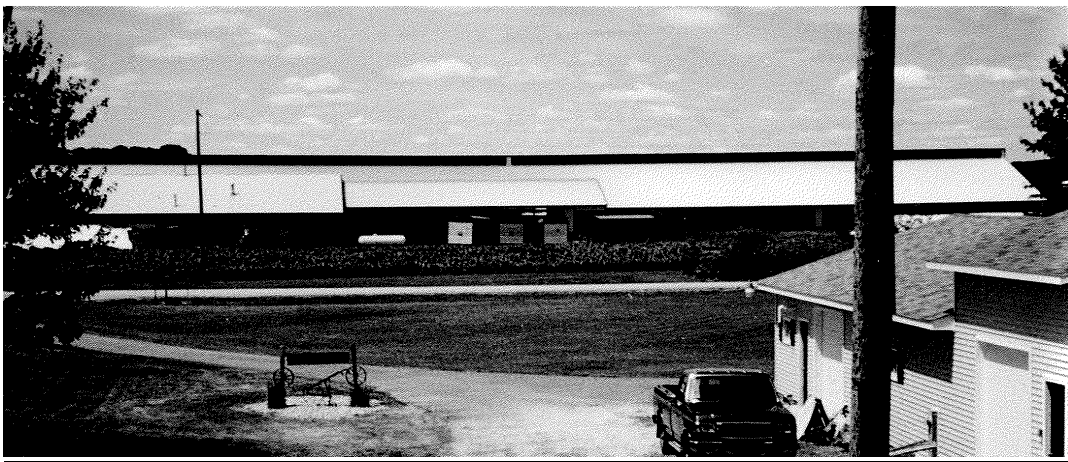


MODEL LIVESTOCK ZONING ORDINANCE:

**THE BALANCE BETWEEN
ENVIRONMENT, ECONOMY, AND AGRICULTURE**

SAMPLE PROVISIONS



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Midwest Environmental Advocates, Inc.

Midwest Environmental Advocates, Inc. is an environmental law center that provides legal and technical assistance to communities working for environmental justice. MEA’s mission is to provide high quality legal services that support a multicultural, grassroots social movement; build local leadership; and develop innovative solutions to environmental problems.

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I. SAMPLE DEFINITIONS

- A. “Animal Confinement Building”** means a walled facility where animals have been, are, or will be stabled or confined, fed and maintained.
- B. “Animal Feeding Operation”**
1. “Animal feeding operation” means a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.¹ “Animal feeding operation” includes animal confinement buildings, animal waste storage facilities, and land where animal waste is disposed of as fertilizer.²
 2. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area, equipment, or system for the disposal of wastes.³
- C. “Animal Unit”** means a unit of measure used to determine the total number of single animal types or combination of animal types which are fed, confined, maintained or stabled in an animal feeding operation.⁴
- D. “Animal Waste”** means the excrement, including all feed additives, metals, antibiotic residue, bedding and other materials of poultry, livestock or other animals housed by the animal feeding operation.
- E. “Animal Waste Storage Facility”** means an excavated or diked pond, walled structure or platform designed for containing animal wastes and runoff containing animal wastes,⁵ including vehicles and transfer equipment used for the temporary storage of animal waste pending land application.
- F. “Concentrated Animal Feeding Operation”** means any animal feeding operation with 500⁶ or more animal units.⁷
- G. “Discontinuance of Use”** and **“Discontinue the Use of”** or **“Abandonment”** means the situation where an animal feeding operation or concentrated animal feeding operation removes the animal units that were principally using the animal waste storage facility and empties the animal waste storage facility within 120 days.⁸
- H. “Family”** means the animal feeding operation’s owner, said operation’s grandparents, parents, stepparents, aunts, uncles, siblings, spouse, children or stepchildren, or grandchildren.⁹

¹ 40 C.F.R. §122.23(b) (2000).

² *Maple Leaf Farms v. Department of Natural Resources*, 247 Wis.2d 96, 112 (2001) (“[A] CAFO includes not only the ground where the animals are confined, but also the equipment that distributes and/or applies the animal waste produced at the confinement area.”).

³ 40 C.F.R. §122.23(b).

⁴ *Id.*, WIS. ADMIN. CODE §243.04(3) (2000).

⁵ *Id.*, §243.04(17).

⁶ MARTHA MOORE AND JIM PLUMHOFF, SUGGESTED MODEL ORDINANCE FOR LIVESTOCK, DAIRY, POULTRY FACILITIES (1994) <http://www.ext.vt.edu:4080/docdb/aaec-103>. Authors of this model ordinance suggest 300 animal units. Local governments should use their discretion in defining “concentrated animal feeding operation.”

⁷ See WIS. ADMIN. CODE §243.11, Table 2.

⁸ Green County, Wisconsin, Ordinance, §4-6-4, (2000).

⁹ Trempealeau County Feedlot Ordinance, Trempealeau County, Wisconsin, §15.4(B) (2000).

- I. **“Livestock”** shall include but is not limited to cows, cattle, sheep, goats, hogs, horses, mules, and poultry.
- J. **“Livestock Pasturing Operation”** means any livestock operation that uses pasture, as defined under this ordinance, as the primary source of feed for the animals.
- K. **“Pasture”** means an area where crops, vegetative forage growth, or post-harvest residues are sustained for the purpose of grazing animals in that area.¹⁰
- L. **“Permit”** means the granting of authority by the local unit of government to conduct certain activities subject to this ordinance.¹¹
- M. **“Permitted Use”** means a use which may be lawfully established in a particular district or districts, provided it conforms with all requirements, regulations, and performance standards of such district.¹²
- N. **“Small Animal Feeding Operation”** means any animal feeding operation that houses or confines fewer than one hundred fifty (150) animal units.
- O. **“Vegetative Buffer Strip”** means a permanently vegetated corridor of land immediately adjacent to navigable waters. It shall be a minimum of thirty-five (35) feet in horizontal width as measured perpendicularly from the ordinary high water mark of the navigable water.¹³
- P. **“Violation”** means an act or omission subsequent to the effective date of this Ordinance by an animal feeding operation not in compliance with the provisions of this ordinance. Each day of such noncompliance shall constitute a separate and distinct violation of this Ordinance.
- Q. **“Wetland”** means those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions. The Wisconsin Wetlands Inventory Maps produced by the Wisconsin Department of Natural Resources Bureau of Planning will be used as references in determining the size and location of wetlands.¹⁴
- R. **“WPDES permit”** means a State of Wisconsin Pollutant Discharge Elimination System permit issued pursuant to Chapter 283, WIS. STATS.

II. SAMPLE PERMITTED AND CONDITIONAL USES

A. Animal Feeding Operations Limited to Agricultural Zone.

[Local governments may insert language defining their agricultural zone as developed as part of their comprehensive plan here.]

¹⁰ See 40 C.F.R. §122.23(b)(ii).

¹¹ Trempeleau County Feedlot Ordinance, 15.4(B)

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

1. Permitted or Conditional Use in the Agricultural Zone. Animal feeding operations will be designated as either permitted uses or conditional uses, dependent on size classification.¹⁵

- a. Livestock pasturing operations are a permitted use subject to the performance standards in section IV of this ordinance for
 - i. General Setbacks; and
 - ii. Runoff Control.

Livestock pasturing operations are not required to obtain a permit under this ordinance.

- b. Small animal feeding operations with fewer than one hundred fifty (150) animal units (AUs) are a permitted use subject to the performance standards in section IV of this ordinance for
 - i. General Setbacks;
 - ii. Runoff Control;
 - iii. Maintenance of Animal Waste Storage Facilities; and
 - iv. Discontinuance of Use of Animal Waste Storage Facilities.

Small animal feeding operations are not required to obtain a permit under this ordinance.

- c. Animal feeding operations with one hundred fifty (150) AUs or more but fewer than five hundred (500) AUs are a permitted use in the agricultural zone, subject to the requirement to obtain a permit in section III and the performance standards in section IV of this ordinance for:
 - i. General Setbacks;
 - ii. Runoff Control;
 - iii. Maintenance of Animal Waste Storage Facilities;
 - iv. Discontinuance of Use of Animal Waste Storage Facilities; and
 - v. Nutrient Management.
- d. Concentrated animal feeding operations with 500 or more animal units (AUs) are a conditional use provided all requirements in subsection III(a) and performance standards in section IV can be met to the satisfaction of the local government. A public hearing shall be required.

B. Residential Uses Conditional in the Agricultural Zone.

- 1. Residential uses, other than a single family dwelling owned and occupied by the owner of the animal feeding operation or livestock pasturing operation at the site of the animal feeding operation or livestock pasturing operation, and other non-commercial, non-industrial uses are conditional uses in the Agricultural Zone if located within twice the setback distance of the animal feeding operation,¹⁶ as established in Section IV, Table 1 of this Ordinance.
- 2. Any residential use existing at the time of this ordinance that is not in compliance with this ordinance or other ordinances relating to residential uses shall become a legally nonconforming use.

¹⁵ Trempealeau County Ordinance, §15.6(A).

¹⁶ Trempealeau County Ordinance, §15.8.

Summary Table: Permitted Uses and Conditional Uses

Permitted Uses	Conditional Uses
Livestock Pasturing Operations	Concentrated Animal Feeding Operations (500 AUs and above)
Small Animal Feeding operations (1 - 149 AUs)	Residential Uses (if within twice the setback distance in section IV, Table 1)
Animal Feeding Operations (150 - 499 AUs)	

III. SAMPLE PROVISIONS FOR PERMITS AND PERFORMANCE STANDARDS

A. Permit Requirement. Under the following conditions, an animal feeding operation permit is required for:

1. A new animal feeding operation, including a concentrated animal feeding operation, which is proposed for a lot or a site on a lot where an animal feeding operation does not exist at the time of application for a permit, or a lot or a site on a lot where an animal feeding operation previously existed;
2. Expansion of an existing animal feeding operation, including a concentrated animal feeding operation, is proposed;
3. An existing animal feeding operation, including a concentrated animal feeding operation, is sought to be permitted;
4. An existing permitted animal feeding operation, including a concentrated animal feeding operation, is to be restocked after being abandoned, or unused for twenty-four (24) or more consecutive months.¹⁷

B. Exemption for Small Animal Feeding Operations (1-149 AUs) and Livestock Pasturing Operations.

No animal feeding operation permit shall be required for livestock pasturing operations or small animal feeding operations, as defined under this ordinance.

C. Required Submissions for an Application to Obtain a Permit:

1. A completed permit application listing all owners and operators, signed by all of the owners and a signed certification of the truth and accuracy of the information in the application; (note: applications containing misrepresentations of material fact may subject the applicant to forfeitures under this ordinance);
2. Application fee of one hundred fifty dollars (\$150.00);

¹⁷ Conditions one through four are taken from Trempealeau County Ordinance, §15.6(B).

3. A statement as to the maximum number of animals and type of animals, with corresponding total number of animal units, that will be confined at the animal feeding operation for 45 days or more in one year;
4. Plans and specifications for all animal waste storage facilities, prepared by a civil engineer with a certificate of authority that the engineer is authorized to do business in the state of Wisconsin;
5. Proof of ownership or control of all animal waste storage facilities and animal confinement buildings, demonstrated by copies of relevant legal instruments;
6. A Nutrient Management Plan in compliance with subsection 4(d) and NRCS 590 and documents showing the amount of land available for manure spreading, including legal title to the land or signed contracts with other landowners for use of the land for manure spreading;¹⁸
7. A plan for abandonment of any animal waste storage facilities, including demonstration of financial assurance described in section 4.

D. Notification of Adjacent Property Owners Required.

All property owners within the general setback distance, as defined under this ordinance, shall be notified individually in writing by the Zoning Administrator 30 days prior to any public hearing for granting of permits for new or expanding animal feeding operations under this ordinance.

E. Permit Renewals.

1. All permits must be renewed with the local government every five years, with all effort made by the local government to coordinate the permit renewal with the Wisconsin Department of Natural Resources.
2. All permits will be renewed, provided that:
3. The permittee can demonstrate substantial compliance with this ordinance, with special emphasis placed on all reasonable steps taken to minimize animal waste storage facility leakage, control contaminated runoff, spread manure in compliance with a manure management plan under this ordinance, and control odor emanating from crop fields, animal confinement buildings, and animal waste storage facilities.
4. The permittee pays a \$50.00 renewal fee to the local unit of government.

F. Conditional Use Permits for Concentrated Animal Feeding Operations (500 or More AUs).

1. Conditional use permit required.

A concentrated animal feeding operation (500 AUs or more) may not operate until it has received a conditional use permit.

2. Additional submissions required.

In addition to the required submissions under subsection (c), the application for a conditional use permit to operate a concentrated animal feeding operation shall include:

¹⁸ Required submissions 1 through 5 are taken from the Trempealeau County Ordinance, §15.6(D).

- a. A Wisconsin Pollutant Discharge Elimination System (WPDES) permit issued to the concentrated animal feeding operation required under Ch. NR 243, to the extent such a permit is required under state law;¹⁹
- b. An Environmental Assessment issued by the Wisconsin Department of Natural Resources to the extent such is provided by state law;
- c. Any high capacity well permit applied for and obtained under Ch. NR 812, to the extent that such a permit is required under state law;
- d. Total acreage of the facility, including animal confinement buildings, animal waste storage facilities, and stormwater retention ponds;
- e. A description of the geologic condition and soil types at the proposed location of the facility;
- f. A list of public services needed by the applicant;
- g. A scaled map or aerial photograph of the site showing the following information:
 - The locations and dimensions of all animal confinement buildings including the outside lots;
 - The locations, dimensions, and design criteria of all animal waste storage facilities;
 - The location of any known well, active or abandoned, within _ mile of the nearest confinement building or outside lot;
 - The drainage patterns at the site;
 - The location of all structures within the general setback area of the proposed facility; and
 - The location of all homes, buildings, lakes, ponds, watercourses, wetlands, dry runs, rock out-croppings, roads, wells, land contours, and surface water drainage within _ mile of the animal feeding operation.
- h. Estimated total water consumption by the facility per day, including the source and location of surface or groundwater supplies that the facility intends to use;
- i. Estimated number of full-time and part-time employees with estimated salaries;
- j. Estimated amounts of hormones, insecticides, and non-therapeutic antibiotics use per year; and
- k. Estimated ammonia, hydrogen sulfide, particulate matter, and volatile organic compound emissions from the animal waste storage facility and animal confinement buildings per day.²⁰

¹⁹ Some of the information required below may be in the operation's application file with the Department of Natural Resources.

3. Procedural Requirements

- a. Any application for a conditional use permit by a concentrated animal feeding operation shall be submitted to the local unit of government for tentative approval.
- b. The local unit of government shall notify within 21 days by first class mail all persons within the unit's jurisdictional boundaries and those person's not within the jurisdictional boundaries but within the general setback distance prescribed below.²¹
- c. The local unit of government shall hold at least one public hearing on the proposed conditional use permit to evaluate the sufficiency of the application and the applicability of Standards for Conditional Use Permits under Section 3(f)(3) of this ordinance.
- d. Following approval of the application by the local unit of government subsequent to the public hearing, the applicant shall be notified in writing of the decision, including conditions imposed, if any.
- e. In the case of a denial of the application by the local unit of government, the applicant shall be notified in writing of the decision and the specific and detailed reasons for the decision. The applicant shall have the opportunity to withdraw the application and resubmit the application with submissions that address the local unit of government's specific reasons for denial. If the local unit of government again denies the application, the applicant may seek declaratory relief and an injunction in the appropriate circuit court.²²

4. Standards for Conditional Use Permits.

The local unit of government may not approve the application for a conditional use permit unless it finds that the proposed use:

- a. Will comply with the applicable requirements of this ordinance;
- b. Will be served by adequate utilities, access roads, drainage and other necessary facilities, infrastructure, or public services;
- c. Will be served by ingress and egress routes that will minimize traffic congestion or damage to roads and streets;
- d. Will not result in air or water pollution, soil erosion, and loss of irreplaceable natural resources, including groundwater;
- e. Is economically viable and will not likely burden the community if it ceases operation;
- f. Will not use unreasonable quantities of groundwater that deplete or pose a substantial risk of harm to ground or surface water resources;

²⁰ UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, EMISSIONS FROM ANIMAL FEEDING OPERATIONS, DRAFT, (2001). See also R. Battye, et al, *Development and Selection of Ammonia Emissions Factors: Final Report*, Prepared for the U.S. Environmental Protection Agency Office of Research and Development, Washington DC (1994).

²¹ For counties developing these procedures, it may not be necessary or cost effective to notify all entities within in the county. Instead, the county could consider notification to a town's boundaries and setback distance outside of those boundaries.

²² Local governments will likely already have procedures in place for appealing conditional use permit decisions, and therefore should incorporate those procedures into this ordinance.

- g. will not be injurious to the use and enjoyment of other property in the immediate vicinity, or substantially diminish or impair property values within the area; or
- h. will not be detrimental to the public health safety or welfare, or materially injurious to properties or improvements in the vicinity.

5. Additional Factors.

The local unit of government may consider these additional factors in determining whether to grant the conditional use permit:

- a. The presence of any wildlife or endangered species;
- b. Grave sites and Native American sacred sites;
- c. Any important archeological, ethnological, cultural, religious, and historical landmarks and artifacts;
- d. Concerns of neighboring property owners;
- e. Traffic;
- f. Housing;
- g. Noise levels;
- h. The location of the facility and surrounding residential uses in relation to prevailing winds; and
- i. Aesthetic appearance.²³

These factors are to be considered in conjunction with the factors described in Section III.F.4, and no individual factor may form the sole basis for the denial of the conditional use permit except where otherwise authorized by law.

6. Additional Conditions.

The following conditions may be attached to a conditional use permit upon specific findings that they are needed to satisfy the purpose of this ordinance and assure operation of the use in a manner compatible with existing and potential uses of adjoining properties and the general vicinity:

- a. Increased setbacks;
- b. Specifications regarding the storage, handling, and disposal of liquid and solid waste;
- c. Landscaping, planting screens, windbreaks, and other measures to control visual and air pollution;
- d. Increased sureties or other financial responsibility upon a finding of need;
- e. Operational controls and time of operation;

²³ *Id.* at §15.8(B). Additional factors in Section III.F.5(a)– (i), are taken from the Trempealeau County Ordinance §15.8(B).

- f. Measures to control erosion and protect water quality, including surface and groundwater testing and monitoring;
- g. Limits on the number of animals housed in an animal feeding operation based on the capacity of the facility to manage manure and the adequacy of the land base to apply manure;²⁴
- h. Notification to the local unit of government and reapplication for a new conditional use permit whenever the facility changes ownership;
- i. Best management practices to limit light pollution;²⁵
- j. Measures to prevent damage to roads, bridges, and other infrastructure, including financial assurances from the animal feeding operation to cover the cost of such damage; or
- k. Any other measure authorized by law.

²⁴ Green County Board of Adjustment, Thursday March 26, 1998 Meeting Minutes (1998). These minutes reflect the conditions placed on the operation of Spring Grove Dairy of Brodhead Wisconsin (*hereinafter* Spring Grove Conditional Use Permit).

²⁵ Trempealeau County Ordinance, §15.8(B)(15).