

ORDINANCE NO. 4.10
**PROCEDURES AND REGULATIONS FOR SITING
AND MONITORING LIVESTOCK FACILITIES**

SECTION A. Purpose and Authority

1. Authority. This Ordinance is enacted, pursuant to the general police power to protect the health, safety and welfare of the citizens of the Town of Brigham, by ensuring that adequate provisions are made for the disposal or dispersion of manure from farm animals which are kept on parcels of land which may not provide, because of size, location or use, adequate disposal or dispersion opportunities on that parcel sufficient to preserve safe, healthful and inoffensive conditions on the parcel and surrounding area. The authority for adopting this Ordinance arises out of the provisions of Wisconsin law, including, but not limited to, Wis. Stats. §§ 92.15 and 93.90.
2. Purpose. The purpose of this ordinance is to comply with Wis. Stats. § 93.90 and Wis. Admin. Code Chap. ATCP 51. This ordinance sets forth the procedures for obtaining a license for the siting of new and expanded livestock facilities in the Town of Brigham.
3. Findings. The Town Board of the Town of Brigham hereby finds after public hearing that the standards in Section 4.10 F. of this Ordinance, which are more stringent than those comparable standards of Wis. Admin. Code Chap. ATCP 51, are based upon reasonable and scientifically defensible findings of fact as documented by Board findings dated March 6, 2013 and adopted by the Board. In addition, the Town Board finds that the more stringent standards in Section 4.10 H. of this Ordinance are necessary to protect public health and safety.

SECTION B. Definitions

1. Adjacent. Located on land parcels that touch each other, or on land parcels that are separated only by a river, stream, or transportation or utility right-of-way.
2. Aggrieved person. As defined in Wis. Stats. § 93.90(5), a person who applied to the Town for approval of new or expanded livestock facilities, a person who lives within two miles of the livestock facility that is proposed to be sited or expanded, or a person who owns land within two miles of a livestock facility that is proposed to be sited or expanded.
3. Agricultural purpose. Beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards;

poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least thirty-five (35) acres of which is enrolled in the conservation reserve program under 16 U.S.C. §§ 3831 to 3836; and vegetable raising.

4. Animal units. Warm blooded animals normally raised on farms in the United States and normally used or intended as food or fiber as further defined in Wis. Admin. Code § NR 243.03(3).
5. Complete application for local approval. An application that contains everything required under Wis. Admin. Code §§ ATCP 51.30(1) to (4).
6. Expanded livestock facility. The entire livestock facility that is created by the expansion, after May 1, 2006, of an existing livestock facility. Expanded livestock facility includes all livestock structures in the expanded facility, regardless of whether those structures are new, existing or altered.
7. 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 the 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.
8. Livestock. Domestic animals traditionally used in this state in the production of food, fiber or other animal products. Livestock includes cattle, swine, poultry, sheep and goats. Livestock does not include equine animals, bison, farm-raised deer, fish, captive game birds, ratites, camelids or mink.
9. 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 a pasture or winter grazing area. Related livestock facilities are collectively treated as a single livestock facility for purposes of this chapter, except that an operator may elect to treat a separate species facility as a separate livestock facility.
10. Livestock Structure. A building or other structure used to house or feed 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 includes a barn, milking parlor, feed storage facility, feeding facility, animal lot or manure storage facility.

Livestock structure does not include a pasture or winter grazing area, a fence surrounding a pasture or winter grazing area, a livestock watering or feeding facility in a pasture or winter grazing area, or a machine shed or like facility that is not used for livestock.

11. Manure. Excreta from livestock kept at a livestock facility, including livestock bedding, water, soil, hair, feathers, and other debris that becomes intermingled with livestock excreta in normal manure handling operations.
12. Manure storage facility. One or more manure storage structures, including stationary equipment and piping used to load or unload a manure storage structure if the equipment is specifically designed for that purpose and is an integral part of the facility. Manure storage facility does not include equipment used to apply waste to land.
13. Manure storage structure. A manure storage impoundment made by constructing embankments, excavating a pit or dugout, or fabricating a structure. Manure storage structure does not include equipment used to apply waste to land. For purposes of Wis. Admin. Code §§ ATCP 51.12(2) and 51.14, manure storage structure does not include any of the following:
 - (a) A structure used to collect and store waste under a livestock facility.
 - (b) A manure digester consisting of a sealed structure in which manure is subjected to managed biological decomposition.
14. 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 five 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 five years.
15. Operator. A person who applies for or holds a local approval for a livestock facility.
16. Person. Any individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity.
17. Populate. Adding animal units for which local approval is required.
18. Property line. A line that separates parcels of land owned by different persons.

19. 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 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 land spreading acreage.

20. Separate species facility. A livestock facility that meets all of the following criteria:
 - (a) It has only one of the following types of livestock, and that type of livestock is not kept on any other livestock facility to which the separate species facility is related under sub. (36):
 - (1) Cattle.
 - (2) Swine.
 - (3) Poultry.
 - (4) Sheep.
 - (5) Goats.
 - (b) It has no more than 500 animal units.
 - (c) Its livestock housing and manure storage structures, if any, are separate from the livestock housing and manure storage structures used by livestock facilities to which it is related under sub. (36).
 - (d) It meets one of the following criteria:
 - (1) Its livestock housing and manure storage structures, if any, are located at least 750 feet from the nearest livestock facility or manure storage structure used by a livestock facility to which it is related under sub. (36).
 - (2) It and the other livestock facilities to which it is related under sub. (36) have a combined total of fewer than 1,000 animal units.

21. WPDES permit. A Wisconsin pollutant discharge elimination system permit issued by DNR under Wis. Admin. Code Chap. NR 243.
22. Other definitions. The remaining definitions in Wis. Admin. Code Chap. ATCP 51 are hereby incorporated by reference to said definitions.

SECTION C. License Required for New or Expanded Livestock Facilities

1. General. A license issued by the Town of Brigham is required for new or expanded livestock facilities that will have 500 or more animal units.
2. Licenses for Existing Livestock Facilities.
 - (a) 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:
 - (1) The applicable size threshold for a license.
 - (2) 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 Section 4.10.
 - (b) A license is not required for any livestock facility that existed before the effective date of the license requirement in this ordinance, except as provided in sub. (a).
 - (c) A license is not required for any livestock facility that was previously issued a conditional use permit, license or other local approval, except as provided in sub. (a).
 - (d) 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 manure storage structure, does not constitute prior approval of an entire livestock facility.

SECTION D. Licensing Administration

The Town of Brigham does hereby create the position of Livestock Facility Siting Administrator who shall have the primary responsibility of administering this Ordinance and related matters thereto. The Livestock Facility Siting

Administrator shall be appointed by the Town Board to serve at the pleasure of said Board.

SECTION E. License Application

1. A livestock operator must complete the application form and worksheets prescribed by Wis. Admin. Code Chap. ATCP 51, including any authorized local modifications. The application form and worksheets demonstrate compliance with standards in Wis. Admin. Code Chap. ATCP 51 and this Ordinance.
2. The operator must submit to the Town Clerk four copies of the application form, including worksheets, maps and documents (other than engineering design specifications) included in the application.

SECTION F. License Application Fee

1. A non-refundable application fee of \$1,000 payable to the Town of Brigham shall accompany an application for the purpose of offsetting Town costs to review and process the application.
2. In addition, each applicant shall be responsible for the actual cost of review, if in excess of the application fee, by the Livestock Facilities Siting Administrator or by the Plan Commission or other Town officials deemed necessary to assure the purposes of this ordinance are met. The applicant shall pay said actual costs within fifteen (15) days of each billing by the Town Clerk.

SECTION G. Application Procedure

1. Pursuant to Wis. Admin. Code § 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.
2. Pursuant to Wis. Admin. Code § 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 Wis. Admin. Code Chap. ATCP 51, and mail by first class mail a written notice to each adjacent landowner.

3. Upon determination of completeness the Town Clerk shall give notice of a public hearing to receive information from the applicant and public input on the application. 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 the final decision shall be made within the time limits described in paragraph 4, below.
4. Pursuant to Wis. Admin. Code § ATCP 51.32, the Town shall grant or deny the application within 90 days after the Town gives notice that the application is complete under paragraph 2 above. The Town may extend this time limit for good cause, including any of the following:
 - (a) The Town needs additional information to act on the application.
 - (b) The applicant materially modifies the application or agrees to an extension.
 - (c) 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.

SECTION H. Licensing Standards.

The Town Board shall apply the following standards to determine whether to issue a license:

1. The state livestock facility siting standards adopted under Wis. Admin. Code Chap. ATCP 51, 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.
2. The following setbacks shall apply to livestock structures:
 - (a) Property lines.
 - (1) Except as provided for manure 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.

- (2) 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.

(b) Public road right-of-way.

- (1) Except as provided for manure 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.
- (2) 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 located closer to the public road right-of-way.

(c) Manure storage structure.

- (1) A new manure 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.
- (2) A single new manure storage structure may be constructed closer to the property line or public road if the new structure is:
 - (i) Located on the same tax parcel as a manure storage structure in existence before May 1, 2006.
 - (ii) No larger than the existing structure.
 - (iii) No further than 50 feet from the existing structure.
 - (iv) No closer to the road or property line than the existing structure.
- (3) This setback requirement does not apply to existing manure 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.

3. The following more stringent local standard adopted in this ordinance required to protect public health or safety:
 - (a) These more stringent standards are based on reasonable and scientifically defensible findings of fact listed in Section A.3. of this Ordinance.

SECTION I. Criteria for Issuance of a License

1. A license shall issue 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 H above.
2. A license shall be denied if any of the following apply:
 - (a) The application, on its face, fails to meet the standard for approval in the previous paragraph;
 - (b) 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 this Ordinance;
 - (c) Other grounds authorized by Wis. Stats. § 93.90 that warrant disapproving the proposed livestock facility.

SECTION J. Record of Decision

1. The Town Board shall 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 Wis. Admin. Code Chap. ATCP 51.
2. If the Town Board approves the application, it shall 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.

3. The Town Clerk, as required by Wis. Admin. Code § ATCP 51.36, shall do all of the following within 30 days of the Town Board decision on the application:
 - (a) Give the Department of Agriculture, Trade and Consumer Protection written notice of the Town Board decision.
 - (b) File with the Department a copy of the final application granted or denied, if the Town Board 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 Board has withdrawn a local approval under this Ordinance, file with the Department a copy of the town final notice or order withdrawing the local approval.

SECTION K. License Terms and Modification

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 Board 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 O of this Ordinance.

SECTION L. Compliance Monitoring

1. The Town shall monitor compliance with the Ordinance with any issued licenses under this Ordinance as follows:
 - (a) Upon notice to the livestock facility owner request, the Town Livestock Facility Siting Administrator may 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.
 - (b) If the livestock facility owner refuses the Town Livestock Facility Siting Administrator the right to view the licensed premises, the Administrator may request the assistance of the Sheriff or a deputy Sheriff to obtain a special inspection warrant from the circuit court to

inspect the licensed premises for the purpose of protection of the public health and safety under Wis. Stats. § 66.0119.

- (c) If a licensed premises is found not to be in compliance with the 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 noncompliance 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.
- (d) If non-compliance of the license conditions as described in the written notice given by the Livestock Facility Siting Administrator continue past the stated reasonable time to comply, the Administrator may take further action as provided in this ordinance, 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 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.

SECTION M. 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 two years after issuance of license:

1. Begin populating the new or expanded livestock facility.
2. Begin constructing all of the new or expanded livestock housing or manure waste storage structures proposed in the application.

SECTION N. Appeals

1. In addition to other appeal rights provided by law, pursuant to Wis. Stats. § 93.90(5), any aggrieved person may request that the Livestock Facility Siting Review Board review 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 Wis. Stats. § 93.30.
2. An aggrieved person may request review of any decision of the Livestock Facility Siting Administrator decision or action by the Town Board.
3. Any appeal brought under this section must be requested with 30 days of the Town approval or disapproval.
4. Any appeal to the State Livestock Facility Siting Review Board shall comply with Wis. Stats. § 93.90 and all administrative rules of the said Board.

SECTION O. Penalties

1. Forfeiture. 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 penalties specified in Section 1.04 of this Code of Ordinances.
2. License Suspension or Revocation. 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.
 - (a) 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.
3. Costs of Abatement. 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 may be collected under this Ordinance or Wis. Stats. § 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. Stats. § 66.0627 unless paid earlier.

4. Notice of Violation. Upon discovery of any violation of this ordinance, the Town Board shall give notice to the operator, by certified mail, of the violation(s) and requiring that the violations be cured within thirty (30) days or a license or license amendment shall be filed within fourteen (14) days of the date of the notice. If the Plan or Plan Amendment is disapproved, the violation shall be cured within fourteen (14) days of disapproval. If the violation is not timely cured, the operator shall be subject to the penalties specified in Section 1.04 of this Code of Ordinances.

5. The Town Board or designee is authorized to refer any violation of this Ordinance to the Town Attorney for the commencement of legal proceedings.”

The above and foregoing Ordinance was duly adopted at a regular meeting of the Town Board of the Town of Brigham on the 6th day of March, 2013.

TOWN OF BRIGHAM

Doug Reeson, Town Chair

ATTEST:

Audrey Rue, Town Clerk

VOTE:

Ayes: 3 Published: April 6, 2013

Noes: 0 Adopted: April 8, 2013