

**A EDWARDS TOWNSHIP  
ZONING ORDINANCE AMENDMENT**

ORDINANCE NO. O-2018-2

*An Ordinance to amend the Zoning Ordinance for Edwards Township to authorize Intensive Livestock Facilities as special land uses in the Agricultural – Residential District, and to establish standards by which these uses are to be managed.*

EDWARDS TOWNSHIP, OGEMAW COUNTY, MICHIGAN, ORDAINS:

**SECTION 1. AMENDMENT TO TOWNSHIP ZONING ORDINANCE, CHAPTER 1, SECTION 1.02:** Township Zoning Ordinance, Chapter 1, Section 1.02, is amended to add the following new definition:

*Animal Unit.* An animal unit is defined per the type of animal as set forth in Table 1:

**Table 1. Animal Units**

<b>Animal Units</b>	50	250	500	750	1,000
<b>Animal Type<sup>1</sup></b>	<b>Number of Animals</b>				
Slaughter and Feeder Cattle	50	250	500	750	1,000
Mature Dairy Cattle	35	175	350	525	700
Swine <sup>2</sup>	125	625	1,250	1,875	2,500
Sheep and Lambs	500	2,500	5,000	7,500	10,000
Horses	25	125	250	375	500
Turkeys	2,750	13,750	27,500	41,250	55,000
Laying Hens or Broilers	5,000	25,000	50,000	75,000	100,000

1 All animal types not in this table are to be calculated as one thousand pounds live weight equals one animal unit.

2 Weighing over 55 pounds.

**SECTION 2. AMENDMENT TO TOWNSHIP ZONING ORDINANCE, CHAPTER 1, SECTION 1.07:** Township Zoning Ordinance, Chapter 1, Section 1.07, is amended to add the following new definition:

*Floodplain.* Any land area that is subject to a 1 percent or greater chance of flooding, or equivalent to a 100-year flood as mapped by the Federal Emergency Management Agency (FEMA).

**SECTION 3. AMENDMENT TO TOWNSHIP ZONING ORDINANCE, CHAPTER 1, SECTION 1.10:** Township Zoning Ordinance, Chapter 1, Section 1.10, is amended to add the following new definition:

*Intensive Livestock Facility.* Any animal feeding facility that handles more than 1,000 “animal units” confined on the property, or any existing animal feeding facility that expands to handle more than 1,000 animal units.

**SECTION 4. AMENDMENT TO TOWNSHIP ZONING ORDINANCE, CHAPTER 1, SECTION 1.14:** Township Zoning Ordinance, Chapter 1, Section 1.14, is amended to add the following new definitions:

*Manure.* The fecal and urinary excrement of livestock and poultry, often containing some spilled feed, bedding or litter, excluding whole or partial carcasses.

*Manure Storage Facility.* A detached “structure” or other improvement built to store “manure” for future use, or awaiting disposal.

**SECTION 5. AMENDMENT TO TOWNSHIP ZONING ORDINANCE, CHAPTER 1, SECTION 1.19:** Township Zoning Ordinance, Chapter 1, Section 1.19, is amended to add the following new definition:

*Surface Water.* A body of water that has its top surface exposed to the atmosphere and includes lakes, ponds, or water holes that cover an area greater than 0.25 acres, and streams, rivers, or waterways that maintain a flow year-round.

**SECTION 6. AMENDMENT TO TOWNSHIP ZONING ORDINANCE CHAPTER 11:** Township Zoning Ordinance, Chapter 11 is amended to add the use “Intensive Livestock Facility” to the list of uses provided in Section 11.07, entitled “Specific Special Land Use Standards,” which shall read as follows:

**SECTION 11.07 SPECIFIC SPECIAL LAND USE STANDARDS**

Z. Intensive Livestock Facility, except for those facilities operated in conformance with the Michigan Right to Farm Act and Generally Accepted Agricultural and Management Practices

**SECTION 7. AMENDMENT TO TOWNSHIP ZONING ORDINANCE CHAPTER 11:** Township Zoning Ordinance, Chapter 11 is amended to add new Subsection Z to Section 11.07, entitled “Specific Special Land Use Standards,” which shall read as follows:

**SECTION 11.07 SPECIFIC SPECIAL LAND USE STANDARDS**

Z. Intensive livestock facility

1. In addition to the information required for Special Land Use under this Chapter and Site Plan Review under Chapter 10, the applicant must include the following information with applicant's submission:
  - a. Location and dimensions of all proposed buildings, structures, fencing and improvements associated with the intensive livestock facility;
  - b. Proposed number of animal units and proposed livestock type;
  - c. Proposed activities on the property and projected duration of the activities;
  - d. Proposed hours of facility and the number of employees;
  - e. Existing and proposed roads and access ways within and adjacent to the facility;
  - f. Surrounding land uses and ownership;
  - g. Topographic relief of the site at a two (2) feet contour;
  - h. Soil types at the site in accordance with Natural Resources Conservation Service/ U.S. Department of Agriculture official soil descriptions;
  - i. Locations of existing on-site water wells, if any, and depth to groundwater;
  - j. Location of surface waters, including ponds, lakes, streams, drainage ditches, rivers and wetlands within 1,000 feet of the site perimeter;
  - k. Location and distance to any residences or parcels of record that allow residential land uses within 2,500 feet of the site perimeter;
  - l. A soil erosion and sedimentation control plan consistent with all applicable provisions of Part 91 SESC of Michigan's NREPA, PA 451 of 1994, as amended;
  - m. A hydrogeological study and monitoring plan addressing the protection of groundwater during operation of the facility. Such study shall consist of a minimum of five (5) on-site groundwater monitoring wells at perimeter of the site set at a depth encountering the first water bearing zone. Groundwater depth, gradient, and flow direction shall be determined with a minimum of three (3) groundwater monitoring wells, and a minimum of two (2) downgradient groundwater monitoring wells.
  - n. A water withdrawal plan designed to protect the level of water in lakes, ponds, wetlands, watersheds, groundwater and residential drinking wells located within the Township, including all materials submitted to the Michigan Department of Environmental Quality (MDEQ) as part of the Water Withdrawal Assessment Tool (WWAT) program. Such water withdrawal plan shall be based upon the results of the required hydrogeological study. Ground water pump test results shall be included in the required water withdrawal plan.

- o. Noise management plan detailing how noise from the equipment used for operation of the facility can be minimized to not create conditions that result in unreasonable interference with the comfortable use and enjoyment of neighboring property; provide documentation establishing the ambient noise level prior to construction; identify the activities on site that have the potential to cause noise impacts; specify how the impacts will be mitigated considering the following characteristics: (i) nature and proximity of adjacent development and land uses; (ii) seasonal and prevailing weather patterns, including wind directions; (iii) extent of vegetative screening on or adjacent to the site; and (iv) topography.
- p. A chemical storage plan containing a list and the location of all chemicals on-site and the material safety data sheets (MSDS) is required and shall be submitted to the Ogemaw Fire Department. If the list of chemicals is confidential and not subject to disclosure under the Freedom of Information Act (FOIA), the list shall be marked accordingly.
- q. A waste management plan describing all projected waste, including a list of all chemical constituents and total volumes intended for disposal, and the manner by which waste shall be lawfully disposed.
- r. The odor management plan shall detail how the facility will minimize odor impacts on adjacent property owners, including: identification of potential sources of significant odors; evaluation of the potential magnitude of each odor source; identification of current, planned, and potential odor control practices; a plan to monitor odor impacts and respond to odor complaints; and a strategy to develop and maintain good neighbor and community relations, and a process for reporting such complaints to the Township.
- s. A reclamation plan providing for the return of the ground to its original condition and the safe and timely removal of all manure, chemical waste or other hazardous materials within a time period not to exceed 60 days after nonuse, decommissioning, or abandonment.
- t. A copy of any permit application, Pollution Incident Protection Plan (PIPP)/Spill Prevention, Control & Countermeasure (SPCC) plans and all other materials submitted by the applicant to MDEQ, or any permit or approval obtained from MDEQ, if applicable; and
- u. A copy of any Generally Accepted Agricultural Management Practices (GAAMPs) plan(s), permit application and all other materials submitted by the applicant to the Michigan Department of Agriculture and Rural Development (MDARD), or any permit or approval obtained from MDARD, if applicable.
- v. A statement as to whether the applicant has operated or owned an intensive livestock facility where there was a violation of any provision of local, state or federal law, or where there was a finding that a nuisance existed; describe each release, violation, or nuisance, and specify the date, place, jurisdiction and any

emergency and/or remedial action taken.

- w. An environmental assessment or impact study and/or other relevant report(s) or studies (including, but not limited to, assessing the potential impact on nearby streams, rivers, lakes and other water sources as well as wildlife), if requested by the Township. Each study or report shall be provided to the Township prior to the time when the Planning Commission makes its final decision regarding the Special Land Use.
  - x. The applicant shall supplement the application in writing by certified mail, return receipt requested, to the Zoning Administrator within ten (10) business days of a change of circumstances which would render the information originally submitted false or incomplete.
  - y. Any other information reasonably requested by the Township Board, Planning Commission, or Zoning Administrator deemed to be relevant to the processing or consideration of the application.
2. The Township shall have the right to inspect the premises on which the intensive livestock facility is located at all reasonable times. The Township may hire a consultant to assist with any such inspections at the applicant's cost.
  3. No special land use approval for an intensive livestock facility may be assigned or transferred to any person unless the assignee or transferee has submitted in writing to the Township that the person will comply with terms and conditions of the special land use approval and this Section. The applicant of the facility shall notify the Township of the sale or transfer of ownership of that facility or change of control or management of the facility within 30 days that such event occurs. No special land use approved under this Section is transferrable to any other location except for the property described in the Township's approval.
  4. A manure storage required for the facility shall not be located:
    - a. Within 330 feet from any single-family residential water well;
    - b. Within 500 feet from surface water;
    - c. Within a 100-year floodplain; or
    - d. Within 2,000 feet of a public water supply well.
  5. The facility shall be operated consistent with the Township approved hydrogeological study and monitoring plan, water withdrawal plan, noise management plan, waste management plan, and odor management plan prepared by the applicant.
  6. All ingress and egress to the facility shall be directly from a hard surfaced road. This requirement may be waived by the Planning Commission upon a determination that

said requirement is not necessary for the protection of the health, safety, convenience and general welfare of the community.

7. Any material damages to a public road located within the Township resulting from the construction, maintenance or operation of the facility shall be repaired at the applicant's expense as determined by the Township.
8. If the any of the operations of the facility cause any public or private ground water well to become contaminated or depleted, the well shall be replaced or repaired by the applicant's expense as determined by the Township.
9. If any change to an alternate or additional livestock type will occur, the Township shall receive notice of the change at least 120 days prior to the anticipated date of the change.
10. A facility shall be operated in such a manner as to minimize, so far as practicable, dust, noise, vibration, or noxious odors, and shall be in accordance with the best management practices as defined by MDEQ. All activities, uses and equipment used shall be constructed and operated so that dust, noise vibrations, and odors or other adverse impacts will be minimized and retained on-site, thereby reducing the adverse impacts to adjacent properties and persons living or working in the surrounding area.
11. The applicant, at applicant's own cost, shall monitor the impact of its activities on the environment to ensure the activities are not adversely impacting nearby properties. In order to conduct the monitoring required by this Section, the applicant, using US EPA/SW-846 and MDEQ protocols, shall sample: (a) sample on-site groundwater monitoring wells quarterly for total phosphorous and nitrate, and (b) sample any river, streams, or lakes within 1,000 feet of the property quarterly for total phosphorous, total nitrogen, E. coli, total dissolved solids, total suspended solids, dissolved oxygen and temperature. The applicant shall report the sample results to the Township Zoning Administrator within ten (10) calendar days of receipt of sample laboratory test results.
12. Operations of the facility shall not result in impacting residential water supplies, including but not necessarily limited to: (a) the withdrawal of groundwater resulting in reducing the volume or amount of well water serving residential properties, or (b) Contamination of soil, groundwater, and drinking water supplies.
13. Any intensive livestock facility that is not used for six (6) successive months or longer shall be deemed to be abandoned and all above and below ground materials must be removed and reclaimed according to the reclamation plan approved by the Township.
14. If any intensive livestock facility is approved pursuant to this Ordinance, the Township Board shall require security in the form of a cash deposit or irrevocable letter of credit (in a form, amount, time duration and with a financial institution deemed acceptable to the Township), which will be furnished by the applicant to the Township in order to ensure full compliance

with this Ordinance and any conditions of approval. When determining the amount of such required security, the Township may also require an annual escalator or increase based on the Federal Consumer Price Index (or the equivalent or its successor). Such financial guarantee shall be deposited or filed with the Township Clerk after the special land use has been approved but before construction commences upon the premises. At a minimum, the financial security shall be in an amount determined by the Township Board to be sufficient to comply with the approved reclamation plans should the intensive livestock facility become abandoned, dangerous or obsolete, or not in compliance with this Ordinance. Such financial security shall be kept in full force and effect during the entire time while the intensive livestock facility exists or is in place. Such financial security shall be irrevocable and non-cancelable (except by the written consent of both the Township and the then-owner of the facility) for at least 30 years from the date of the license approval, or until every component of the intensive livestock facility has been completely removed as required by this Ordinance, whichever comes later. Failure to keep such financial security in full force and effect at all times required by the Ordinance shall constitute a violation of this Ordinance, and will subject the applicant to all available remedies to the Township, including possible enforcement action and revocation of the license.

15. An escrow account shall be set up when the applicant applies for approval of an intensive livestock facility. The monetary amount filed by the applicant with the Township shall be in an amount estimated by the Township to cover all costs and expenses associated with the license review and approval process, which costs can include, but are not limited to, fees of the Township Attorney, Township Planner, Township Engineer, and environmental consultant, as well as any reports or studies which the Township anticipates it may have done related to license review process for the particular application. Such escrow amount shall be in addition to regularly established fees. At any point during the license review process, the Township may require that the applicant place additional monies into escrow with the Township should the existing escrow amount filed by the applicant prove insufficient. If the escrow account needs replenishing and the applicant refuses to do so promptly, the zoning review and approval process shall cease until and unless the applicant makes the required escrow deposit.
16. Each intensive livestock facility shall also comply with all applicable federal and county requirements, in addition to Township ordinances. The applicant shall notify the Township immediately of any suspension or revocation of any required state and/or federal permit.
17. The applicant shall notify the Township of any incident report or written complaint submitted to the MDEQ, MDARD, US EPA or other regulating agency within seventy-two (72 hours) after the applicant has notice of the existence of such report or complaint.
18. Applicant shall copy the Township on all data required to be delivered to MDEQ, MDARD and/or the US EPA for the facility.
19. In addition to the other requirements and standards contained in this section, the Township Board shall not approve any intensive livestock facility unless it finds that the intensive livestock facility will not pose a safety hazard or unreasonable risk of harm to the occupants of any adjoining properties or area wildlife.

**SECTION 8. AMENDMENT TO TOWNSHIP ZONING ORDINANCE, CHAPTER 14, SECTION 14.07:** Township Zoning Ordinance, Chapter 14, Section 14.07, entitled “Penalties,” is amended to add civil infractions citations, which shall read as follows:

A. Penalties

1. Any building, structure or use constructed, altered, moved or maintained in violation of the provisions of this Ordinance is hereby declared to be a nuisance *per se*.
2. Violation of a provision of this Ordinance or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with variances and conditional uses and violations of approved site plans, shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than five-hundred dollars (\$500.00) or imprisoned for not more than ninety (90) days, or both, and in addition, shall pay all costs and expenses involved in the case.
3. Persons, firms, corporations or entities in violation of a provision of this Ordinance, including violations of conditions and safeguards established in connection with variances and conditional uses and violations of approved site plans, may be subject to and found responsible for a municipal civil infraction. The schedule of forfeitures for any municipal civil infraction shall be established by resolution of the Township Board, not to exceed five-hundred dollars (\$500.00) plus court costs, attorney fees and abatement costs of each violation, together with all other remedies pursuant to MCL 600.8701, *et seq.* A schedule of forfeitures for violation of this Ordinance shall be available at the municipal civil infractions bureau.
4. Each and every day during which any violation continues shall be deemed a separate offense. The duly authorized attorney for the Township is empowered to prosecute such violations.

B. Procedure

The Township Board and/or Township Supervisor may institute injunction, mandamus, abatement, or any other appropriate action or proceedings to prevent, enjoin, abate, or remove any violation of this Ordinance. The rights and remedies provided herein are cumulative and in addition to all other remedies provided by law.

**SECTION 9. SEVERABILITY:** The provisions of this Ordinance are hereby declared to be severable and if any provision, section or part of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall only affect the particular provisions, section or part involved in such decision and shall not affect or invalidate the remainder of such Ordinance, which shall continue in full force and effect.

**SECTION 10. EFFECTIVE DATE:** This Ordinance shall become effective seven (7) days after its publication following final adoption or as required by law.



**SECTION 11. REPEAL:** All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Following its introduction and publication prior to final adoption, the above Ordinance was offered for final adoption by \_\_\_\_\_ and was supported by \_\_\_\_\_ at a regular meeting of the Edwards Township Board, held at the Edwards Township Hall on the \_\_\_ day of \_\_\_\_\_, 2018, at \_\_\_\_\_ p.m., the vote being:

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT/ABSTAIN: \_\_\_\_\_

ORDINANCE DECLARED ADOPTED:

\_\_\_\_\_  
Supervisor  
Edwards Township

**CERTIFICATION**

I hereby certify that the above is a true copy of an Ordinance that was:

1. Introduced for publication and subsequent final adoption by the Edwards Township Board at a duly scheduled and noticed meeting of that Township Board held on \_\_\_\_\_, 2018;
2. Published by a summary once before its final adoption in the \_\_\_\_\_ newspaper, a newspaper that circulates within Edwards Township, on \_\_\_\_\_, 2018;
3. Finally adopted by the Edwards Township Board at a duly scheduled and noticed meeting of that Township Board held on \_\_\_\_\_, 2018;
4. Published by summary again following its final adoption in the \_\_\_\_\_ newspaper, a newspaper that circulates within Edwards Township, on \_\_\_\_\_, 2018;
5. Recorded within one (1) week after such publication in a book of Ordinances kept by me for that purpose, including the date of passage of the Ordinance, the names of the members of the Township Board voting, and how each member voted; and
6. Filed as an attested copy with the Ogemaw County Clerk on \_\_\_\_\_, 2018.

ATTESTED:

\_\_\_\_\_  
Dennis A. Stephens, Clerk  
Edwards Township