



# POLK COUNTY, WISCONSIN

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Lisa Ross, County Clerk  
100 Polk Plaza, Suite 110, Balsam Lake, WI 54810  
Phone (715) 485-9226 | Email [countyclerk@co.polk.wi.us](mailto:countyclerk@co.polk.wi.us)

## AGENDA AND NOTICE OF MEETING

### Health & Human Services Board

Tuesday, August 18, 2020

**Public Hearing Meeting, 9:30 a.m.**

**Regular Business Meeting, 10:00 a.m.**

A quorum of the County Board may be present  
Virtual, Open Meeting via Webex Video Conference or Phone

### **Webex Virtual Meeting Info:**

Meeting Number (access code): **960 069 727**

Password: **HHSmeeting**

- Join Online: <https://polkwi.webex.com>
- Join by Phone: 1-408-418-9388

Materials: Minutes of July 14, 2020 Meeting; 2020 Workplan; Siting Ordinance Guide; Operational Based vs CUP, Public Hearing Notice

### Order of Business:

1. Call to Order- Public Hearing- Chairman Bonneprise- 9:30 a.m
2. Public Hearing on 2020 Polk County Community Services Budget
3. Close Public Hearing- 10:00 a.m.
4. Call to Order-Chairman Bonneprise
5. Approval of Agenda
6. Approval of Minutes for the July 14th, 2020 Meeting
7. Disclosure of Committee Member Conflicts of Interest regarding matters noticed on this agenda
8. Public Comment – 3 minutes – not to exceed 30 minutes total
9. Receipt of Information from Supervisors Not Seated as Committee Members
10. Announcements and Committee information
11. Reports and Presentations
  - A. DNR Presentation-Permitting Process-Jeff Jackson, WI DNR
  - B. Presentation by Environmental Services Division staff –Siting Ordinances, Operations Ordinances, Conditional Use Permits
  - C. 2019 Year-end financial report CSD, Veteran’s, Child Support
  - D. Audit Report from Golden Age Manor
  - E. Update on the Community Health Improvement Plan
  - F. Update from Lisa Ross, County Clerk regarding Minutes
12. Discussion Items
  - A. Review of Resolution regarding Health in All Policy as it relates to CAFO local regulatory options for Polk County to be presented at September 2020 County Board meeting
  - B. Discussion and consideration of draft Ordinance 29-20: Operational Based Ordinance Related to Swine CAFO’s.
13. Action Items
  - A. Review and Recommendation on fee schedule and Leases
14. Identify Subject Matters for September 8th, 2020 Meeting
15. Adjourn

Items on the agenda not necessarily presented in the order listed. This meeting is open to the public according to Wisconsin State Statute 19.83. Persons with disabilities wishing to attend and/or participate are asked to notify the County Clerk’s office (715-485-9226) at least 24 hours in advance of the scheduled meeting time so all reasonable accommodations can be made. Requests are confidential.

## **POLK COUNTY COMMUNITY SERVICES PUBLIC NOTICE**

Public Input is being sought for the 2021 Polk County Community Services Budget.

The Polk County Community Services Division will hold a public hearing to receive comments from clients, providers, interested citizens and community agencies as to the adequacy and need for services in such areas as Services to Juveniles, Child Protective Services, Services to the Elderly, Public Health Services, Mental Health Services, Alcohol and Drug Abuse Services, and any other services being or needing to be provided in the community.

The meeting will be held on Tuesday, August 18, 2020 from 9:30-10:00 a.m. in the County Board room (first floor) at the Polk County Government Center, 100 Polk County Plaza, Balsam Lake, WI 54810. The public will be directed to the West Conference Room as to properly social distance.

The public may attend the hearing and meeting via WebEx:

Meeting Link: <https://polkwi.webex.com/>

Meeting Number: 960 069 727

Meeting Password: HHSmeeting

We ask that anyone wishing to make public comment via email, send the comment to the County Clerk: [countyclerk@co.polk.wi.us](mailto:countyclerk@co.polk.wi.us).

Anyone wishing to make a comment remotely via WebEx, please send your name and information to the County Clerk: [countyclerk@co.polk.wi.us](mailto:countyclerk@co.polk.wi.us) so we can unmute you on WebEx.

Written comments may be submitted, postmarked no later than August 14, 2020, addressed to:

Polk County Community Services  
Attn: Tonya Eichelt, Division Director  
100 Polk County Plaza, Suite 50  
Balsam Lake, WI 54810

Any person who has a qualifying disability under the Americans with Disabilities Act and requires the meeting or materials at the meeting to be in an accessible format must contact the County Clerk's office at (715) 485-9226 at least 48 hours prior to the meeting so that arrangements may be made to accommodate your request.



# POLK COUNTY, WISCONSIN

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## MINUTES OF THE HEALTH & HUMAN SERVICES BOARD MEETING

Government Center, County Board Room, Balsam Lake, WI 54810

1:00 p.m. Tuesday, July 14th, 2020

This meeting was available for viewing through Webex videoconference and teleconference

Meeting called to order by Chair Bonneprise at 1:04 p.m.

Members present

Attendee Name	Title	Status
John Bonneprise	Chair	Present
Joe Demulling	Vice Chair	Present
Amy Middleton	Supervisor	Present
Fran Duncanson	Supervisor	Present via WebEx
Jay Luke	Supervisor	Present
William Alleva	Citizen	Present
Rita McKee	Citizen	Present
Sabrina Meddaugh	Citizen	Present via WebEx
Dr. Arne Lagus	Citizen	Present

Also present: Shabana Lundeen, Deputy County Clerk; Roxanne Howe, Deputy County Clerk; Tonya Eichelt, Community Services Director; Kathy Gingras, Community Services Business Operations Manager; Lisa Lavasseur, Behavioral Health Director; Brian Kaczmarek, Public Health Director; Leigh Wahlen, DCF Director; Andrew Butzler, CVSO; Dana Reese, GAM Administrator; Vince Netherland, County Administrator; Bob Kazmierski, Environmental Services Division Director; Kim O'Connell, Supervisor; Malia Malone, Corporate Council; Jason Kjeseth, Zoning Administrator; Member of the Press, Member(s) of the Public.

**Approval of Agenda-** Chair Bonneprise called for a motion to approve agenda. **Motion** (Demulling/Middleton) to approve agenda. **Motion** carried by unanimous voice vote.

**Approval of Minutes-** Chair Bonneprise called for a motion to approve the minutes of the June 9<sup>th</sup>, 2020 meeting. **Motion** (Luke/Demulling) to approve the minutes. **Motion** carried by unanimous voice vote.

**Time was given for Committee Members to disclose any conflicts of interest regarding matters noticed on the agenda.** No conflicts of interest were stated.

**Public Comment** – One Public Comment was received by the Board.

**Receipt of Information from Supervisors Not Seated as Committee Members** - No information was received by the committee from Supervisors not seated as committee members.

**Announcements and Committee Information** – The Committee received information from Chair Bonneprise regarding Wisconsin Counties Association and the five steering committees in which Chair Bonneprise has been appointed to.

The Committee received information from Chair Bonneprise and Tonya Eichelt, Community Services Division Director, regarding the Health and Human Services Wisconsin Counties Association meeting held Friday July 10<sup>th</sup>, 2020.

### Reports and Presentations

The Board received an update from Brian Kaczmarek, Public Health Director from Polk County Health Department regarding Covid-19.

The Board received the Veteran's Service Office Mid-Year Report, a presentation from Andrew Butzler, Director of Veterans Services.

The Board received a mid-year report from Dana Reese, Director of Golden Age Manor regarding Golden Age Manor's current census and Covid-19 precautions and affects.

### Discussion Items

The Board received information about budget priorities from Vince Netherland, County Administrator and discussed the goals being set as a county and how those could affect budget changes for the next fiscal year.

The Board discussed the CAFO resolution in accordance with Bob Kazmierski, Environmental Services Division Director and Jason Kjeseth, Zoning Administrator. The Committee received some clarification about the resolution the Environmental Services Committee has been working on.

Bob Kazmierski, Environmental Services Director and Jason Kjeseth, Zoning Administrator also discussed updates from the June and July ESC Meetings with the board.

### Action Items

**Motion** (Alleva/Duncanson) to pass the WCA resolution to the Environmental Services Committee for review. **Motion** carried by unanimous voice vote.

**Motion** (Middleton/Luke) to recommend the requests, presented by Supervisor Middleton, of the HHS Board to be reviewed by the Environmental Services Committee regarding CAFO's. **Motion** carried by unanimous voice vote.

**Motion** (Middleton/Demulling) to recommend to Corporate Council to draft a resolution to present to the County Board based upon requests of the HHS Board sent to Environmental Services Committee regarding CAFO's.

**Motion** carried by unanimous voice vote.

### Items for the next Agenda –

- Audit Report from Golden Age Manor
- DNR presentation on the Permitting Process
- Review and recommendations on fee schedule and Leases
- Community Health Improvement Plan Update
- Legislative Event Report

**Next Meeting** – 10:00 a.m. Tuesday, August 11<sup>th</sup>, 2020

Chair Bonneprise called for a motion to adjourn. **Motion** (Demulling/Aleva) to adjourn.

**Motion** carried by unanimous voice vote. Chair Bonneprise declared meeting adjourned at 3:38 p.m.

Respectfully submitted,  
Shabana Lundeen, Deputy County Clerk

Date	Scheduled Agenda Items	Program Review and Upcoming Issues
January	No meeting-cancelled	
February	No meeting	
March	<ul style="list-style-type: none"> <li>• GAM and VSO Updates</li> <li>• BHHS Satisfaction Survey</li> <li>• Truancy education/Child Wellness Ordinance</li> <li>• Public Nuisance Ordinance</li> </ul>	
April	<ul style="list-style-type: none"> <li>• Division Strategic Plan Update</li> <li>• COVID-19 update</li> </ul>	<ul style="list-style-type: none"> <li>• Program Review-Great Rivers Income Maintenance</li> <li>• CAFO presentation</li> </ul>
May 12 10:00 AM	<ul style="list-style-type: none"> <li>• Welcome new members Amy Middleton and Fran Duncanson</li> <li>• Legislative Event Report</li> <li>• 2021 Budget Priorities Discussion</li> <li>• BHHS accomplishments</li> <li>• Preliminary End of Year Financial Report</li> <li>• Establish budget priorities</li> </ul>	Housing study results? Public transportation <ul style="list-style-type: none"> <li>• Uber</li> <li>• Van Service</li> <li>• Options for non-disabled/elderly, full cost and discounted</li> <li>• Transportation study</li> </ul>
June 9 **8:30 AM 10:00 AM	<ul style="list-style-type: none"> <li>• Department Annual Reports</li> <li>• Medical Examiner Update</li> <li>• Child Wellness ordinances</li> </ul>	<ul style="list-style-type: none"> <li>• Board Member Orientation *8:30 start</li> </ul>
July 14 10:00 AM	<ul style="list-style-type: none"> <li>• VSO and GAM mid-year reports</li> </ul>	<ul style="list-style-type: none"> <li>• Budget Updates (State/Local)</li> </ul>
August 18 9:30 AM	<ul style="list-style-type: none"> <li>• Review and recommendations on fee schedule and leases</li> <li>• Community Health Improvement Plan Update</li> <li>• Legislative Event Report if applicable</li> </ul>	<ul style="list-style-type: none"> <li>• Public Hearing for 2021 Budget *9:30 start</li> </ul>

September 8 10:00 AM	<ul style="list-style-type: none"> <li>• Presentation 2021 Budget</li> <li>• Legislative event</li> <li>• Strategic Plan update-Don Wortham</li> </ul>	<ul style="list-style-type: none"> <li>• Program Review-tbd</li> </ul>
October 13 10:00 AM	<ul style="list-style-type: none"> <li>• Annual Budget Amendments</li> <li>• Division Update</li> </ul>	
November 10 10:00 AM	<ul style="list-style-type: none"> <li>• Legislative Event Report if applicable</li> <li>• GAM Update</li> <li>• Veteran's Update</li> </ul>	<ul style="list-style-type: none"> <li>• Hold meeting at GAM?</li> </ul>
December 8 10 AM	<ul style="list-style-type: none"> <li>• Division Update</li> <li>• 2021 Workplan</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>

	Operational Based	Conditional Use
<b>Authority</b>	Wis. Stats. §§ 59.03(2), 59.70(1), 254.51(5) & 254.59(7) NR 151 and NR 243	NR 151 and NR 243, 59.69, 59.70 Polk County Comprehensive Land Use Ordinance & Polk County Ordinance 39-17
<b>Definitions</b>	“Large-Scale Concentrated Animal Feeding Operation” or “CAFO” means a lot or facility, other than a pasture or grazing area, where 1,000 or more animal units have been, are or will be stabled or concentrated, and will be fed or maintained by the same owner(s), manager(s) or operator(s) for a total of 45 days or more in any 12-month period.	“SWINE CONCENTRATED ANIMAL FEEDING OPERATION (CAFO)” means feedlot, barnyard or other outdoor facility, other than a pasture or winter grazing area, where 1000 animal units or more of swine livestock are concentrated for feeding or other purposes.
<b>Procedures/Process</b>	<ul style="list-style-type: none"> <li>• The applicant shall apply for a “CAFO Operations Permit”</li> <li>• Notice all landowners within <b>3 miles</b> of the proposed CAFO</li> <li>• Public Hearing required</li> <li>• CAFO Operations Permit granted by the <b>County Board.</b></li> </ul>	<ul style="list-style-type: none"> <li>• The applicant shall apply for a “Conditional Use Permit”</li> <li>• Notice all landowners within <b>300 feet</b> of the proposed CAFO</li> <li>• Public Hearing required</li> <li>• Conditional use permit granted by the <b>Environmental Services Committee.</b></li> </ul>
<b>Application</b>	<ul style="list-style-type: none"> <li>• <b>County-wide ordinance</b></li> <li>• <b>More flexibility than siting ordinance</b></li> <li>• <b>One dollar (\$1.00) per proposed animal unit to Polk County</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Applies to Ag District 20 only; does not apply in towns without County Zoning Authority</b></li> <li>• <b>\$750.00 Conditional Use Permit</b></li> <li>• <b>\$400.00 Land Use Permit</b></li> </ul>
<b>Renewal Fee</b>	<ul style="list-style-type: none"> <li>• Annual fee of one dollar (\$1.00) per proposed animal unit to Polk County</li> </ul>	<ul style="list-style-type: none"> <li>• None</li> </ul>
<b>Financial Assurances</b>	<ul style="list-style-type: none"> <li>• Applicant shall fully compensate the County for all legal services, expert consulting services, and other expenses incurred by the County in considering the application</li> <li>• The County Board shall <b>determine the amount and require</b> the applicant to provide sufficient funds (e.g. bonds, cash, escrow, trusts, etc.) be available for pollution clean-up, nuisance abatement, and proper closure of the CAFO</li> </ul>	<ul style="list-style-type: none"> <li>• Fees must be justifiable</li> <li>• Performance bond is unlawful</li> </ul>
<b>Permit terms</b>	<ul style="list-style-type: none"> <li>• Five (5) years</li> </ul>	<ul style="list-style-type: none"> <li>• Conditional use permits expire twelve months from their date of issuance if no building activity has begun within such time</li> <li>• Can be revoked at any time if any conditions are violated.</li> </ul>

<b>Conditions</b>		
<b>Permits Required:</b>	<ul style="list-style-type: none"> <li>• Wisconsin Pollutant Discharge Elimination Systems Permit (WDNR)</li> <li>• Polk County CAFO Operations Permit (HHS?)</li> </ul>	<ul style="list-style-type: none"> <li>• Wisconsin Pollutant Discharge Elimination Systems Permit (WDNR)</li> <li>• Polk County Land Use Permit (Zoning)</li> </ul>
<b>Site Planning:</b>	<ul style="list-style-type: none"> <li>• Site Plan</li> <li>• Nutrient Management Plan</li> <li>• List of crops grown and yields</li> <li>• Provide soil map and aerial photos of navigable waters within 1000 ft.</li> </ul>	<ul style="list-style-type: none"> <li>• Site Plan</li> <li>• Nutrient Management Plan</li> <li>• List of crops grown and yield.</li> <li>• A plan of the area showing contours, soil types, ordinary high water marks, ground water conditions, bedrock, slope and vegetative cover.</li> <li>• Professionally designed and drafted plans of the main facility shall be submitted with the conditional use permit application.</li> </ul>
<b>Environmental Impacts:</b>	<ul style="list-style-type: none"> <li>• Provide report on annual phosphorus losses</li> <li>• Describe the technologies or method(s) the to reduce, eliminate, or treat methane, nitrous oxide, ammonia, hydrogen sulfide, and particulate emissions</li> <li>• Identify the source of all water to be used at the proposed CAFO facility and the anticipated quantity of water usage</li> <li>• Groundwater monitoring wells be installed</li> <li>• Describe erosion control practices</li> <li>• Describe measures that will be taken to screen the CAFO operation from view of surrounding land uses</li> <li>• Schedule and method for air quality testing, within a quarter mile of the proposed CAFO's</li> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• N/A currently, but can be applied as condition</li> <li>• N/A currently, but can be applied as condition</li> <li>• N/A currently, but can be applied as condition</li> <li>• N/A currently, but can be applied as condition</li> <li>• Polk County Ord. 05-19</li> <li>• N/A currently, but can be applied as condition</li> <li>• Air quality testing/studies required</li> <li>• Shall have no discharge from animal lots, feed or waste storage into navigable waters</li> </ul>
<b>Operations:</b>	<ul style="list-style-type: none"> <li>• Describe how animals will be transported, including a description of the type, size and weight of the transportation vehicles, all highways or roads that will be used, the hours of operation and specific path of travel</li> </ul>	<ul style="list-style-type: none"> <li>• Shall obtain approval from Town prior to hauling of any overweight loads during spring break up period. (road ban period)</li> </ul>

	<ul style="list-style-type: none"> <li>• Describe how all animal waste will be stored and transported</li> <li>• Identify all residential and business structures within 500 feet of a gravel road used by implements of husbandry</li> <li>• Identify a substantially similar CAFO operation that has been continuously operated in the United States for at least ten (10) years without causing pollution of groundwater or surface water, and without causing either a private nuisance or a public nuisance.</li> <li>• N/A</li> <li>• N/A</li> <li>• N/A</li> <li>• Shall comply with Polk County Manure and Water Quality Management Ordinance.</li> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• Shall have a Nutrient Management Plan for farming operation, and must ensure land base is sufficient to handle waste produced annually</li> <li>• N/A</li> <li>• Applicant shall disclose any previous livestock facility violations. (owners or parent company)</li> <li>• Farm entrance must be at least 100 feet from a nonfarm residential driveway</li> <li>• All waste storage structures, including manure storage, shall be at least 300 feet from the nearest property line.</li> <li>• All buildings housing livestock and feed storage, shall have a minimum setback of 300 feet from the nearest property line.</li> <li>• Shall comply with Polk County Manure and Water Quality Management Ordinance.</li> <li>• Farm owner or operator must live within 5 miles of the farm</li> <li>• Other conditions can be assigned to address any operational concerns as long as they are supported by the criteria and in line with the purpose and intent of the ordinance.</li> </ul>
<p><b>Animal Welfare:</b></p>	<ul style="list-style-type: none"> <li>• Livestock Mortality Plan required</li> <li>• Describe how all animals will be housed and how maintained with power outages</li> <li>• Describe how all animal units will be fed</li> <li>• Identify all products (including chemicals or medicines) that will be injected in, fed to, or administered to animals</li> <li>• Identify all measures that will be taken to prevent the spread of disease</li> </ul>	<ul style="list-style-type: none"> <li>• Livestock Mortality Plan required</li> <li>• N/A</li> <li>• N/A</li> <li>• N/A</li> <li>• N/A</li> </ul>

<p><b>Employees:</b></p>	<ul style="list-style-type: none"> <li>• Identify all veterinary care</li> <li>• Identify the number of anticipated employees</li> <li>• Identify education will employees receive regarding operating safe CAFOs</li> <li>• Identify type of healthcare will be made available to employees</li> </ul>	<ul style="list-style-type: none"> <li>• N/A</li> <li>• N/A</li> <li>• N/A</li> <li>• N/A</li> </ul>
<p><b>Emergency Management:</b></p>	<ul style="list-style-type: none"> <li>• Emergency plan of action in the event of soil, water or air contamination</li> <li>• Describe measures that will be taken to mitigate environmental impacts on timber, agriculture, surface water, ground water, air quality, noise pollution and plant, wildlife or fish habitat.</li> <li>• Identify known endangered species on or near site</li> </ul>	<ul style="list-style-type: none"> <li>• Any suspected case of an environmental or human health hazard, shall be referred to the Polk County Health Department and the appropriate follow-up will occur based on public health statutory requirements.</li> <li>• DNR would also follow up on environmental concerns</li> <li>• N/A</li> </ul>
<p><b>Penalties:</b></p>	<ul style="list-style-type: none"> <li>• Any violation shall be a forfeiture of \$100.00 up to \$5,000.00 per day, plus the costs of prosecution.</li> <li>• The County Board may: (1) stop operations and work order; (2) suspend or revoke the permit; or (3) impose any other available enforcement remedy.</li> </ul>	<ul style="list-style-type: none"> <li>• Any violation shall be a forfeiture of \$200.00 up to \$1,000.00 per day</li> <li>• Zoning Department may: (1) issue an on-site stop work order; (2) revoke the conditional use permit; or (3) impose any other available enforcement remedy.</li> </ul>
<p><b>Appeals:</b></p>	<ul style="list-style-type: none"> <li>• Final decision of the County Board under this ordinance is not subject to appeal</li> <li>• Applicant who is aggrieved by a final decision of the County Board may seek remedy through Polk County Circuit Court.</li> </ul>	<ul style="list-style-type: none"> <li>• Applicants aggrieved or affected by any decision of the Zoning Administrator or Environmental Services Committee may appeal to the Board of Adjustment</li> <li>• Applicant who is aggrieved by a final decision of the Board of Adjustment may seek remedy through Polk County Circuit Court.</li> </ul>

## Sample Ordinance Provisions

### How this works

The following offers a zoning-based approach to local livestock regulation. It modifies the **Sample Ordinance Provisions** in the Appendix of *Livestock Guidance Local Planning For Livestock Operations in Wisconsin* (April 2003)

The modifications are designed to allow local livestock regulation consistent with requirements of the Livestock Facility Siting Law (siting law) (sec. 93.90, Stats. and ATCP 51, Wis. Adm. Code)

Under the siting law, a local government can use its zoning authority in different ways to regulate the siting and operation of livestock facilities. However there are important limitations. Local governments can set up agricultural zones in accordance with comprehensive plans. If a local government only establishes one agricultural zone, livestock facilities cannot be prohibited based on size in that zone. If a local government establishes more than one agricultural zone, it can prohibit livestock facilities based on size for public health or safety reasons, but must allow at least one zone where livestock facilities are not prohibited based on size. This limitation does not affect the authority to exclude livestock operations in non-agricultural zones.

Local governments may require conditional use (special exception) permits for livestock facilities. However, they must follow state requirements for issuing these permits.

This appendix provides components for developing multiple agricultural and other districts: Agriculture Enterprise (AE), General Agriculture (G-AG), Limited Agriculture District (L-AG), Rural Residential District (RR). For each district, there is a purpose statement, a menu of options for permitted and conditional uses in the district, and property development standards such as maximum lot sizes and setbacks.

Local governments must take additional steps to codify these provisions into an ordinance. For example, maps are needed to determine the location and boundaries of zoning districts. As important as any step, local governments need expert advice to make use of this model. Legal and other experts can help you address the following issues:

- Consistency of zoning actions with a comprehensive plan
- Compliance with the requirements of the Livestock Facility Siting Law
- Consistency with the requirements of the state runoff law for farms (NR 151, Wis. Adm. Code, ATCP 50)
- Compliance with requirements of the Farmland Preservation Program, Ch. 91, Stats., to ensure eligibility for tax credits for farm landowners.

- Agricultural Storage
- Agricultural Research and Development
- Other Agriculturally-Related Structures and Improvements
- Stable, Commercial
- Utility, Minor

**Drafting tip**

An Agricultural Enterprise District may allow, as permitted uses, livestock facilities that might require conditional use permits in other districts (the Agricultural Enterprise District may have no permit requirement, or a higher size threshold for a permit). Under the livestock siting law, an ordinance adopted after July 19, 2003 may not require a conditional use permit for a livestock facility that will have fewer than 500 animal units.

C) Conditional Uses

The following uses may be allowed in this district if reviewed and approved in accordance with standards in this ordinance:

- Livestock facilities over ( ) animal units.
- Communication Tower, Commercial
- Mining and Extraction
- Utility, Major
- Agricultural Packing and Processing

**Drafting tip**

For this and other districts, a menu of suggested uses is provided. Specific uses for the district should be selected consistent with the purpose of the district and planning goals. To reduce the potential for conflict, new single family residential dwellings are not allowed in this district. A less effective approach involves regulating new single family residential dwellings as conditional uses. Existing residential uses are authorized to continue as non-conforming uses. Conditional uses such as Agricultural Packing and Processing should be allowed if they fit with planning goals and are compatible with uses in the district. The provisions in this section, however, may not provide the necessary standards to regulate uses other than livestock operations.

D) Property Development Standards

**Drafting tip**

This section may include minimum lot size, lot width and depth, maximum residential density, setbacks from highways, and maximum heights for structures.

- 1) Minimum lot area

100 feet from any public road right-of-way if the livestock facility will have fewer than 1,000 animal units, and or more than 150 feet from any public road right-of-way if the livestock facility will have 1,000 or more animal units.

**Drafting tip**

Because of the intensive uses allowed in this district, local governments may wish to impose minimum setbacks to minimize land use conflicts, subject to the limitations of the livestock siting rule.

c) Waste Storage Structure

A new waste storage structure may not be located within \_\_\_\_\_ feet [not to exceed 350] of a property line, or within \_\_\_\_\_ feet [not to exceed 350] feet of the nearest point of any public road right-of-way.

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

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

This setback requirement *does not apply* to existing waste storage structures, except that an existing structure within \_\_\_\_\_ feet [not to exceed 350] of a property line or road may not expand *toward* that property line or road.

3) Water quality and related setbacks

a) Navigable Waters and Wetlands

A livestock facility shall comply with setback and related requirements in any applicable shoreland or wetland zoning ordinances enacted within the scope of authority granted under s. 59.692, 61.351 or 62.231, Stats.

**Drafting tip**

Essentially all navigable waters are now protected by ordinances that require building setbacks of 75 feet or more (depending on the ordinance). Zoning restrictions, if any, typically apply to new or enlarged structures. A local government may apply its zoning ordinance if the ordinance was enacted within the scope of statutory authority under s. 59.692, 61.351 or 62.231, Stats., even if it was also enacted under other authority.

The following uses are permitted by right in this district without any further notice approval to or from the local unit of government:

- Agriculture Uses, including Livestock Facilities of less than ( ) animal units, subject to compliance with Property Development Standards.
- Agriculturally-Related Residence
- “Value Added” Agriculture
- Roadside Stand
- Signage
- Agricultural Sales and Service
- Agricultural Storage
- Agricultural Research and Development
- Other Agriculturally-Related Structures and Improvements
- Stable, Commercial
- Utility, Minor

#### C) Conditional Uses

The following uses may be allowed in this district if reviewed and approved in accordance with standards in this ordinance

- Livestock Facilities of ( ) or more animal units.
- Single-Family Residence
- Mining and Extraction
- Communication Tower, Commercial
- Utility, Major

#### **Key Limitation**

Under the livestock siting law, an ordinance adopted after July 19, 2003 may not require a conditional use permit for a livestock facility that will have fewer than 500 animal units. The livestock siting rule explains how to count “animal units.”

#### D) Property Development Standards

#### **Drafting tip**

This section may include minimum lot size, lot width and depth, maximum residential density, setbacks from highways, and maximum heights for structures.

the setback requirement, except that a structure may not be expanded closer to the public road right-of-way.

**Key Limitation**

The siting rule recognizes and allows local-established setback requirements for public road right-of-ways, provided that the requirements do not impose a setback of more than 100 feet from any public road right-of-way if the livestock facility will have fewer than 1,000 animal units, and or more than 150 feet from any public road right-of-way if the livestock facility will have 1,000 or more animal units.

c) Waste Storage Structure

A new waste storage structure may not be located within \_\_\_\_\_ feet [not to exceed 350] of a property line, or within \_\_\_\_\_ feet [not to exceed 350] feet of the nearest point of any public road right-of-way.

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

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

This setback requirement *does not apply* to existing waste storage structures, except that an existing structure within \_\_\_\_\_ feet [not to exceed 350] of a property line or road may not expand *toward* that property line or road.

3) Water quality and related setbacks

a) Navigable Waters and Wetlands

A livestock facility shall comply with setback and related requirements in any applicable shoreland or wetland zoning ordinances enacted within the scope of authority granted under s. 59.692, 61.351 or 62.231, Stats.

**Drafting tip**

Essentially all navigable waters are now protected by ordinances that require building setbacks of 75 feet or more (depending on the ordinance). Zoning restrictions, if any, typically apply to new or enlarged structures. A local government may apply its zoning ordinance if the ordinance was enacted within the scope of statutory authority under s. 59.692, 61.351 or 62.231, Stats., even if it was also enacted under other authority.

b) Floodplain

The Limited Agriculture District is intended to provide for the continuation of low intensity agricultural, restrict new and expanding livestock operations, provide for limited siting of single family residences, and support other uses that maintain the rural characteristics of the area. It may serve as a buffer for more intensive agricultural uses in adjacent districts, and prevent premature conversion of rural lands to urban and other non-agricultural uses. The district's use and development regulations are designed to implement the Comprehensive Plan goals by discouraging urban and suburban development in areas that are suited to agricultural uses and that are not well served by public facilities and services.

*Note: With modification, this district may be designed to be compatible with designation as "Exclusive Agricultural Zone." If the district is used for transitional agricultural district, the EAZ status can be maintained. See Zoning to Preserve Agricultural Land, UWEX A3038 (1980), s. 2.0. It may be advisable to create a separate district to meet the need for a transition district.*

#### B) Permitted Uses

The following uses are permitted by right in this district without any further notice approval to or from the local unit of government:

- Agricultural Uses, (excluding Livestock Facilities)(including Livestock Facilities of less than \_\_\_ more animal units), subject to Property Development Standards.
- Agriculturally-Related Residence
- Keeping and raising of domestic stock limited to 1 animal unit per acre
- "Value Added" Agriculture
- Roadside Stand
- Signage
- Single-Family Residence
- Home Occupation
- Utility, Minor

#### **Key Limitation**

A local government must identify if livestock facilities are allowed in this agricultural zoning district and then determine the size of livestock facilities allowed as permitted uses. If the local government excludes livestock facilities entirely or by size in this district, it must meet special requirements of the siting law. First, the exclusion must be clearly justified on the basis of public health or safety. Second, the town, county or other municipality must have at least one other agricultural zoning district where livestock agriculture is not excluded by size. This second requirement would be satisfied by adoption of either of these districts: Agriculture Enterprise (AE) or General Agriculture (G-AG).

the setback requirement, except that a structure may not be expanded closer to the property line.

**Key Limitation**

The siting law recognizes and allows local-established setback requirements for property lines, provided that the requirements do not impose a setback of more than 100 feet from any property line if the livestock facility will have fewer than 1,000 animal units, or more than 200 feet from any property line if the livestock facility will have 1,000 or more animal units.

b) Public road right-of-way

Except as provided for waste storage structures, livestock structures must be located a minimum of \_\_\_ feet [not to exceed 100 feet] from public road right-of-way if the livestock facility will have fewer than 1,000 animal units, and \_\_\_ feet [not to exceed 150 feet] from a public road right-of-way if the livestock facility will have 1,000 or more animal units.

The setback requirement does not prevent the use or expansion of a livestock structure that was located within the setback area prior to the effective date of the setback requirement, except that a structure may not be expanded closer to the public road right-of-way.

**Key Limitation**

The siting rule recognizes and allows local-established setback requirements for public road right-of-ways, provided that the requirements do not impose a setback of more than 100 feet from any public road right-of-way if the livestock facility will have fewer than 1,000 animal units, and or more than 150 feet from any public road right-of-way if the livestock facility will have 1,000 or more animal units.

c) Waste Storage Structure

A new waste storage structure may not be located within \_\_\_\_\_ feet [not to exceed 350] of a property line, or within \_\_\_\_\_ feet [not to exceed 350] feet of the nearest point of any public road right-of-way.

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

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

**Drafting tip**

DNR rules under chs. NR 811 and 812 spell out well construction and well location standards to protect water supplies. Violation of well setback requirements in ch. NR 811 or 812 may prevent use of a well. DNR may grant appropriate variances, as provided in chs. NR 811 and 812.

**4) Single-family residences**

No single-family residence shall be constructed within 1000 feet of a livestock structure or building, including animal waste storage areas. This provision shall not apply to dwelling units that are accessory to a livestock facility.

***RR Rural Residential District*****A) Purpose**

The Rural Residential District is intended to permit low-density residential uses, require large single-family lots to maintain the area's rural character, and accommodate uses that are not urban in nature, including low-intensity agriculture. The district may be used as a "holding" or "transitional" zone to retain land in a less intensive use until the appropriate time for more intensive residential and other development, avoid scattered development, and premature and costly extension of utility mains and services.

**B) Permitted Uses**

The following uses are permitted by right in this district without any further notice approval to or from the local unit of government:

- Single-Family Residence
- Agriculture, Crop
- Mobile or Manufactured Home (Optional)
- Home Occupation
- Roadside Stand
- Signage
- Utility, Minor
- Accessory Uses and Buildings

**Drafting tip**

A menu of suggested uses is provided. Specific uses for the district should be selected consistent with the purpose of the district and planning goals. The provisions in this section, however, do not provide the necessary standards to regulate uses such as mobile or manufactured homes.

These procedures apply to livestock facilities that require a conditional use permit under this ordinance.

#### B) Permits for Existing Livestock Facilities

1) A permit 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 conditional use permit established in the zoning district where the facility is located.
- 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 (May 1, 2006 or on the effective date of the permit requirement, whichever date is later)

2) A permit is not required for livestock facility that existed before May 1, 2006 or before the effective date of the permit requirement in this ordinance (except as provided in sub. 1).

3) A permit is not required for livestock facility that was previously issued a conditional use permit 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.

#### C) Application Procedure

A livestock operator must complete the application and worksheets prescribed by ATCP 51, including any authorized local modifications. The application requirements specified in ATCP 51, Wis. Adm. Code are incorporated by reference, without reproducing them in full. The application form and worksheets establish compliance with the standards in ATCP 51 and this ordinance.

The operator must file \_\_\_ [select 2, 3 or 4] duplicate copies of the application form, including worksheets, maps and documents (other than engineering design specifications) included in the application.

#### **Drafting Tip**

ATCP 51.30 provides that an applicant may be required to file up to 4 duplicate copies of an permit application. One copy must be filed after a final decision on the application with DATCP. If approved, one duplicate copy marked approved must be given back to the applicant. The applicant may wish to record the approved application with the register of deeds. It is recommended that 4 duplicate copies be required to have adequate copies available in the event of a future appeal. }

3) The following more stringent standards required to protect public health or safety:

a) These more standard standards are based on the following reasonable and scientifically defensible findings of fact adopted after public hearing:

**Key Limitation**

Local governments will need to meet additional requirements to adopt more stringent standards. To adopt a more stringent standard consistent with the requirements of s. 93.90(3)(ar), Stats., a local government must include the standard in its ordinance along with the scientifically defensible findings of fact to justify the more stringent standard being necessary to protect public health and safety. It is recommended that a town or county board hold a public hearing to receive evidence that supports the adoption of a more stringent standard. Any more stringent standards must be adopted in ordinance *prior* to applying it to a particular permit applicant.

Under s. 92.15, Stats., a local government may need approval from DATCP or DNR for local livestock regulations that exceed state performance standards in NR 151 and ATCP 50, Wis. Adm. Code.

To qualify for local approval, an operator must meet the standards in this rule, regardless of whether the applicant receives cost-sharing (*see* s. 93.30(3)(ae), Stats.). *However, a political subdivision may provide cost-sharing if it wishes to do so.*

H) Criteria for Issuance of a Permit

1) A permit shall issue if the application for the proposed livestock facility 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.

***Rebuttable Presumption***

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

2) A permit may be denied if any of the following apply:

- 2) File with the Department a copy of the final application granted or denied, if the town/county 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/county has withdrawn a local approval under this ordinance, file with the department a copy of the town/county final notice or order withdrawing the local approval.

#### L) Expiration of Permit

A permit remains in effect regardless of the amount of time that elapses before the livestock operator exercises the authority granted under permit, and regardless of whether the livestock operator exercises the full authority granted by the approval. However, the political subdivision may treat a permit as lapsed and withdraw the permit if the permit holder fails to do all of the following within 2 years after issuance of permit:

- *Begin* populating the new or expanded livestock facility.
- *Begin* constructing all of the new or expanded livestock housing or waste storage structures proposed in the permit application.

#### M) Permit modifications

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.

#### N) Compliance Monitoring

The (political subdivision) shall monitor compliance with the ordinance as follows:

- 1) Upon notice to the livestock facility owner request the right of the (permit administrator) to personally view the permitted facility at a reasonable time and date to insure that all commitments of the application as approved are being complied with.
- 2) If the livestock facility owner refuses the (permit administrator) the right to view the permitted facility, the (permit administrator) may request the assistance of the Sheriff or a deputy Sheriff to obtain an inspection warrant from the circuit court to inspect the permitted facility for the purpose of protection of the public health and safety under Sec. 66.0119 of Wis. Statutes.
- 3) If a permitted facility is found not to be in compliance with the commitments made in the approved application, the (permit 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 be complied with in a reasonable amount of time stated in this written notice.

including but not limited to such information as the name and address of the new owner and date of transfer of ownership.

## **Non-Conforming Uses**

~~A land use existing and operational at the time of this ordinance that is not in compliance with this ordinance shall be considered a non-conforming use.~~

### ~~A) Abandonment~~

~~A non-conforming livestock facility that is abandoned or not operational for a period of 24 consecutive months, or a total of 36 months in a 5-year period, shall no longer retain its non-conforming status and must comply with all of the regulations set forth in this ordinance prior to the reintroduction of livestock. A landowner may retain a non-conforming status by demonstrating an active and continuous marketing of the land for sale or lease, or other activities that affirmatively prove there is no intent to abandon. In the event of an involuntary change of ownership of a livestock facility including but not limited to mortgage or land contract foreclosures or bankruptcy proceedings, the lender or subsequent owner has 24 months from the date of acquisition to restock the feedlot and retain the non-conforming status of the livestock facility.~~

### ~~B) Alteration, Enlargement, Movement~~

~~A non-conforming use may not be altered, enlarged or moved, except for normal maintenance and repairs.~~

## **Variance**

A) The (political subdivision) is not authorized to grant a variance from the state requirements related to livestock facility siting, except as provided in s. 93.90, Stats. and ATCP 51.

B) Local governments may reduce general setbacks in specified in zoning district by \_\_\_\_-foot increments but no lower than:

\_\_\_\_ feet for setbacks to roads and property line

\_\_\_\_ feet for new manure storage structures

The local government may the discretion to reduce setbacks using factors it deems appropriate, including compliance with procedures

## **Definitions**

**Drafting tip** Definitions are not provided for every use and only explain key agricultural uses. Sample provisions contain terms such as Utility, Major and Utility, Minor, which have generally accepted zoning definitions.

structures in the expanded facility, regardless of whether those structures are new, existing or altered.

**NOTE:** This chapter applies to local approvals of *new or expanded* livestock facilities that will have 500 or more animal units (or will exceed a lower permit threshold incorporated in a local *zoning* ordinance prior to July 19, 2003). See s. ATCP 51.02. Although this chapter covers all livestock structures in an “expanded livestock facility,” existing structures are subject to less rigorous standards than new or expanded structures, and are completely exempt from certain requirements.

“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.

“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.

“Navigable waters” has the meaning given in s. 30.01(4m), Stats

“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.

1. 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.
2. It and the other livestock facilities to which it is related have a combined total of fewer than 1,000 animal units.

“Roadside Stand” means a building or part of a building no more than 500 square feet used for the retail sale of agricultural and related incidental products, excluding livestock, produced on the farm where the stand is located.

“Stable, Commercial” means a building or land where horses are kept for remuneration, hire, sale, boarding, riding, or show.

“Signage” mean outdoor advertising attached to, made a part of, or placed in front, rear, sides, or top of any structure or on any land to announce the name or nature of a farm business including a roadside stand. Signs are limited to 8 square feet of panel area, not to exceed eight feet (8’) in height above grade, unlighted.

“Single Family Residence” means the principal use of a lot only for one dwelling unit.

“Value Added Agriculture” means a small commercial, manufacturing or service operation, which is accessory to an agricultural use. Examples of value added agriculture include small scale food processing, handcrafting, product packaging and marketing, and agricultural tourism. These farm-based activities cannot exceed a certain size and scale, but may involve new structures. Additional permits and licenses may be required to carry on these activities.

“Waste” means manure, milking center waste and other organic waste generated by a livestock facility.

“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:

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

**POLK COUNTY, WISCONSIN**

**ORDINANCE NO. 29-20  
CONCENTRATED SWINE FEEDING OPERATIONS ORDINANCE**

The Polk County Board of Supervisors hereby ordain as follows:

**Section 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. This Ordinance is further adopted pursuant to the powers granted to counties pursuant to Wisconsin Statutes § 59.03(2); 59.70(1); 254.51(5); 254.59(7) for the protection of public health, safety and general welfare.

**Section 2. Purpose**

The purpose of this Ordinance is to effectively, efficiently and comprehensively regulate the operation of Large-Scale Concentrated Swine Feeding Operations of 1,000 Swine units or greater (“CAFO”) in Polk County, without respect to siting, to protect public health (including human and Swine health), safety, and general welfare, to prevent pollution and the creation of private nuisances and public nuisances, and to preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of Polk County and to achieve water quality standards within Polk County. This Ordinance sets forth the procedures for obtaining a CAFO Operations Permit for the operation of new and expanded livestock facilities in Polk County (sometimes referred to as “the County”).

The need for this Ordinance is based upon the County’s obligation to protect the health, safety and general welfare of the public and is based upon reasonable and scientifically defensible findings, as adopted by the County Board, clearly showing that these requirements are absolutely necessary to protect public health and safety. Specifically, the County finds that there is ample scientific research and evidence establishing that CAFO’s pose a significant risk to the integrity of the County’s groundwater, surface water, air quality, the health and well-being of its residents and local property values. These findings are based in part on the scientific articles and research studies discussed and listed below and in Appendix A.

Pathogens found in Swine manure that have been determined to cause illness in humans include the following:

<b>Pathogen</b>	<b>Disease</b>	<b>Symptoms</b>
<i>Bacillus anthracis</i>	<b>Anthrax</b>	Skin sores, headache, fever, chills, nausea, vomiting
<i>Escherichia coli</i>	<b>Colibacillosis, Coliform mastitis-metris</b>	Diarrhea, abdominal gas
<i>Leptospira pomona</i>	<b>Leptospirosis</b>	Abdominal pain, muscle pain, vomiting, fever
<i>Listeria monocytogenes</i>	<b>Listeriosis</b>	Fever, fatigue, nausea, vomiting, diarrhea
<i>Salmonella species</i>	<b>Salmonellosis</b>	Abdominal pain, diarrhea, nausea, chills, fever, headache
<i>Clostridium tetani</i>	<b>Tetanus</b>	Violent muscle spasms, lockjaw, difficulty breathing
<i>Histoplasma capsulatum</i>	<b>Histoplasmosis</b>	Fever, chills, muscle ache, cough rash, joint pain and stiffness
<i>Microsporum and Trichophyton</i>	<b>Ringworm</b>	Itching, rash
<i>Giardia lamblia</i>	<b>Giardiasis</b>	Diarrhea, abdominal pain, abdominal gas, nausea, vomiting, fever
<i>Cryptosporidium species</i>	<b>Cryptosporidiosis</b>	Diarrhea, dehydration, weakness, abdominal cramping

### Section 3. Definitions

1. “Applicant” or “permittee” refer to the entity seeking a CAFO Operations Permit under the terms of this Ordinance.
2. “Large-Scale Concentrated Swine Feeding Operation” or “CAFO” means a lot or facility, other than a pasture or grazing area, where 1,000 or more Swine units have been, are, or will be stabled or concentrated, and will be fed or maintained by the same owner(s), manager(s) or operator(s) for a total of 45 days or more in any 12-month period. Two or more smaller lots or facilities under common ownership or common management or operation are a single Large-Scale Concentrated Swine Feeding Operation or CAFO if the total number of Swine stabled or concentrated at the lots or facilities equal 1,000 or

more Swine units and at least one of the following is true: (1) The operations are adjacent; (2) The operations utilize common systems for the land spreading of manure or wastes; (3) Swine are transferred between the lots or facilities; (4) The lots or facilities share staff, vehicles, or equipment; or (5) Manure, barnyard runoff or other wastes are comingled in a common storage facility at any time.

3. "Operations" means a course of procedure or productive activity for purposes of conducting and carrying on the business of a CAFO including populating Swine housing facilities, storing and managing Swine and other waste materials, and conducting any other business activities.
4. "Pollution" means degradation that results in any violation of any environmental law as determined by an administrative proceeding, civil action, criminal action or other legal or administrative action investigation or proceeding.
5. "Private Nuisance" means a nontrespassory invasion of another's interest in the private use and enjoyment of land, and the invasion is either: (1) intentional und unreasonable, or (2) unintentional and otherwise actionable under the rules of controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.
6. "Public Nuisance" means a thing, act, occupation, condition or use of property which shall continue for such length of time as to " (1) substantially annoy, injure or endanger the comfort, health, repose or safety of the public; (2) in any way render the public insecure in life, health or in the use of property; or (3) unreasonably and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage or public use any street, alley, highway, navigable body of water or other public way or the use of public property or other public rights.

#### **Section 4. License Required**

Regardless of siting, a livestock facility with 1,000 or more Swine units shall be allowed to conduct operations within Polk County only as provided under this Ordinance. Applicants shall apply for a CAFO Operations Permit to operate in Polk County under this Ordinance prior to conducting any operations.

##### 1. General

A CAFO Operations Permit issued by Polk County is required for new or expanded livestock facilities that will operate with 1,000 or more Swine units.

## 2. Licenses for Existing Livestock Facilities

A CAFO Operations Permit is required for the expansion of a pre-existing or previously approved livestock facility if the number of Swine units kept at the expanded livestock facility will exceed 1,000 animal units.

### **Section 5. Licensing Administration**

The County Board shall administer this Ordinance and related matters thereto and shall have the authority to issue licenses under this Ordinance.

### **Section 6. License Application and Standards**

The applicant shall apply for a CAFO Operations Permit prior to conducting any operations associated with a Large-Scale Concentrated Swine Feeding Operation in Polk County. The application shall be submitted on a form provided by the County Clerk.

The County Board shall decide whether to approve and issue a CAFO Operations Permit to an applicant that has submitted a complete application and paid the required application fee, after holding a public hearing on the application and considering any evidence concerning the application and the proposed operation presented by the applicant and any other interested persons or parties, including members of the public, other governmental agencies or entities, special legal counsel and expert consultants who may be hired by the County Board to review the application and advise the County Board.

The County Board shall approve and issue a CAFO Operations Permit, either with or without conditions, if it is determined by a majority vote of all members, supported by clear and convincing evidence presented by the applicant, that: the applicant can and will comply with all conditions imposed by the County; that the applicant's operations as proposed, with or without conditions, will protect public health (including human and Swine health), safety, and general welfare, prevent pollution, prevent the creation of private nuisances, prevent the creation of public nuisances and preserve the quality of life, environment, existing small-scale livestock and other agricultural operations of Polk County; and that the applicant and the application meet all other requirements of this Ordinance.

### **Section 7. License Application Fee**

A non-refundable application fee of One Dollar (\$1.00) per proposed animal unit payable to Polk County shall accompany an application for the purpose of offsetting the County costs to review and process the application.

## **Section 8. Application Procedure**

1. An applicant for a CAFO Operations Permit shall complete a Polk County Swine CAFO Operations Permit Application and pay the required application fee. The applicant must be an owner or officer of the corporate entity proposing to operate the CAFO.
2. Upon signing and submitting a CAFO Operations Permit Application to the County Clerk, the applicant shall agree to fully compensate the County for all legal services, expert consulting services, and other expenses which may be reasonably incurred by the County in reviewing and considering the application, regardless of whether or not the application for a permit is subsequently approved, with or without conditions, or denied by the County Board. The applicant shall submit an administrative fee deposit as required by the County Clerk.
3. After receiving the application and the application fee, the County Clerk shall mail a notice that a CAFO Operations Permit Application has been received to all landowners within 3 miles of the proposed CAFO with the date and time of a County Board meeting at which the application will be considered. The notice shall provide information on how interested persons and parties may inspect and obtain a copy of the application.
4. The County Clerk shall place the application on the agenda for the next regular County Board meeting for which required notice can be provided.
5. At a formal public hearing held by the County Board on the application at least sixty (60) days after it has been determined to be complete, the County Board shall consider any evidence concerning the application and the proposed CAFO presented by the applicant and any other interested persons or parties, including members of the public and other governmental agencies or entities, and special legal counsel and expert consultants who may be hired by the County to review the application and advise the County Board.
6. In its review and consideration of a CAFO Operations Permit Application, the County Board shall act in a quasi-judicial capacity, and its final decision on whether to approve and issue a CAFO Operations Permit, either with or without conditions, shall be based on written findings of fact and conclusions of law consistent with the provisions of this Ordinance, which shall be filed with the County Clerk and served on the applicant by regular U.S. Mail.
7. The County Board shall approve and issue a CAFO Operations Permit, either with or without conditions, if it determines by a majority vote of all members of the County Board, supported by clear and convincing evidence presented by the applicant, that the operations of the proposed CAFO, with or without conditions, will protect health (including human and Swine), safety, and general welfare, prevent pollution and the

creation of private nuisances and public nuisances, and preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of the County and that the application meets all other requirements of this Ordinance.

### **Section 9. Financial Surety**

A CAFO Operations Permit shall require the applicant and all contractors, subcontractors, agents and representatives, to ensure that sufficient funds will be available for pollution clean-up, nuisance abatement, and proper closure of the operation if it is abandoned or otherwise ceases to operate as planned and permitted, based on the following provisions:

1. A determination shall be made regarding the financial assurance level required by the scale of the operation. As a condition of the license, the required financial assurance shall be filed with Polk County in an amount sufficient to clean up environmental contamination if the same were to occur, to abate public nuisances caused by the operation, including but not limited to the testing and replacement of any potentially contaminated private and public wells and water supplies within the areas subject to operations, and to ensure proper closure of the operations should the applicant elect to close or should closure occur for some other reason. Upon notification of the required financial assurance, but prior to commencing operations, the applicant shall file with the County the financial assurance conditioned on faithful performance of all requirements for the license. Upon notification of finance assurance or deposit approval and conformance with license conditions, the applicant may commence operations.
2. The applicant may deposit cash or irrevocable letters of credit established with a bank acceptable to the County as the required financial assurance.
3. The County may reevaluate and adjust accordingly the amount of the financial assurance required on an annual basis.

### **Section 10. Conditions of Approval**

A CAFO Operations Permit may be approved with conditions to protect public health (including human and Swine health), safety, and general welfare, prevent pollution and the creation of private nuisances and public nuisances, and preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of the County. To the extent not expressly or otherwise preempted by Wis. Stat. 93.90, and Wis. Admin. Code Ch. ATCP 51 or any other provision of state or federal law, such conditions may include, but are not limited to:

1. Conditions relating to the operational characteristics of the proposed operation, to protect public health, prevent point and non-point sources of air and water pollution, and prevent private nuisances and public nuisances;

2. Conditions relating to the management of Swine and other waste that may be generated as part of an operation's ongoing operation, to protect public health, prevent point and non-point sources of air and water pollution, and prevent private nuisances and public nuisances;
3. Conditions relating to the population and depopulation of individual Swine housing facilities, to protect public health and prevent the spread of Swine-borne and vectorborne disease, to assure a safe level of sanitation, and to assure human health hazard control or health protection for the community;
4. Conditions relating to biosecurity and the maintenance of Swine health and welfare, to prevent the spread of Swine-borne and vector-borne disease, to protect public health, and provide for Swine safety and welfare;
5. Conditions relating to transportation of Swine as part of the ongoing operations, to protect public health, prevent pollution, and prevent private nuisances and public nuisances;
6. Conditions relating to protection of private and public drinking and agricultural wells, and other public water supplies, as part of an ongoing operation to protect public health, prevent pollution, and prevent private nuisances and public nuisances;
7. Conditions relating to air emissions and dust control as part of an ongoing operation, to protect public health, prevent pollution and prevent private nuisances and public nuisances;
8. Conditions relating to protection of the private and public property rights and property values of affected property owners, as part of an ongoing operation, to protect the general welfare of the County's residents and property owners, and to prevent private nuisances and public nuisances;
9. Conditions relating to permit compliance, enforcement and monitoring, including establishment of fees that may be assessed against the permittee to cover the costs of hiring, training, and maintaining County personnel, or for contracting with private consultants, to conduct permit compliance, enforcement and monitoring activities for the County.
10. Conditions relating to the monitoring of surface water, ground water, air quality and all other environmental factors and considerations.
11. Any other conditions deemed reasonably necessary or appropriate by the County Board to effectively, efficiently, and comprehensively regulate the operations of a facility, to

protect public health (including human and Swine health), safety, and general welfare, prevent pollution and the creation of private nuisances and public nuisances, and preserve the quality of life, environment, and existing small-scale livestock and other agricultural operations of the County.

These conditions may apply not only to the CAFO facility itself, but also to any property upon which manure, carcasses, body tissue or other by products of the CAFO are spread, deposited or disposed of. Any conditions imposed under this Ordinance may be modified by the County Board at the time of each annual renewal. Any modifications must be documented as required by section 11, below.

### **Section 11. Record of Decision**

The County Board must issue its decision in writing. The decision must be based on written findings of fact supported by evidence in the record.

### **Section 12. Transferability of License**

A CAFO Operations Permit 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.

Upon change of ownership of the livestock facility, the new owner of the facility shall file information with the County Clerk providing pertinent information, including but not limited to such information as the name and address of the new owner and date of transfer of ownership.

### **Section 13. Expiration of License**

A CAFO Operations Permit remains in effect regardless of the amount of time that elapses before the livestock operator exercises the authority granted under this permit, and regardless of whether the livestock operator exercises the full authority granted by the approval. However, the County may treat a CAFO Operations Permit 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 CAFO.
2. Begin constructing all of the new or expanded livestock housing or waste storage structures proposed in the application for local approval.
3. Pay the renewal fee on or before January 1 of each calendar year as required by Section 14 of this Ordinance.

## **Section 14. License Terms and Modifications**

A CAFO Operations Permit and the privileges granted by a CAFO Operations Permit 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 CAFO Operations Permit. The operator may make reasonable changes that maintain compliance with the standards in this Ordinance, and the County Board shall not withhold authorization for those changes unless the County can demonstrate good cause to do so. A violation of the Permit or a failure to comply with the commitments made in the application may result in suspension and/or termination of the Permit.

The County Board, or its designee, shall work to ensure on an ongoing basis that all requirements and conditions of any permit issued under this Ordinance are followed by the permittee. To assist in accomplishing this task, any permit issued pursuant to this Ordinance shall be subject to an annual renewal fee in the amount of One Dollar (\$1.00) per Swine unit. Modifications to the conditions of a CAFO Operations Permit may be made as described in Sections 10 and 11.

## **Section 15. 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:

1. Upon conviction by a court of law, pay a forfeiture of not less than \$100 nor more than \$1,000, 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. In addition, the County Board may seek injunctive relief from a court of record to enjoin further violations.
4. In addition, the County Board may suspend or revoke the local approval of a CAFO Operations Permit 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.

The County shall exercise sound judgment in deciding whether to suspend or revoke a CAFO Operations Permit. The County shall consider extenuating circumstances, such as adverse weather conditions, that may affect an operator's ability to comply.

In addition to any other penalty imposed by this Ordinance, the cost of abatement of any public nuisance on the licensed premises by the County 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 16. Appeals**

An applicant or any other person or party who is aggrieved by a final decision of the County Board on whether to issue a CAFO Operations Permit, either with or without conditions, or a taxpayer, may, within thirty (30) days after the filing of the decision with the County Clerk, commence an action seeking the remedy available by certiorari in Polk County Circuit Court. The court shall not stay the decision appealed from, but may, with notice to the County Board, grant a restraining order. The County Board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary, for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

In any certiorari proceeding brought under the preceding paragraph, attorney fees and costs shall not be allowed against the County Board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

A final decision of the County Board under this ordinance is not subject to appeal under Wis. Stat. 93.90(5), Wis. Stat 93.30, or Wis. Admin Code Ch. ATCP 51, which apply only to siting decisions.

### **Section 17. 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. Except that if it is determined that the limitation to swine only is found contrary to law, the entire Ordinance shall be deemed rescinded.

### **Section 18. Effective Date**

This Ordinance is effective the day after publication.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2020 by the County Board of Supervisors.

County Chairman

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Attested:

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County Clerk