

SEWRPC Model Zoning Ordinance EXCLUSIVE AGRICULTURAL ZONING DISTRICT REGULATIONS

These regulations have not been reviewed by an attorney. Review by the municipal attorney is strongly recommended before adopting these regulations as part of a town, village, city, or county zoning ordinance.

The following regulations are intended to preserve existing farmland areas by limiting non-agricultural uses. These regulations are not intended to be “certifiable” by the Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) to qualify for Farmland Preservation Program tax credits. The DATCP website includes a link to model ordinances intended to meet Farmland Preservation Program zoning requirements:

https://datcp.wi.gov/Pages/Programs_Services/FPZoningForPS.aspx

The attached regulations allow lot averaging and accessory apartments. Lot averaging allows the creation of a limited number of small parcels for non-farm development while preserving the remainder of a farm for agricultural use. Non-farm housing is located on small lots to minimize the amount of land used for non-agricultural purposes. Accessory apartments help to provide affordable housing in rural areas and may provide additional income for farm families, but maintain the rural character of agricultural areas by limiting the number of residential buildings.

Chapter ATCP 51 of the Wisconsin Administrative Code limits local government regulation of Livestock Facilities, which include feedlots, dairy farms, or other operations where livestock are fed, confined, or maintained for more than 45 days in a 12-month period (but not including pasture or grazing areas). The term “livestock” is defined in ATCP 51 as cattle, swine, poultry, sheep, and goats. Horses and other equine animals, bison, game birds, fish, ratites (ostriches and emus), camelids (llamas and alpacas), and mink are not regulated under ATCP 51.

ATCP 51 prohibits a county or local government from “picking and choosing” which requirements they want to adopt from ATCP 51. Either the entire chapter needs to be adopted and enforced by a county or local government, or the county or local government is limited to adopting the setback requirements for livestock facilities in Sections 51.12 (1) and (2) of ATCP 51. Local governments can also adopt the manure setback requirement in ATCP 51.12(2) if the county has not adopted an animal waste storage facility ordinance. Note, however, that Section 93.90(3)(a)(6) of the Wisconsin Statutes allows a county or local government to adopt livestock facility requirements that are more stringent than State requirements if the ordinance is adopted before an applicant files an application to establish or expand a livestock facility, and the requirement is based on reasonable and scientifically defensible findings of fact that clearly show that the requirement is necessary to protect public health or safety.

Limits on the number of livestock that can be kept on an agricultural parcel are no longer allowed, unless the county or local government adopts all ATCP 51 requirements. Note that as long as one agricultural zoning district in a county or local ordinance allows livestock facilities with no limit on the number of livestock, additional agricultural districts may include such limits (see Section 93.93(3)(b) of the Statutes). In other words, the while the “Exclusive Agricultural” district may not impose limits on the number of livestock, an “Agricultural/Rural Residential” or similar district may include such limits. Any agricultural zoning district with a minimum parcel size of less than 35 acres should include limits on the number of livestock and other farm animals. This model ordinance includes limits on the number of animals on parcels

less than 35 acres in the Exclusive Agricultural District, which is the minimum lot size required for the District.

State statutory and regulatory requirements that prohibit county and local governments from limiting the number of livestock do not apply to animals not defined as livestock by ATCP 51. These model regulations therefore include limits on animals defined as “farm animals” and “fur-bearing animals,” which are not regulated under ATCP 51.

In the following model ordinance, where the word “Town” appears in italics, the word “Village,” “City,” or “County” may be substituted. These regulations are intended to be adopted as a Section in an existing zoning ordinance. As such, they do not include provision for appeals, variances, severability, nonconforming uses and structures, and similar considerations which would typically be addressed in other sections of a full zoning ordinance. Please contact SEWRPC if you would like examples of other zoning ordinance sections.

Please contact SEWRPC at (262) 547-6721 or sewrpc@sewrpc.org if you have any questions or would like a Word version of the model ordinance.

3. EA EXCLUSIVE AGRICULTURAL DISTRICT

The EA Agricultural District is intended to maintain, enhance, and preserve agricultural lands historically utilized for crop production and the raising of livestock and farm animals. The district is further intended to prevent the premature conversion of agricultural land to residential, commercial, and industrial uses.

A. Principal Uses

1. Apiculture (beekeeping).
2. Barns, silos, sheds, storage bins, and similar buildings and structures used in a farm operation, but not including dwellings.
3. Dairy farming on parcels or contiguous parcels under common ownership of 35 acres or larger.
4. Essential services.
5. Floriculture (cultivation of ornamental flowering plants).
6. Keeping, raising, grazing, or pasturing of livestock on parcels or contiguous parcels under common ownership of 35 acres or larger.
7. Keeping, raising, grazing, or pasturing of farm animals on parcels or contiguous parcels under common ownership of 35 acres or larger, not to exceed 300 animals.
8. Keeping raising, grazing, or pasturing of livestock or farm animals on parcels of at least five acres but less than 35 acres, or less than 35 acres of contiguous parcels under common ownership, in accordance with the following:
 - a. No more than one livestock or farm animal over six months of age shall be kept for each 1.5 acres; or
 - b. No more than five poultry, over two months of age, shall be kept for each 1.5 acres; or
 - c. No more than eight rabbits or hare, over two months of age, shall be kept for each 1.5 acres.
 - d. Combinations of the above shall be apportioned to the total acreage and the Zoning Administrator shall determine the total number of animals allowed.
9. One single-family dwelling with a garage to be occupied by the farm operator or owner.
10. Orchards.
11. Parcels of land less than 35 acres in area existing on [insert date original Town zoning ordinance was adopted or when the 35-acre minimum parcel size requirement took effect]; and parcels with existing dwellings not accessory to any farm operation or dwellings remaining after the consolidation of farms provided that such dwellings are located on a lot not less than 40,000 square feet in area having a lot width of not less than 125 feet.
12. Plant nurseries.
13. Poultry raising and egg production on parcels or contiguous parcels under common ownership of 35 acres or larger.
14. Raising of grain, grass, mint, and seed crops.
15. Raising of tree fruits, nuts, and berries.
16. Sod farming.
17. Vegetable raising.
18. Viticulture (grape growing).

B. Accessory Uses

1. Garages or carports.
2. Home occupations in accordance with Section _____.
3. Dish antennas located in the side or rear yard or mounted on a roof.
4. One roadside stand for farm products produced on the premises and not exceeding 150 square feet in floor area.
5. Forest and game management.
6. Solar collectors mounted on a principal or accessory building.

C. Conditional Uses

1. Accessory apartments provided that:
 - a. The principal dwelling unit is owner-occupied.
 - b. There may be only one accessory apartment per principal dwelling unit.
 - c. A garage, shed, or other enclosed storage area must be provided for use by the residents of each dwelling unit.
 - d. Each dwelling unit shall be a minimum of 800 square feet, and the total square footage of both dwelling units shall be a minimum of 2,000 square feet, excluding both finished and unfinished basement areas.
 - e. All setback and height requirements must be met.
 - f. Adequate off-street parking must be provided for each dwelling.
 - g. Onsite water supply and private onsite wastewater treatment systems (POWTS) meeting the requirements of the County Sanitary Code must be provided if public sewage collection and public water are not available to the dwelling.
2. Additional single-family dwellings for a child or parent of the farm operator. The need for more than one single-family dwelling to support and carry on a permitted principal or conditional use must be established to the satisfaction of the *Town* Plan Commission before the issuance of a conditional use permit. If approved, an additional dwelling shall be placed on a parcel separated from the farm parcel and shall be a minimum of 1.5 acres and a maximum of 2.5 acres in area and have a minimum lot width of 150 feet. The location of each parcel shall be subject to approval by the *Town*.
3. Agricultural warehousing, provided that such use is determined to be consistent with agricultural use.
4. Airports, airstrips, and landing fields provided that such facilities shall be governmentally owned and operated, or used for farm related operations such as crop dusting, provided that such use is determined to be consistent with agricultural use.
5. Auction halls, provided that:
 - a. The building to be used shall conform to all applicable Building and Sanitary Code requirements.
 - b. Adjacent onsite parking, as determined by the Plan Commission, shall be identified on an approved site plan.
 - c. Auctions shall be on an occasional basis.

- d. Such use is clearly incidental to the principal farm use.
- 6. Bed and breakfast establishments, in accordance with Section _____.
- 7. Boat and recreation vehicle storage when the storage is in a completely enclosed structure which is at least 10 years old, provided the use is clearly incidental to a principal farm use.
- 8. Boarding stables provided that confined housing of horses shall be located not closer than 100 feet to a residential district boundary or a navigable body of water.
- 9. Commercial raising, propagation, or butchering of farm animals in excess of 300 animals.
- 10. Commercial raising, propagation, or butchering of fur-bearing animals, such as mink, rabbits, and foxes.
- 11. Home industry, which is similar to a home occupation and shall generally be limited by the standards for home occupations set forth in Section _____. The *Town* Plan Commission may, however, permit the conduct of a home industry in an accessory building. The Plan Commission may further permit the assembly and manufacturing of a small-scale piece work or the use of non-household appliances and tools if determined it will not be disruptive to the neighborhood.
- 12. Housing for farm laborers, and for seasonal and migratory farm workers, provided that such use is determined to be consistent with agricultural use.
- 13. Lot averaging to allow residential lots on a small portion of an agricultural parent parcel, or contiguous parcels under the same ownership, while retaining the majority of the parent parcel for continued agricultural use and without increasing the permitted density in the EA district of one home per 35 acres, provided that:
 - a. When using lot averaging, the area of a lot intended for residential use may be reduced below the 35 acre minimum, provided the area by which it is reduced is added to a lot intended to remain in agricultural use. The area of a lot intended for residential development may be reduced to no less than 1.5 acres and no more than 2.5 acres, with a minimum lot width of 150 feet.
 - b. New lots must be created by certified survey map or subdivision plat.
 - c. All residential lots must have frontage on a public road and at least one of the contiguous parcels intended to remain in agricultural use must have frontage on a public road.
 - d. All lots capable of being further divided shall be restricted against further division by deed restriction, conservation easement, or other agreement in a form acceptable to the *Town* Board and recorded in the office of the County Register of Deeds. Parent parcels intended for continued agricultural use shall not be developed for non-agricultural uses unless the parcel is rezoned by a super-majority vote of the *Town* Board (four of the five *Town* Board members in favor), and the deed restriction or conservation easement is removed.
 - e. Lots shall be laid out in such a way as to retain the maximum amount feasible of productive agricultural soils on the parent parcel. Residential lots must be clustered in a small contiguous area unless the Plan Commission permits lots to be scattered to better preserve productive agricultural soils. Productive agricultural soils are non-wooded areas with soils identified by the U.S. Natural Resources Conservation Service as having an agricultural capability class rating of I, II, III, or IV. The *Town* will place a higher priority on preserving farmlands in the higher-value capability classes (I and II).

- f. One single family dwelling may be constructed on each residential lot, provided the following requirements are met:
 - (1) Dwellings must comply with the building height and area requirements of Section _____ and the yard requirements of Section _____ (*cross-reference requirements from an appropriate single-family residential district*).
 - (2) Residential lots shall be located at least 350 feet from manure storage facilities, at least 100 feet from animal structures with fewer than 1,000 animal units; and at least 200 feet from animal structures with 1,000 or more animal units.
 - (3) Onsite water supply and private onsite wastewater treatment systems (POWTS) meeting the requirements of the County Sanitary Code must be provided if public sewage collection and public water are not available to the dwelling.
- 14. Operation of motorized off-road vehicles, in accordance with Section _____
- 15. Outdoor furnace or boilers, in accordance with Section _____.
- 16. Separating an existing dwelling from the remaining farm operating unit at the time separate farm operations are consolidated, provided at least 1.5 acres of land are kept with such dwelling.
- 17. Solar energy conversion systems not considered accessory uses, in accordance with Section _____.
- 18. Utilities, provided all principal structures and uses are not less than 50 feet from any residential district lot line and provided that such use is determined to be consistent with agricultural use.
- 19. Veterinary services provided that all principal uses and structures are located not less than 200 feet from a residential district and provided that such use is determined to be consistent with agricultural use.
- 20. Wind energy conversion systems, in accordance with Section _____.
- 21. Wireless communication facilities, in accordance with Section _____.

D. Parcel Area and Width

Farm structures hereafter erected, moved, or structurally altered and related farm activities shall provide a contiguous area of not less than 35 acres and no farm shall be less than 600 feet in width.

E. Building Height and Area

- 1. No farm structure or part thereof shall exceed 100 feet in height.
- 2. No dwelling or part of a dwelling shall exceed 35 feet in height.
- 3. The total minimum floor area of a dwelling shall be 1,000 square feet for a one-story dwelling and 1,200 square feet for a multi-story dwelling. Multi-story dwellings shall have a minimum first floor area of 800 square feet. The Plan Commission may approve smaller size dwelling units for accessory apartments created in accordance with this Section.

F. Yards for Structures other than Animal Structures

- 1. A minimum street yard (setback) of 40 feet from the road right-of-way shall be required.

2. A minimum shore yard of 75 feet from the ordinary high water mark of any navigable water shall be required unless a lesser setback is approved by the County in accordance with the County shoreland zoning ordinance.
3. There shall be a side yard on each side of all structures not less than 25 feet in width.
4. There shall be a rear yard of not less than 50 feet.

G. Yards for Animal Structures

1. Animal structures with fewer than 1,000 animal units shall be set back a minimum of 100 feet from property lines and public road rights-of-way. (*per ATCP 51.12(1)(a)*)
2. Animal structures with 1,000 or more animal units shall be set back a minimum of 200 feet from property lines and 150 feet from public road rights-of-way. (*per ATCP 51.12(1)(b)*)
3. Manure storage facilities shall be set back a minimum of 350 feet from property lines and public road rights-of-way. (*per ATCP 51.12(2)*)
4. A minimum shore yard of 75 feet from the ordinary high water mark of any navigable water shall be required unless a lesser setback is approved by the County in accordance with the County shoreland zoning ordinance.

Related definitions

Animal Structure

A building or other structure used to house or feed livestock or farm animals, to confine livestock for milking, to confine livestock or farm animals for feeding other than grazing, to store feed for livestock or farm animals, or to collect or store waste generated at a barn, milking parlor, or animal lot. A fenced pasture is not considered an animal structure.

Animal Unit

Equivalent units of livestock or farm animals. The number of animals constituting an “animal unit” varies by species. For example, one milking dairy cow equals 1.4 “animal units.” A beef animal over 600 lbs. equals 1.0 “animal units.” A pig over 55 lbs. equals 0.4 “animal units.” A laying chicken equals 0.01 “animal unit.” When necessary, the Zoning Administrator shall determine the applicable animal units based on guidelines published by the Wisconsin Department of Agriculture, Trade and Consumer Protection or other reliable source.

Bed and Breakfast Establishment

Any place of lodging that provides eight or fewer rooms for rent to no more than a total of 20 guests or other transients for more than 10 nights in a 12-month period, is the owner’s personal residence, is occupied by the owner at the time of rental, and in which the only meal served to guests is breakfast.

Farm

All land under common ownership that is primarily devoted to agricultural use.

Farm Animal

Horses, bison, donkeys, farm-raised deer, captive game birds, ratites, and camelids raised in captivity. Cattle, swine, sheep, goats, and poultry are not considered “farm animals” but are

regulated as “livestock.” Dogs, cats, and other household pets are not considered to be livestock or farm animals.

Farm Operator

Any person who owns land and raises crops, livestock, or farm animals on a farm; or a person who rents land to another for agricultural purposes and who lives on the land having day-to-day contact with the farm operation; or a person who lives on land that he or she has historically farmed. For the purpose of this Ordinance, any person who has farmed land for five consecutive years is deemed to have farmed it historically.

Home Industry

A home occupation that is carried out in a structure separate from the principal structure; or the manufacture or assembly of a product, often on a contract basis, in a residence; or an occupation of a more intense nature than is normally defined as a home occupation.

Home Occupation

Any occupation for gain or support conducted entirely within buildings by resident occupants which is customarily incidental to the principal use of the premises.

Livestock

Cattle, swine, sheep, goats, and poultry. Horses, bison, donkeys, farm-raised deer, captive game birds, ratites, and camelids raised in captivity are not considered “livestock,” but are regulated as “farm animals.” Dogs, cats, and other household pets are not considered to be livestock or farm animals.

Poultry

Domestic farm fowl, such as chickens, ducks, and turkeys.