicate copy will include worksheets, maps and other documents (other than engineering specifications) included in the application.

The town clerk as required by ATCP 51.34(5) within 30 days of the town decision on the application shall do all of the following:

- A. Provide the Department of Agriculture, Trade and Consumer Protection (DATCP) written notice of the town’s decision.
- B. File with DATCP 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.)
- C. If the Town has withdrawn a local approval under this ordinance, file with DATCP a copy of the Town’s final notice or order withdrawing the local approval.

## **13. Transferability of License**

- A. A license and the privileges granted by this license run with the land approved under the license 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.

B. A license is transferable to a new owner or operator. The new owner or operator must provide the Town of Lincoln with the new owner or operator's name and address within 30 days of the date of any change in the owner or operator.

#### **14. Expiration of License**

A. 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.

B. The town board 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:

1. Begin populating the new or expanded livestock facility.
2. Begin constructing the new or expanded livestock housing or waste storage structures proposed in the application for local approval.
3. The town board has the authority to grant extensions due to extenuating circumstances.

C. Once issued the license remains in effect for subsequent expansions of the farm operation provided that the farm operation continues to meet all applicable requirements and established standards of Sec. 93.90 of Wis. Statutes and ch. ATCP 51, Wis. Adm. Code (ATCP 51) ), NR 151, or the standards set forth in this ordinance.

#### **15. 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 provided that he applicant notifies the Town of any and all changes that impact the license. 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 this ordinance.

#### **16. Compliance Monitoring**

For this section only, "Town" shall mean the Town Board or any other official authorized by the Town Board to act on behalf of the Town of Lincoln.

The Town may monitor compliance with the ordinance as follows:

- A. Upon notice to the livestock facility owner or operator, the Town, pursuant to Sec. 66.0119 of Wis. Statutes, may personally view the licensed premises, including all records deemed necessary by the Town to determine compliance, at a reasonable time and date to insure that all commitments of the application as approved are being complied with.
- B. If the livestock facility owner or operator refuses the Town the right to view the licensed premises or all records deemed necessary by the Town to determine compliance, the Town 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 and all records deemed necessary by the Town to determine compliance for the purpose of protection of the public health and safety under Sec. 66.0119 of Wis. Statutes.
- C. Refusal to grant permission to enter the facility for compliance monitoring is grounds for denial or revocation of a license.
- D. If a licensed premises is found not to be in compliance with any of the commitments made in the approved application or any provision of this ordinance, the Town 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, provisions of the ordinance, and license be complied with in a reasonable amount of time, as agreed upon by the Town and owner or operator, as stated in this written notice. The notice of non-compliance shall inform the owner or operator of the facility that they have five business days to request a hearing. The notice of noncompliance may include a stop work order.
- E. If non-compliance of the license conditions as described in the written notice given by the Town continue past the stated reasonable time to comply, the Town may take further action as provided in this ordinance, including but not limited to issuance of a citation or seeking of injunctive relief.
- F. If the livestock facility owner disputes that the conditions of the license have not been complied with, the livestock facility owner may request a hearing in writing within five days of receipt of the notice of non-compliance. The Town Board shall schedule a hearing within five days to determine if the conditions of the license have been complied with or whether non-compliance of the commitments of the approved application and local approval exists.
- G. Monitoring wells. The owner or operator shall provide the Town on a timely basis with all test results from any monitoring wells placed pursuant to DNR requirements.

## **17. License Revocation Authority**

- A. Upon referral from the Town Board, the Plan Commission shall hold a hearing to review noncompliance.
- B. The Plan Commission may recommend to the Town Board that it revoke a license for substantial noncompliance with any provision of this ordinance, substantial noncompliance with any commitments made in the application, violation of a condition contained in a

license, refusal to permit inspection of a premises for which a license has been applied for and granted, or failure to comply with the action requirement contained in a notice of noncompliance.

C. The Town Board 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.

## **18. Penalties**

(A) 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.

(B) It is unlawful for any license facility applicant or person representing the license facility applicant to knowingly provide false information, make a false statement, or fail to provide or misrepresent any material fact to the Town Board, Plan Commission, Zoning Administrator, Town Clerk, or any official acting in an official capacity under this ordinance.

(C) It is unlawful for any license facility applicant or person representing the license facility applicant to disobey; fail, neglect, or refuse to comply with; or otherwise resist an order issued pursuant to this ordinance.

(D) Notwithstanding the provisions of Section 11.8.2 of the Town of Lincoln Zoning Ordinance, 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:

1. Upon conviction by a court of law, pay a forfeiture of not less than \$250.00 nor more than \$10,000.00, plus the applicable surcharges, assessments and costs for each violation.
2. Each day a violation exists or continues shall be considered a separate offense under this ordinance.
3. The minimum and maximum forfeitures specified in this section may be doubled each time that a person is convicted for the same violation occurring within any 24-month period.
4. In addition, the town board may seek injunctive relief from a court of record to enjoin further violations.
5. 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.



6. The town shall exercise sound judgment 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.
7. In addition to any other penalty imposed by this ordinance, the Town may recover its actual costs incurred in enforcement, including actual consultant fees and actual expenses and actual attorney fees, and the cost of abatement or clean up of any public nuisance on the licensed premises by the town may be collected under this ordinance or Sec. 823.06 of Wis. Statutes 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 Sec. 66.0627 of Wis. Statutes unless paid earlier.

## **19. Appeals**

In addition to other appeal rights provided by law, for animal facilities and expansions requiring a license under Section 6 hereof, Sec. 93.90 (5), Stats, provides that any "aggrieved person" may request review by the Livestock Facility Siting Review Board of any decision by the town 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 sec. 93.30, Stats.

A. An "aggrieved person" under this section as defined in Sec. 93.90 (5) of Wis. Statutes means a person who applied to the 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.

B. An "aggrieved person" may request review of any decision of the town or action by the Town Board.

C. Any appeal brought under this section must be requested with 30 days of the Town's approval or disapproval or within 30 days after the decision on appeal before the town board.

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

## **20. 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.

## **21. General Definitions**

For the purpose of this Ordinance, words used in the present tense shall include the

future; words used in the singular shall include the plural number, and the plural the singular.

- A. The word "shall" is mandatory and not discretionary.
- B. The word "may" is permissive.
- C. All "measured distances" shall be to the nearest "integral foot". If a fraction is one-half foot or less, the next "integral foot" below shall be taken.
- D. Any words not herein defined shall be construed as defined in other respective state, county, and town codes.

## **22. Definitions**

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

## **23. Effective Date**

This ordinance is effective upon enactment and publication.

Enacted this 13th day of January, 2014 by the Town Board of Supervisors of the Town of Lincoln, Kewaunee County, Wisconsin.

## **TOWN BOARD**

Cory Cochart, Chairman (signed)

Nick Cochart, Supervisor #1 (signed)

Arlin Monfils, Supervisor #2 (signed)

## **CERTIFICATION OF ENACTMENT**

I hereby certify that the foregoing ordinance was duly enacted by the Town Board of the Town of Lincoln on this 13<sup>th</sup> day of January, 2014.

Dale Massey, Town Clerk (signed)