

**Town of Sylvester
Green County, WI
Ordinance Amending Town of Sylvester Ordinance No. 09-30-15-01
for Licensing Livestock Facilities and Adopting Additional Standards**

Ordinance #09-30-15-01

WHEREAS, the Town Board of the Town of Sylvester established the Town of Sylvester Large-Scale Livestock Study Committee to research, analyze, and synthesize scientific literature and research regarding the impact of livestock facilities with 500 or more animal units on ground water, surface water, air quality and other identified potential impacts, specifically as those issues apply in the Town of Sylvester and to report its recommendations to the Town Board;

WHEREAS, a team of scientists with a variety of backgrounds including ecology, geospatial analysis, analytical chemistry, hydrogeology, natural areas management, environmental biology, and remote sensing (the “Science Team”) volunteered to conduct research and analysis and to prepare a report of its findings;

WHEREAS, the Science Team devoted a substantial amount of time and expertise in preparing an in-depth report on the potential impacts of large-scale livestock farming with respect to the particular natural resources of the Town of Sylvester and Green County;

WHEREAS, the Science Team also researched and reviewed the scientific literature on subjects relevant to the impacts of large-scale livestock farming and compiled an extensive list of such literature;

WHEREAS, the Science Team produced a report of its findings of fact and recommendations for regulations and practices to avoid, mitigate or alleviate the negative impacts of such agriculture on the environment and the community;

WHEREAS, the Study Committee has reviewed the findings and recommendations of the Science Team and has formulated recommendations to the Town Board for ordinance provisions to address the concerns raised by such large-scale farming operations;

NOW THEREFORE, the Town Board of the Town of Sylvester makes the following findings of fact.

FINDINGS OF FACT

1. The Science Team Report and Recommendations: Environmental Human Health & Safety Risk to Water Quality, Air Quality, Soil Quality, and Natural Areas from Concentrated Animal Feeding Operations (CAFOs) January 18, 2016 is adopted in its entirety and incorporated here by reference. The Town takes particular notice of the following findings.

2. Green County, including the Town of Sylvester, possesses geological, soil, and water resource conditions that render large areas vulnerable to surface and groundwater contamination. The underlying aquifer has been determined to be susceptible to contamination, particularly from excess contributions of nitrate.
3. An evaluation of the Groundwater Contamination Susceptibility Map for Green County illustrates that approximately 85% of groundwater by section in the county is “more susceptible” to contamination and approximately 75% of the sections demonstrate significant risk (upper 25% of risk factors). Characteristics evaluated for this determination include depth to bedrock, type of bedrock, soil characteristics, depth to water table, and groundwater features.
4. More than 60% of Green County is reported to have bedrock exposed at the surface or less than five feet below the soil surface (see the Green County Depth to Bedrock map, available on the WDNR Protecting Wisconsin’s Groundwater through Comprehensive Planning website). An evaluation of high capacity well construction information also confirms shallow depths to bedrock of 0 to 25 feet below the surface throughout a significant portion of the County and Township. Such shallow depth to bedrock poses a significant threat to groundwater resources from both point and nonpoint contaminant sources.
5. Karst bedrock at depths within 50 feet of the surface forms and characterizes much of the groundwater aquifer of the region. The karst landscape allows infiltrating rain or other surface runoff waters to dissolve underlying bedrock, mostly along fractures, which can create caves and other direct conduits to groundwater. Water moves readily through these openings, carrying sediment (and pollutants) directly into the aquifers. As a result, extensive areas of the County and Town have restricted and cautionary uses (such as for land spreading of livestock waste) to reduce the risk of contamination to surface and groundwater in public and private wells.
6. Approximately 50% of the soils within the county are recorded as demonstrating medium to high permeability; specifically, highly permeable soils are documented within the Town of Sylvester and surrounding areas. These soils are characterized by an inability to restrict the infiltration of groundwater, including potential surface contaminants (such as compounds contained within land spread waste) and are therefore susceptible to contamination.
7. The topography that defines locations in the Town of Sylvester, such as the Searles Creek Sub-Drainage Basin also defines an air drainage basin. Basins such as Searles Creek have a nearly closed outlet. The elevated upland plateau and ridges, which occupy the western part of the County and margins of the Town of Sylvester decline quickly to the east, toward the broad glacial outwash plain of the Sugar River Valley, and documents sub-drainage basins, including Searles Creek Watershed which is surrounded on three or more sides by highly elevated ridges.

8. Potential air quality impacts and emission control measures need to be considered and evaluated. Air quality impacts from industrial agriculture facilities can include hazardous emissions, including gases and particulate matter. Emissions are generated by the livestock and manure decomposing in lagoons or spread on to fields. Constituents include ammonia, carbon dioxide, hydrogen sulfide, methane, nitrogen dioxide, total reduced sulfur, and volatile organic compounds. These can travel hundreds of miles and remain in the air for multiple days. Ammonia is released in waste in facilities, lagoons, and spray application, and can cause most highly susceptible age class for many water and airborne diseases, illnesses and human health risks. This mapping also suggests the remainder of the population (17-24%) consists of youth that also have a higher and increasing vulnerability to many types of air and water quality-borne illnesses and diseases. Increasingly so, these older and youngest age classes have been documented to have increased frequencies of new on-set asthma, rare cancers, and other serious health risks. These age-distribution demographics of citizens living within air basins in the Town of Sylvester (including Searles Creek watershed, downstream Decatur Lake, and the citizens of Brodhead) is skewed toward the oldest-age demographic of the especially vulnerable humans at risk from air contaminant exposure. This, coupled with the nearly closed air-basin topographic features and resulting drainage pathway, exposes the most susceptible demographic groups. Elderly citizens within the down gradient air basin have the increased potential for more regular exposure to aerosol contaminants from land use changes
9. Current maps of areas of the County and Town that meet the NRCS 590 Nutrient Management restrictions (such as for manure application) because of setback requirements from roadways, other farms, potable wells, and shallow bedrock, and the presence of springs, seeps, hydric soils, wetlands and floodplains, floodways and high groundwater tables under-represent the NRCS 590 restrictions because several of the types of data (e.g. exact locations of potable wells, wetlands that meet state or federal jurisdictional and wetland delineation requirements, and groundwater resources or springs) do not exist in modern form with current standards of precision for Green County and the Town of Sylvester.
10. Springs and seeps are rare resources in many landscapes. However, in Green County, the Town of Sylvester (and others), springs were historically common. Many of the higher volume springs have been mapped by WDNR as a part of development of the State regulations governing high capacity wells. Few, of what is likely thousands, of additional smaller springs have been mapped. Intensification of agricultural operations associated with AFO/CAFO, and the maximization of croplable acreage, has resulted in tiling intensification which has dewatered the recharge areas of many springs and seeps, and other wetlands.
11. In the Sugar River Basin, which encompasses in part eastern Green County and much of Sylvester Township, the Wisconsin Department of Natural Resources (WDNR) and U.S. Environmental Protection Agency (USEPA) have designated 213 total stream miles as Clean Water Act (CWA) 303(d) impaired water bodies, over the past two decades. In Sylvester Township, Searles Creek, one of the principle tributary streams draining the

Township, has been listed since 1998 for habitat impairment resulting from straightened stream reaches, excess sediment originating largely from heavily tilled croplands, eroding banks, and in-stream grazing livestock.

12. The primary threat from agriculture to surface water in Green County is from surface runoff carrying sediment, nutrients, and manure. Phosphorus loading in surface waters and consequent algal blooms constitute a threat to human health due to toxins produced by the algae. Microbiological pathogens from manure in runoff and surface waters constitute a threat to human health, particularly to swimmers and others in direct contact with the water. And, also to potable water supplies where the surface runoff encounters and enters higher permeability sands, gravels, limestone, dolomite, which comprise the common karst bedrocks found in Green County and The Town of Sylvester.
13. The amount of stormwater runoff from rivers and watersheds in the Mississippi basin (like the Sugar River) and all over the U.S, has been increasing over time given the magnitude of the storm events experienced. These large storm events are resulting in increased flood levels; severity, magnitude, depth and durations; increased human health and safety issues; and increased costs to maintain (and rebuild) roads and other infrastructure. This, coupled with recent trends in storm intensification, has prompted National Oceanic and Atmospheric Administration (NOAA), Federal Emergency Management Agency (FEMA) and State meteorological agencies to increase the flood magnitude projections and risks associated with storm events. For example, now the City of Chicago requires that storm water management. Because of the changing storm patterns and intensities being experienced in the Wisconsin, and elsewhere in the Midwest, local, state and federal agencies are taking more rigorous approaches to address increased flooding and failure risk of stormwater management and containment systems controls for major developments must be able to fully contain back to back 100 year storm events.
14. Groundwater is also being contaminated as evidenced from Green County well data. Numerous studies in Southern Wisconsin, Northern Illinois, and more broadly throughout the Midwest have documented the increased contamination of a number of water wells and surface waters from nitrogen, E. coli, antibiotics, soaps and other cleaning materials used in dairy operations, fertilizers (including the emulsifying agents, dyes, flowability agents, and carriers), insecticides and herbicides, and other chemical constituents. This impact is occurring with agricultural intensification throughout many areas, including the Town of Sylvester. This suggests that land use changes, including AFO and CAFO operations in the Town and throughout Green County, that involve spreading of larger quantities of manure and waste water threaten to contaminate the surface or groundwater through infiltration or reinjection, passive runoff or aerosol mobilization. These activities have already contributed to increased contamination, resulting in increased human health and safety risks.
15. Nitrate is the most widespread groundwater contaminant in Wisconsin. Multiple studies have determined this increase to be directly related to manure spreading, agricultural

fertilizers and concentrated production of leguminous crops such as alfalfa.

16. Several investigators have studied the chronic health and reproductive impacts of nitrate contaminated drinking water. Recent studies have implicated nitrate exposure as a possible risk factor associated with lymphoma, gastric cancer, hypertension, thyroid disorder and birth defects. In addition, a recent investigation conducted by local public health officials in La Grange County, Indiana implicated nitrate-contaminated drinking water as the possible cause of several miscarriages.
17. In most cases, a properly constructed well (regulated by NR 812) will prevent bacteria and other disease-causing organisms from entering a well. Soils are often able to naturally filter bacteria out of water before it reaches the saturated zone. Unfortunately, in areas with thin soils or in karst regions (such as those found in Green County and the Town of Sylvester), natural filtration is not as effective and bacteria can more easily contaminate the groundwater aquifer. Under these conditions, even a properly constructed well may become contaminated. Installation of water supply wells in accordance with required distances from septic systems, animal feedlots and manure pits, and manure spreading may minimize potential contamination.
18. There is compelling evidence that the amount of nitrate entering surface water from groundwater is increasing. A long term study carried out at the Deep Loess Research Station in Iowa showed that after 26 years of fertilizer application, nitrate levels in groundwater entering surface water increased from 5 ppm to 23 ppm. Currently, 16% of the nitrate applied within that study area enters surface water from groundwater. This study region is very similar to conditions found in the Town of Sylvester and in Green County. This Iowa data may be representative of trends in the Town of Sylvester and Green County's streams and rivers. A similar pattern has been seen in Wisconsin's Little Plover River where nitrate-nitrogen has increased from 1-2 ppm in the 1960s to 8 ppm at present. Data show increasing nitrate-nitrogen levels in the Little Plover River since 1966. This is a region with significant increased CAFO farming operations and highly permeable sand substrates. An estimated 2040 million pounds of nitrogen are deposited on Wisconsin's surface annually from agriculture, the atmosphere, septic systems and other sources. Approximately 80% of this originates from agricultural sources divided almost equally among legumes, manure and commercial fertilizer.
19. Groundwater wells used as the drinking water (potable) supply in Green County and the Town of Sylvester show increased nitrate pollution at levels above health limits set by USEPA for potable consumption by children, chronic exposure to elderly or sick people, and consumption by livestock. In Green County and the Town of Sylvester, recent testing conducted in 2015 by the Green County Extension found 24% of 45 voluntarily tested wells already have excessive levels of nitrates in groundwater. In the same testing period, coliform bacteria tested positive in 38% and E. coli tested positive in 18% of the wells.
20. Studies show that on most soils, if the available nitrogen in the soil is kept to about the level of nitrogen that crops actually need, the loss of nitrate is minimized. Even with the

very best nutrient management plans (NMP), because manure quality varies considerably, the addition of small amounts of livestock manure to enhance soil fertility and to promote plant health and proper plant nutrition are sustainable agricultural practices. But, CAFO operations do not add small amounts of manure to the land. Use of the land as a means of livestock waste disposal is not only unsustainable; it is a direct threat to the groundwater and surface water of everyone downstream.

21. Non-point source pollution is the primary cause of reduced water quality in the United States (USEPA 1996, 2000; USGS 1999), in Green County (WDNR 2014), and in the Sugar River (WDNR 2014). Non-point source pollution includes, along with other types, agricultural farm runoff from fertilizers and manure management (Shepard 2005).
22. Reduced water quality from non-point source pollution and concern about the effectiveness of nutrient management plans have been documented in Wisconsin, (Shepard 2005; WGCC 2015; WDNR 2013; WLWCA 2013). In Green County, impaired water quality conditions in the groundwater (CWSC, online water quality viewer) and in surface waters (WDNR 2014) stand as evidence that agricultural non-point pollution is not being effectively managed under existing national, state, and local regulations.
23. According to a study of two watersheds in eastern WI, there is a lack of oversight on how NMPs are implemented and maintained. Only three fourths of the farmers with NMPs implemented their nutrient management plans on the majority of the acres the plan covered.
24. The evidence strongly suggests that the presence alone of a NMP does not ensure plans will be fully implemented and the intended environmental benefits realized without follow-up by providing assistance aimed at long-term implementation, plan maintenance, and plan modifications due to changes in the farming operation over time. The promotion and requirements of nutrient management plans as part of government conservation programs should also address how plans are implemented and maintained, not merely written.
25. Spills, including reported and non-reported discharges of manures, and other sources of surface, groundwater and soil contamination have been frequently associated with dairy operations and other AFO/CAFO operations as well as with many other types of industrial operations in the U.S., including areas in the Town of Sylvester and in Green County.
26. Nationally, in the Town of Sylvester, in Green County, and throughout Wisconsin, downstream receiving water quality has been seriously impacted by non-point source agricultural operations. Large, intensified operations that do not use ecologically adequate buffers to reduce runoff and sedimentation of waterways, and do not biofilter and bio-cleanse their runoff from manure laden and cropped farm fields contribute disproportionately to the runoff experienced downstream.
27. *The frequency and severity of storm events is well documented. The 25-year and 100-year 24-hour storm event data listed in Table 1 of Wis. Admin. Code sec. NR 205.05*

(applicable to Chs. 200-299) and sec.NR 243.04 are based on the National Weather Service in Technical Paper No. 40, "Rainfall Frequency Atlas of the United States". Technical Paper No. 40 is based on data from 1961. The U.S. NOAA National Weather Service Hydrometeorological Design Studies Center Atlas 14 Volume 8 (NA 14), which is based on data from 2013 supersedes Technical Paper 40. According to NA 14: "The states of Wisconsin, Michigan, Minnesota, and Iowa have the largest extent of magnitude increases across the entire Midwest." The estimates in large portions of southwestern Wisconsin increased as much as 2 inches (around 30%).

NOW, THEREFORE, the Town Board hereby ordains that the Town of Sylvester Livestock Facility Licensing Ordinance is hereby amended as follows (changes are highlighted in yellow with additions in italics and deletions marked with strikeouts)

Town of Sylvester Livestock Facility Licensing Ordinance

Section 1. Authority

- A) 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.
- B) *Except where stricter standards are set in this ordinance, the following state standards are incorporated as part of this ordinance as if fully set forth in this section*
 - 1. *Wis. Admin. Code NR Ch 811 and NR Ch. 812 pertaining to wells*
 - 2. *Wis. Admin. Code ATCP § 51.14 pertaining to odor control*
 - 3. *Wis. Admin. Code ATCP § 51.16 pertaining to nutrient management plans.*

Section 2. Purpose

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 Sylvester. This ordinance sets forth the procedures for obtaining a license for the siting of new and expanded livestock facilities in the Town of Sylvester.

Section 3. Definitions

~~A)~~ "Adjacent" means 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.

"Administrator" means the Town of Sylvester Livestock Siting Facility Administrator.

“AFO” means an animal feeding operation

Ⓑ) “Animal unit” has the meaning that was given in s. NR 243.03 (3) as of April 27, 2004.

“Aquifer” means a geologic formation(s) that is water bearing. A geological formation or structure that stores and/or transmits water, such as to wells and springs.

€ “Complete application for local approval” means an application that contains everything required under s. ATP 51.30 (1) to (4).

Ⓓ) “Expanded livestock facility” means 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.

Ⓔ) “Expansion” means 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.

“Groundwater” means any of the waters of the state occurring in a saturated subsurface geological formation of rock or soil.

Ⓕ) “Karst feature” means an area or superficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater. “Karst feature” may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.

Ⓖ) “Livestock” means 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.

Ⓗ) “Livestock facility” means 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.”

Ⓖ) “Livestock structure” means 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 waste 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.

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

⌘ “New livestock facility” means a livestock facility that will be used as a livestock facility for the first time, or for the first time in at least 5 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 5 years.

⌘ “Operator” means a person who applies for or holds a local approval for a livestock facility.

⌘ “Person” means an individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity.

⌘ “Populate” means to add animal units for which local approval is required.

⌘ “Property line” means a line that separates parcels of land owned by different persons.

“Rainfall event” means the design rainfall amount and probable intensity of a 24-hour rainfall event for Green County for various lengths of time, such as 25 and 100 years. The upper limit of the 90% confidence interval for rainfall events shall be based on the U.S. NOAA National Weather Service Hydrometeorological Design Studies Center Atlas 14 and not the National Weather Service Technical Paper No. 40 as currently used by the State of Wisconsin.

“Recharge Area” means the total land area contributing water to an aquifer.

⌘ “Related livestock facilities” means livestock facilities that are owned or managed by the same person, and related to each other in at least one of the following ways:

1. They are located on the same tax parcel or adjacent tax parcels of land.
2. They use one or more of the same livestock structures to collect or store manure.
3. At least a portion of their manure is applied to the same land spreading acreage.

⌘ “Separate species facility” means a livestock facility that meets all of the following criteria:

1. 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. (P):
 - a. Cattle.
 - b. Swine.
 - c. Poultry.
 - d. Sheep.
 - e. Goats.
2. It has no more than 500 animal units.
3. 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. (P).
4. It meets one of the following criteria:
 - b. Its livestock housing and manure storage structures, if any, are located at least 750 feet from the nearest livestock housing or manure storage structure used by a livestock facility to which it is related under sub. (P).
 - c. It and the other livestock facilities to which it is related under sub. (P) have a combined total of fewer than 1,000 animal units.

“Spring” means a water body formed when the side of a hill, a valley bottom or other excavation intersects a flowing body of groundwater at or below the local water table, below which the subsurface material is saturated with water.”

⌘ “Waste storage facility” means one or more waste storage structures. “Waste storage facility” includes stationary equipment and piping used to load or unload a waste storage structure if the equipment is specifically designed for that purpose and is an integral part of the facility. “Waste storage facility” does not include equipment used to apply waste to land.

⌘ “Waste storage structure” means a waste storage impoundment made by constructing embankments, excavating a pit or dugout, or fabricating a structure. “Waste storage structure” does not include equipment used to apply waste to land. For purposes of ss. ATCP 51.12 (2) and 51.14, “waste storage structure” does not include any of the following:

1. A structure used to collect and store waste under a livestock housing facility.
2. A manure digester consisting of a sealed structure in which manure is subjected to managed biological decomposition.

⌘ “WPDES permit” means a Wisconsin pollutant discharge elimination system permit issued by DNR under ch. NR 243.

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

Section 4. License Required

A) General

A license issued by the Town of Sylvester 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.
 - 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 license requirement.
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 sub. 1.
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 sub. 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 Administration

The Town of Sylvester 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 6. 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) The following setbacks shall apply to livestock structures:
 1. Property lines

- a. 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.
 - b. 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. Public road right-of-way
 - a. 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.
 - b. 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.
- 3. Waste storage structure
 - a. 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.
 - b. 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.
 - ii. No larger than the existing structure.
 - iii. No further than 50 ft. from the existing structure.
 - iv. No closer to the road or property line than the existing structure.
 - c. 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.

Section 7. License Application

- A) A livestock operator must complete the application form and worksheets prescribed by ATCP 51, including any authorized local modifications. The application form and worksheets shall
- B)
- C) demonstrate compliance with standards in ATCP 51 and this ordinance.
- D) The operator must file 4 duplicate copies of the application form, including worksheets, maps and documents (other than engineering design specifications)

included in the application.

E) Nutrient management information.

- 1. Together with the application, the applicant shall also file an original and four duplicate copies of a nutrient management plan (NMP) meeting all state standards pursuant to Wis. Admin. Code §§NR151.07, NR 243.14, NRCS Standard 590 and other applicable state statutes, regulations and rules.*
- 2. In order for the Town to verify that the land base for applying nutrients described in the NMP is accurate and sufficient, the applicant shall also file an original and four duplicate copies of executed and recorded waste spreading easements or similar executed documents demonstrating the applicant's guaranteed, non-revocable right to spread sufficient quantities of waste for at least a five-year period.*
- 3. The applicant shall also produce maps showing the location and identification of each parcel of land on which it proposes to spread manure. For each property, restrictions, prohibitions under NRCS 590, DATCP, WDNR and locally imposed restrictions and prohibitions must be shown on the maps and all sources of data used in the mapping must be documented and must include latest County, Township, State and Federal database and provided at scales of no smaller than 1 inch equals 100 feet on mapping.*
- 4. Natural Areas and State Scientific Area—The maps submitted by the applicant shall also show the location of all designated natural and scientific areas, public and private conservation lands, and mapped federal and state threatened and endangered plant and animal species and show setbacks from these natural resources required by Town, county state or federal laws and regulations.*

F) Testing and mapping required. Within 15 days of the filing of a complete application, the applicant shall provide the Town with the following information to ensure compliance with the standards set forth in section 6 of this ordinance.

- 1. Springs: For every spring or seep on building site that is mapped in the most recent map of springs in the Town of Sylvester whether prepared by the State, Green County, the Town or other governmental or private professional surveys, reports or maps, the applicant shall map the locations of surface to groundwater recharge locations that support each spring. This mapping should be done using scientifically and technically acceptable dye tracing, ground penetrating radar technologies, and confirmed with water chemistry testing and water mass-balance modeling to document recharge quantities and discharge quantities from the springs and seeps. The modeling shall be sealed by a registered Wisconsin hydrogeologist and a registered senior ecologist with the Ecological Society of America.*
- 2. Wetlands. All applications shall include a formal wetland delineation mapping and report following the federally approved 1987 U.S. Army*

Corps of Engineers wetland delineation manual and the most recent WDNR wetland delineation requirements.

Section 8. License Application and Monitoring Fees

- A) A non-refundable application fee of \$1,000 payable to the Town of Sylvester shall accompany an application for the purpose of offsetting the town costs to review and process the application.
- B) *The Town may charge the applicant for the reasonable out-of-pocket expenses the Town incurs, including for engineering, legal and other professional services, for review of the application.*
- C) *The Town may charge a license holder for the reasonable out-of-pocket expenses the Town incurs, including for engineering, legal and other professional services, for monitoring and ensuring compliance with the conditions of the license and other provisions of this ordinance.*

Section 9. 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 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.
- 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 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.
- D) Pursuant to ATCP 51.32, the Town 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 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.

- E) 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 10. Criteria for Issuance of a License

- A) A license shall issue if the application for the proposed livestock facility:
1. Complies with this ordinance,
 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 the standards specified in this ordinance, specifically Section 6 above.
- 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 this ordinance.
 3. Other grounds authorized by s. 93.90, Stats., that warrant disapproving the proposed livestock facility.
- C) *No conditions may be imposed on a license other than those based on standards provided in the Town ordinances.*
- D) *Conditions Incorporated in all Licenses. The following conditions are incorporated as a matter of law in every license that is issued and apply to such license regardless of whether they are expressly set forth in the license.*
1. *Setbacks for spreading manure. No manure shall be applied on any field closer than the distances shown in Table 1 of this ordinance without the express written approval of the Town Board in its sole discretion. No approval may be granted unless the applicant incorporates at least three of the conservation options listed in Table 3. The Town Board may set additional conditions on its approval as it deems appropriate to safeguard the health, safety and welfare of the public.*
 2. *Prohibition on spreading manure. No manure shall be spread in any of the locations shown in Table 2 of this ordinance.*
 3. *Limitation on amount of manure spread on parcels.*
 - a. *Before any manure from the license holder's operations is spread on any parcel, soil samples shall be taken to determine the soil's nutrient content to establish a base line.*
 - b. *No manure shall be applied on any parcel in excess of 80 percent of its nutrient load capacity.*
 - c. *No later than 4 successive years after manure generated from the license holder's operations is first applied to a parcel, soil samples*

shall again be taken at the license holder's expense to determine the soil's nutrient content. The application rate shall be modified if appropriate based on the results of the soil samples taken as the baseline.

- d. Soil samples shall be taken at least every 4 successive years to determine whether the application rate should be adjusted.*
- 4. Limitations on transportation of liquid animal waste.*
 - a. Without the written approval of the Town:*
 - i. No surface hoses or pipes for the transportation of liquid animal waste shall be located in Town rights-of-way except for two continuous two-week periods annually for the owner of the parcel of land adjoining the right-of-way in which the hoses or pipes will be located. If any surface hose or pipe discharges any waste within the right-of-way, the owner of the waste transport operation shall be responsible for the immediate cleanup of such waste.*
 - ii. No underground pipes or culverts for the transportation of liquid animal waste shall be located in or across Town rights-of-way; and*
 - iii. No Town road or facility may be opened for the purpose of installing underground pipes or culverts.*
 - b. The Town may approve the transportation of liquid animal waste and may set reasonable conditions to ensure the health and safety of Town residents, including:*
 - i. specifying the location and depth of pipes or hoses and type of pipe or hose material; and*
 - ii. requiring the applicant to post a bond.*
 - c. The applicant for installation of pipes or hoses to transport liquid animal waste shall be responsible for the cost of repair of any Town road or facility that is damaged due to the installation or existence of the pipeline, including subsidence.*
- 6. Updating Nutrient Management Plan. Every license holder shall*
 - a. file an updated NMP by the end of each calendar year;*
 - b. file an updated map and description of its land base for spreading waste and copies of all executed and recorded waste spreading easements or similar executed documents demonstrating the applicant's guaranteed non-revocable right to spread sufficient quantities of waste. The Town may waive this requirement for any such agreements already on file.*
 - c. For any waste spreading agreements which have previously been filed with the Town and that are due to expire within two years from the end of the calendar year, the license holder shall provide proof of renewal of such agreements for a period of at least five*

years from the end of the reporting calendar year. In lieu of renewals of existing agreements, the license holder may file executed agreements guaranteeing the right to spread waste on other parcels for an equivalent amount of manure load and time period.

7. *Responsibility of License Holder for Compliance with Conditions.*
 - a. *The license holder is individually responsible for compliance with the conditions governing spreading and hauling manure for all manure generated by its operations regardless of whether it sells the manure to a third party or contracts with a third party for transporting or spreading the manure. Any violations of these conditions shall constitute a violation by the license holder.*
 - b. *If the license holder sells the manure or contracts with a third party for transporting or spreading the manure shall provide the purchaser or contractor with a copy of these conditions.*
8. *Manure storage facilities.*
 - a. *The Town incorporates all state and county regulations of manure storage facilities, including all future amendments as part of this ordinance. A violation of any standards and conditions under those regulations and of any permits, licenses or approvals adopted by the state or county shall constitute violations of this ordinance.*
 - b. *The upper limits of the 90% confidence intervals of NA 14 for Monroe, Green County 24-hour rainfall events (7.00" for 25-year and 9.65" for 100-year events) shall be used for purposes of calculating the required design volume of manure storage facilities,*

Section 11. Record of Decision

- A) The Town shall issue its decision in writing. The decision shall 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.
- B) If the Town approves the application, it shall give the applicant a duplicate copy of the approved application, marked "approved." The duplicate copy shall include worksheets, maps and other documents (other than engineering specifications) included in the application. The Town Clerk as required by ATCP 51.36 within 30 days of the Town's decision on the application shall do all of the following:
 1. Give the Department of Agriculture, Trade and Consumer Protection written notice of the Town's decision.
 2. 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.)

3. If the Town has withdrawn a local approval under this ordinance, file with the department a copy of the Town's final notice or order withdrawing the local approval.

Section 12. 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) The Town requests that upon change of ownership of the livestock facility, the new owner of the facility shall file information with the Town 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 political subdivision 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 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 political subdivision 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 *Administrator* shall monitor compliance with the ordinance as follows:

- A) Upon notice to the livestock facility owner request the right of the Administrator under Section 5 of this ordinance 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.

- B) If the livestock facility owner refuses the Administrator 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.
- C) If a licensed premises is found not to be in compliance with the commitments made in the approved application, the Administrator 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.
- D) If non-compliance of the license conditions as described in the written notice given by the 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 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 \$250.00 nor more than \$500.00 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 may seek injunctive relief from a court of record to enjoin further violations.
- D) 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.

E) The Town shall recover from any person who violates any provisions of this ordinance, all reasonable attorney fees and enforcement costs incurred by the Town, including fees of expert consultants retained to determine or monitor compliance.

F) 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.

G) 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 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.

Section 17. Appeals

A) In addition to other appeal rights provided by law, 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~~ license 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.

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

C) An "aggrieved person" may request review of any decision of the Livestock Facility Siting Administrator decision or action by the Town Board.

D) 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.

E) 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.

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.

Adopted this 15th day of February, 2016, by the Town Board of Supervisors of the Town of Sylvester.

Chairperson aye; 1st Supervisor aye; 2nd Supervisor nay

Anna Anderson, Town Chairperson

Attested by the Town Clerk

Jacqueline Witt, Town Clerk

This ordinance was filed in the office of the Town Clerk and properly posted or published as required by law on the _____ day of _____, 2016

Attested by the Town Clerk

Jacqueline Witt, Town Clerk