



## POLK COUNTY, WISCONSIN

[WWW.CO.POLK.WI.US](http://WWW.CO.POLK.WI.US)

Lisa Ross, County Clerk

100 Polk Plaza, Suite 110, Balsam Lake, WI 54810

Phone (715) 485-9226 | Email: [county\\_clerk@co.polk.wi.us](mailto:county_clerk@co.polk.wi.us)

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### INFORMATION FOR PUBLIC AND MEDIA REGARDING POLK COUNTY VIRTUAL MEETINGS JULY 1, 2020

All County Board and Committee meetings are broadcast live via WebEx. Public can attend meetings in person in the West Conference Room of the Polk County Government Center or on-line through WebEx. Public comment can be made from the West Conference Room or through WebEx. Webex meeting information can be found:

1. On the attached meeting agenda
2. By selecting the respective committee meeting on our online Meetings Calendar at:

<https://www.co.polk.wi.us/meeting>.

#### **PUBLIC COMMENT**

If you wish to make public comment through WebEx, no later than 24 hours in advance of the meeting e-mail the County Clerk at [countyclerk@co.polk.wi.us](mailto:countyclerk@co.polk.wi.us). Provide your name, the meeting you plan to comment during and the agenda topic you plan to comment on. Public comment will be taken first from those in attendance in the West Conference Room and then remotely in the order of the request received.

Due to potential technical difficulties, please consider submitting written comments for consideration to: [countyclerk@co.polk.wi.us](mailto:countyclerk@co.polk.wi.us) or by mail to: **Polk County Government Center, 100 Polk County Plaza – Suite 110, Balsam Lake, WI 54810**. Written comments received less than 24 hours prior to meetings may not be received and reviewed by Supervisors before the meeting.



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## AGENDA AND NOTICE OF MEETING

### ENVIRONMENTAL SERVICES COMMITTEE

Government Center, 100 Polk County Plaza, Balsam Lake, WI 54810

County Board Room

Wednesday, Aug 26, 2020 at 9:00 a.m.

A quorum of the County Board may be present

#### Webex Virtual Meeting Info:

Event Number (access code): **146 225 7957**

Password: **ESMeeting**

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

1. Call to Order – Chairperson Kim O’Connell
2. Approval of Agenda
3. Approval of Minutes for August 12, 2020
4. Public Comments – 3 minutes per person – not to exceed 30 minutes total
5. Disclosure of Committee Member Conflicts of Interest regarding matters noticed on this agenda
6. Receipt of Information on Matters Noticed from Supervisors not Seated as Committee Members, only on items noticed on the agenda (5 minutes maximum)
7. Tax Delinquent Properties (Emil Norby)
  - a. Fee schedule for Lime Quarry
8. Forestry (Mark Gossman)
  - a. Sustainable Forestry Grant
  - b. DNR Partnership meeting
9. Zoning (Jason Kjeseth)

10:00 AM PUBLIC HEARING:  
Applicant: Sara Rank; Residential Agricultural 5 (RA-5) to Recreational Business & Commercial (B-2). Property affected is: 2631 80th St County Rd O, part of the NE ¼ of the SE ¼, Sec 22/T36N/R16W, Town of Bone Lake, parcel #012-00503-0000, 1 acre.

  - a. Discuss Conditional Use recommendations from DATCP of the Proposed Amended Polk County Comprehensive Land Use Ordinance related to Swine CAFO’s in the Agricultural 20 Zoning District
  - b. Discussion and consideration of draft Resolution regarding Operational Based Ordinance related to Swine CAFO’s
  - c. Discussion and recommendation of Resolution Extending Moratorium on Swine CAFO’s
10. Environmental Services Division update (Bob Kazmierski)
11. Committee Calendar and Identification of Subject Matters for Upcoming Meetings
12. Committee may convene in closed session proceedings under WI §19.85 (1) (e) to deliberate or negotiate the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session. This pertains to discussion on parcel #024-00031-0000
13. Committee will reconvene in open session and may act on matters discussed in closed session and to complete the agenda.
14. Parks, Recreation and Trails, and Dams (Ben Elfelt)
  - a. County Conservation Aid
  - b. Tour of Ahlgren and DD Kennedy Parks at 11:00 am or soon thereafter and return by 12:30 pm
15. Adjournment

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.



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## \*CORRECTED MINUTES

### Environmental Services Committee

Government Center County Board Room  
100 Polk County Plaza Balsam Lake, WI 54810  
9:00 A.M. Wednesday, Aug. 12<sup>th</sup>, 2020

#### Member Attendance

Attendee Name	Title	Status
Kim O'Connell	Chair	Present
Tracy LaBlanc	Supervisor	Present
Doug Route	Supervisor	Present
Brad Olson	Vice Chair	Present
Sharon Kelly	Supervisor	Present
Lyle Doolittle	FSA Representative	Present

Also present were: Malia Malone, Corporation Counsel; Vince Netherland, County Administrator; Emil Norby, Public Works Director; Tim Anderson, County Planner; Jason Kjeseth, Zoning Administrator; Ben Elfelt, Parks and Trails Coordinator; Mark Gossman, County Forester; Paul Heimstead, WDNR Forester; Bob Kazmierski, Environmental Services Division Director; members of the public; and member of the press.

**Meeting called to order by Chair O'Connell at 9:00 a.m.**

**Approval of Agenda-** Chair O'Connell called for a motion to approve the agenda. **Motion:** (LaBlanc/Kelly) to approve the agenda, carried by unanimous voice vote.

**Approval of Minutes** – Chair O'Connell called for a motion to approve the minutes of the July 22<sup>nd</sup>, 2020 meeting. **Motion** (Route/LaBlanc) to approve the minutes of the July 22<sup>nd</sup> 2020 meeting as published, carried by unanimous voice vote.

**Public Comment** – 1 Public Comment

**Disclosure of Committee Member** Conflicts of Interest regarding matters noticed on this agenda-None

**Receipt of information** from Supervisors, not seated as Committee Members, on only items noted on agenda (5 minutes maximum) Supervisor Duncanson discussion to consider extending the CAFO Moratorium and reviewing of an Operational ordinance. Supervisor Middleton mirrored that consideration, also noting that the HHS meeting had been moved and no report was given. County Board Chairman Nelson noted some housekeeping issues to Standing Committees about WebEx meetings, safety issues and general rules to follow.

#### **Tax Delinquent Properties (Emil Norby)**

- a. Norby passed out a handout outlining County owned Property Listings/Public Land Sales

**Parks, Recreation and Trails, and Dams (Ben Elfelt)**

- a. Parks and Trails Advisory Group Update-Interviews are currently being conducted.
- b. Virtual Parks Tour Kickoff - Presentation on Opportunities and Deficiencies of Parks and Trails Facilities; overview of Ahlgren and DD Kennedy. A tour of the parks will be scheduled.

**Forestry (Mark Gossman)**

- a. Review status of Cattail bridge repair funding. **Motion** (Route/Kelly) to move forward with construction plan and accepting River City Construction's bid of \$94,400, carried by unanimous voice vote.
- b. **Motion** (LaBlanc/Olson) to approve Resolution 27-2020; 15 year Comprehensive Forestry Plan and forward it to the full County Board, carried by unanimous voice vote.

**Zoning (Jason Kjeseth)**

- a. Discussion and recommendation to revise the Proposed Amended Polk County Comprehensive Land Use Ordinance related to Swine CAFO's in the Agricultural 20 Zoning District based on DATCP's review of Ordinance.
- b. Received draft Resolution regarding Operational Based Ordinance related to Swine CAFO's. ~~Instructed Council to send Ordinance to DATCP for review~~
- c. **Motion** (Olson/Kelly) to approve Resolution No. 28-20 rezone request from Town of St. Croix Falls and send to full County Board, carried by unanimous voice vote.

**Divisional Form of Government update (Bob Kazmierski)** –none-

AGENDA ITEMS:                      AUG 26<sup>TH</sup>, 2020                      9:00 A.M.

**ITEMS TO INCLUDE ON AGENDA:**

Tax delinquent properties: Fee Schedule for Lime Quarry

Parks, Recreation, Trails and Dams: TAG update, Tour of Ahlgren/DD Kennedy Parks

Forestry: approval to apply for a Sustainable and Fencing grants

Zoning: Public Hearing for rezone (Bone Lake), Discussion and recommendations of the Proposed Amended Polk County Comprehensive Land Use Ordinance, Discussion and recommendation of draft Resolution regarding Operational Based Ordinance related to Swine CAFO. Discussion and consideration of proposed Resolution extending Moratorium on Swine CAFOs

Divisional Form of Government: Possible closed session to mitigate land use conflict on County land.

Chairman O'Connell called for a motion to adjourn. **Motion (Kelly/Olson)** to adjourn. **Motion** carried by unanimous voice vote. Chair O'Connell declared meeting adjourned at 10:35 a.m.

Respectfully submitted,

Carol Zygowicz  
LWRD Admin. Asst.



# Polk County Land Information Department

Zoning | Planning | Mapping | Surveyor

100 Polk County Plaza, Suite 130  
Balsam Lake, WI 54810

Vince Netherland, County Administrator  
Robert Kazmierski, Director of Environmental Services  
Office: (715) 485-9279

TO: Officials, Applicant and Neighboring Property Owners  
FROM: Zoning Department  
RE: Public Hearing – Wednesday, August 26, 2020  
DATE: August 11, 2020

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The Polk County Environmental Services Committee will hold a public hearing on Wednesday, August 26, 2020 at 10:00am in the Government Center (County Board room), Balsam Lake, Wisconsin, to consider the following district changes and other agenda items:

- SARA RANK: Residential Agricultural 5 (RA-5) to Recreational Business & Commercial (B-2). Property affected is: 2631 80<sup>th</sup> St County Rd O, part of the NE ¼ of the SE ¼, Sec 22/T36N/R16W, Town of Bone Lake, parcel #012-00503-0000, 1 acre.

Applicant or agent must appear at this hearing to answer any questions that may arise; otherwise, it may be tabled or a decision by the Committee may be made after reading your application and any other letters of support or opposition to your request.

All interested parties have a right to either support or oppose the request(s) by appearing in person at time of hearing or by writing a letter to the Zoning Office. If we do not receive a response, it will be regarded as a "no objection".

For any questions regarding this hearing you may call our office Monday through Friday, 8:30 am - 4:30 pm, at (715) 485-9111.

cc: DNR (Eau Claire/Balsam Lake) Corporation Counsel  
Town Clerk (certified mail) Environmental Services Committee  
County Planner Land & Water Resources Dept  
County Board Supervisor County Hwy Dept



## Livestock Facility Siting

### Local Governments

#### What You Need to Know About Livestock Facility Siting

#### Questions and Answers

*Does this law force us to regulate the siting of new or expanding livestock facilities?*

No. The livestock facility siting law (s. 93.90) and rule (ATCP 51) do not require local governments to regulate the siting of livestock operations.

*Can we impose a moratorium on new livestock operations until a livestock siting ordinance is adopted?*

Yes. Under authority of Section 62.23(7)(da) of the Wisconsin Statutes a city, village, or town can impose a moratorium, however it must be for planning purposes and cannot exceed two years.

*Can a county impose a moratorium?*

Yes. The state does not restrict counties from imposing temporary moratoria, however there is no specific state statute that addresses this issue.

*Is there a good reference that covers moratoriums and land use planning and zoning?*

Yes. "Guide to Community Planning in Wisconsin" by Brian W. Ohm. It can be accessed on the Web using this link:

<http://www.lic.wisc.edu/shapingdane/resources/planning/library/book/contents.htm>

*Can we prohibit new or expanding livestock operations based on their location in a zoning district?*

Yes, in certain cases if 1) the facility is located in a nonagricultural district or 2) it is located in an agricultural district and the local government has at least one other agricultural district that allows operations of all sizes, however you must provide public health and safety justifications for the exclusion.

*How does this rule affect county manure storage ordinances?*

This rule includes standards for manure storage structures. This rule, when it applies, pre-empts inconsistent local manure storage ordinances. Livestock facilities not covered by the rule must comply with the existing local manure storage ordinance.

The siting standards **only** apply to new and expanding livestock facilities in areas that require local approval, and then **only** if the farm will have 500 animal units (AU) or more and has expanded by at least 20% (limited exceptions)

## Livestock Facility Siting

*How does this rule affect local regulation of existing livestock facilities?*

Existing livestock facilities are not covered by this rule unless they expand **and** a local permit is required. If local approval is required, an expansion will be required to complete an application if:

- The facility expands by 20% and exceeds 500 animal units in size for the first.
- The expansion exceeds the express limit of a prior local siting permit (for example, if a livestock facility previously approved for up to 800 “animal units” wants to expand to 900 “animal units”).
- The number of “animal units” to be kept at the livestock facility already exceeds the threshold and expands by more than 20% the number kept on the rule effective date (for example, the facility wants to expand from 600 to 900 “animal units”).

*What if a facility has a conditional use permit issued under an ordinance in effect before 2006. What happens to those permits?*

The siting rule does not affect any conditional use or other permits that have already been issued. Livestock operators must continue to meet the terms of those existing permits. A local government is free to remove conditions in a permit issued under pre-siting ordinances, but it cannot authorize an expansion under that permit. If a livestock operator wishes to expand beyond the level authorized in the old permit, the operator must obtain a new local permit, and the new siting standards and rule would apply.

*What options do local governments have to require siting permits?*



Counties, towns and other municipalities with zoning can adopt a conditional use permit requirement in their zoning codes. This option provides the most land use control. Counties and towns without zoning, or with a mixture of zoned and unzoned towns, have the option of adopting a licensing permit. The licensing permit requires that applicants meet the siting standards, but would not have any location restrictions that would apply with zoning.

*What standards must we use in issuing a permit for new or expanding livestock facilities?*

In most cases, local governments will use the state standards required by ATCP 51. A local government may adopt stricter local standards by ordinance, but only if they can be justified based on public health and safety. An ordinance may not include local standards designed to promote public welfare such incompatible uses, but may address public health and safety issues such traffic, noise, and dust.

*Does the siting rule apply the same standards to all livestock facilities that must apply for a permit?*

No. Requirements may vary, depending on facility size, type and location. In general, this rule has less stringent requirements for livestock facilities with fewer than 1,000 animal units, and has more stringent requirements for new livestock structures (buildings) than existing structures.

State Siting  
Standards and  
Worksheets

Animal Units

Odor Management

Waste and Nutrient  
Management

Waste Storage

Runoff Management



## Livestock Facility Siting

*Can we still require compliance with other local requirements not covered by the new law?*

The rules do not affect your authority to prohibit a proposed livestock facility that violates:

- shoreland and floodplain zoning ordinances
- construction site erosion control or stormwater management ordinances
- generally applicable building, electrical or plumbing codes.

*Can we charge a fee to process the livestock siting application, or require the applicant to post a bond or other security?*

A local government may charge a reasonable fee, not to exceed \$1000, to offset its costs to review and process an application. The fee must be set by local ordinance. A local government may not charge any other fee, or require the applicant to pay any bond or security.

*How do we know if livestock operators turn in a complete application?*

Local governments must provide livestock operators with the official livestock siting application form. A complete application means all the required components specified in the application form are consistent, credible, accurate, and not missing any information. A checklist is available on the DATCP website to help you review the application.

*Can we change the application form prescribed by this rule?*

No. All local governments that require local approval of new or expanded livestock facilities will use the same application form. There are, however, some very limited exceptions that allow local governments to add their own requirements to the application to seek information concerning local standards adopted for public health and safety reasons.

*How much time do we have to process a siting application?*

You must notify an applicant, within 45 days, whether the application is complete. If the application is not complete, then you must tell the applicant what information is needed. After the applicant provides this information, you must notify the applicant within 14 days that the application is complete. You must grant or deny the application within 90 days after giving this notice of completeness. You also must notify adjacent landowners using the DATCP "Notice to Adjacent Landowners" within 14 days of determining the application complete, but before making the approval decision.

*Do we have to provide the applicant the reasons for our decision to approve or deny the facility?*

Yes. You must issue your decision in writing. The decision must be based on written findings of fact included in the decision. The findings must be supported by evidence in the local record. You must return a copy of the application, with the approval decision clearly marked, to the applicant.

## Livestock Facility Siting

The decision-making record must include the application for approval, a record of any public hearing, a copy of any local ordinance cited in the decision, and other documents or evidence considered. You must keep the record for at least 7 years.

### *Can livestock operators or others appeal our decision?*

In addition to the other appeal options provided by law, such as internal local processes and circuit court challenges, a person may appeal to the state Livestock Facility Siting Review Board (LFSRB). An LFSRB appeal may be filed by the applicant, or a person who resides or owns land within 2 miles of the proposed livestock facility. Appellants are not required to exhaust the local appeal process before appealing to the Board.

The LFSRB must review the local decision based on the evidence in the local record. The local government must certify its record to the Board within 30 days after it receives notice of the appeal. The Board must make its decision within 60 days after it receives the certified local record.

The appellant or the local government may appeal the Board's decision to circuit court. The court must review the Board's decision based on the evidence in the local record.

### *Can a producer phase in the building construction and animal population at a permitted facility?*

Yes. A livestock operator must exercise rights granted under the permit within two years. A local government may withdraw the permit approval if an operator does not do the following within two years:

- 1) Add at least some animal units
- 2) Begin constructing any proposed facility structures

An operator does not need to add all the animal units or complete the construction of the structures within two years.

### *Once a siting permit is issued, can a producer modify the permit when animals are later added, rather than submit a new application?*

Yes. The siting rule authorizes local governments to grant a reasonable request to modify a permit as long as the livestock operator maintains compliance with the siting standards. A possible modification scenario might involve an operator updating a nutrient management plans to reflect newly added animals.

### *Can we conduct inspections of the livestock facility?*

You may consider including in your ordinance a provision to conduct periodic inspections upon written notice to the livestock facility owner and his or her consent to enter the premises. If the facility owner refuses to give permission for the inspection the local unit government has authority to seek inspection warrants under Sec. 66.0119 of Wis. Statutes. You may also require that permitted facilities submit self-certifications regarding their compliance status. You may charge reasonable fees to pay for the costs of these activities.



## Livestock Facility Siting

### *What actions can we take if the facility is not meeting its permit requirements?*

The full range of enforcement options is available to you if a livestock facility has not designed, constructed or maintained the facility consistent with the commitments made in its application for a permit. The enforcement options such as stop work orders must be included in your ordinance if you want to use them.

As a first step, you should provide written notice to the facility owner that the facility is not following the practices agreed to in the application. The notice should state a reasonable time to come into compliance and a statement that compliance must be maintained and that a follow up inspection will be conducted.

If noncompliance continues, the ordinance may provide for fines, which can be enforced through the citation procedure under Sec. 66.0113 of Wis. Statutes. The local ordinance may provide that each day of noncompliance after written notice constitutes a separate offense. The authority to fine may be used as leverage to gain compliance, which is the desired outcome.

In lieu of issuing a citation seeking imposition of a fine, the local ordinance may also provide that the local unit of government may seek injunctive relief in circuit court. The injunctive relief would be a court order that the livestock facility comply with the best management practices approved for the facility or the livestock facility owner would be subject to contempt of court and possibly a court order closing the operation of the livestock facility.

### *Where can I get more information?*

For more information about livestock facility siting, please contact Richard Castelnovo at [richard.castelnovo@wi.gov](mailto:richard.castelnovo@wi.gov) (608-224-4608), or Chris Clayton at [Christopher.Clayton@wi.gov](mailto:Christopher.Clayton@wi.gov) (608-224-4630).

Also, more information can be found on this Website: <http://livestocksiting.wi.gov>

Information regarding manure storage and other local ordinances can be located on DATCP's Website by searching for these terms.

# POLK COUNTY, WISCONSIN

## ORDINANCE NO. \_\_\_\_\_ 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:

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

**RESOLUTION EXTENDING MORATOIUM ON SWINE CAFOS**

ROLL CALL Board Members	Aye	Nay	Exc.
Olson			
Route			
Warhdahl			
Nelson (Chairperson)			
LaBlanc			
Ruck			
Prichard			
Kelly			
O'Connell			
Middleton			
Luke (2 <sup>nd</sup> Vice Chair)			
Duncanson			
Arcand			
Bonneprise (Vice Chair)			
Demulling			

**BOARD ACTION**  
Vote Required: Majority Vote of a Quorum

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Motion to Approve      Adopted

1st \_\_\_\_\_ Defeated

2nd \_\_\_\_\_

Yes: \_\_\_\_\_ No: \_\_\_\_\_ Exc: \_\_\_\_\_

Reviewed by: \_\_\_\_\_, Corp. Counsel

Reviewed by: \_\_\_\_\_, Administrator

Reviewed by: \_\_\_\_\_, Finance

**FISCAL & LEGAL IMPACT:**

**Certification:**  
I, Lisa Ross, Clerk of Polk County, hereby certify that the above is a true and correct copy of a resolution that was adopted on the \_\_\_\_ day of \_\_\_\_\_, 2020 by the Polk County Board of Supervisors.

\_\_\_\_\_  
Lisa Ross  
County Clerk, Polk County

1 **TO THE POLK COUNTY BOARD OF SUPERVISORS:**

2

3 **WHEREAS**, Polk County enacted Resolution 33-19 and 03-20, Original

4 Moratorium and first Moratorium extension on the development or expansion of

5 Swine CAFOs in Polk County, respectively; and

6

7 **WHEREAS**, for Villages, Towns and Cities, development moratoriums are

8 not to last more than 12 months; however, the statute is silent on a County's

9 ability to do the same; and

10

11 **WHEREAS**, the Covid-19 pandemic has limited the ability of Polk County to

12 sufficiently research and analyze the impacts a swine CAFO would have on the

13 health, safety, welfare, and economy of Polk County; and

14

15 **WHEREAS**, more time is needed to fulfill the purposes espoused in Polk

16 County Resolutions 33-19 and 03-20; and

17

18 **NOW, THEREFORE, BE IT RESOLVED**, Polk County hereby extends the

19 moratorium on Swine CAFO's for an additional 6 months from the date 03-20

20 would have expired for the purposes set forth in 33-19 and 03-20.

21

22

23

**SUBMITTED BY:**

\_\_\_\_\_

**Committee** \_\_\_\_\_

Recommended

Not Recommended

Neutral