



July 17, 2019

Board of Supervisors  
Burnett County Government Center  
7410 County Road K  
Siren, Wisconsin 54872

*Via Electronic Mail to:*  
cbdistrict18@burnettcounty.org

Dear Chair Taylor,

My name is Lane Ruhland and I am the Director of Environmental and Energy Policy at Wisconsin Manufacturers and Commerce (WMC). I am writing this joint letter of WMC and the Wisconsin Dairy Alliance (WDA) to you today regarding Burnett County's Proposed Ordinance entitled "Moratorium on Livestock Facilities Licensing."

WMC is the state chamber of commerce, manufacturers association, and largest general business association in Wisconsin. We were founded over 100 years ago, and are proud to represent approximately 3,800 member companies of all sizes, and from every sector of our economy. Our mission is to make Wisconsin the most competitive state in the nation in which to do business. WDA represents modern regulated dairy farms in Wisconsin and works diligently to preserve Wisconsin's heritage as the Dairy State. Our combined membership includes livestock operators and organizations, dairy producers, cheesemakers, food processors, and other industry that relies heavily on agriculture. These members provide employment, support local businesses, pay taxes, give charitably and represent an integral part of Wisconsin's heritage. They go to great lengths, and at great cost, to be good stewards of the environment. Consistency and predictability in regulation is necessary to facilitate compliance.

We are deeply concerned with the lack of citation to valid legal authority for Burnett County (County) to implement its proposed moratorium. Moratoria are one of the most intrusive regulatory burdens government can impose on businesses. When a government makes the decision to do so, it must have the appropriate legal authority and policy basis. In this instance, the County does not appear to have either.

The only statutory authorities the County cites for the proposed ordinance are Wis. Stats. §§ 59.02(2) and 59.69. Wis. Stat. § 59.02 does not provide any statutory authority to adopt a moratorium. This provision lays out the procedural requirements for adopting a resolution, not authority to implement a moratorium on the establishment/expansion (i.e. siting) of large-scale livestock facilities.

Wis. Stat. § 59.69 defines the zoning powers of counties. Wis. Stat. § 59.69(4) explicitly lays out the extent of county power to impose moratoriums. The relevant part of the citation reads,

The board may not enact a development moratorium, as defined in s. 66.1002 (1) (b), under this section or s. 59.03, by acting under ch. 236, or by acting under any other law, except

that this prohibition does not limit any authority of the board to impose a moratorium that is not a development moratorium.

This statute gives counties some power to enact moratoria, other than development moratoriums. However, the Wisconsin Supreme Court and State Legislature have made clear that this language does not give counties the ability to enact a moratorium on livestock siting. Specifically, Wis. Stat. §93.90(3)(a) states “notwithstanding ss... 59.69... a political subdivision may not disapprove or prohibit a livestock facility siting or expansion...” The statute has eight exceptions, none of which apply here.

The Wisconsin Supreme Court interpreted §93.90 finding that the Legislature expressly withdrew the authority political subdivisions previously had to disapprove livestock facility siting permits. *Adams v. Wis. Livestock Facilities Siting Review Bd.*, 2012 WI 85 ¶46, 342 Wis. 2d 444, 820 N.W.2d 404. That is, the Wisconsin Supreme Court held that any authority counties have under § 59.69 is rendered inoperative as it relates to regulating the siting or expansion of a large livestock facility. Therefore, the County’s authority to impose a moratorium on the creation or expansion of livestock facilities, including the moratorium proposed in “Moratorium on Livestock Facilities Siting” has been preempted by state law.

Finally, the County does not appear to have cited a specific policy basis for implementing the moratorium. Nowhere in the ordinance or relevant materials are there specific examples of large-scale livestock operations harming the people or environment of Burnett County. In fact, the latest information from the Wisconsin Department of Natural Resources indicates that of the over 300 Concentrated Animal Feeding Operations (CAFO) in Wisconsin, only one is located in Burnett County. Large farms are some of the most heavily regulated industries in the United States, with strict environmental requirements at the state and federal levels to protect the health, safety, and welfare of Wisconsinites. This resolution seems to be more about making a political statement and unfairly targeting one of Wisconsin’s most important economic sectors, as opposed to a thoughtful policy response to an actual harm caused by large livestock facilities in Burnett County.

If enacted, the moratorium ordinance would be unlawful and unenforceable per § 93.30 of the Wisconsin Statutes and the Wisconsin Supreme Court’s holding in *Adams v. Wis. Livestock Facilities Siting Review Bd.* When you were sworn in to serve, you took an oath to uphold the laws of the State of Wisconsin and the Wisconsin Constitution. WMC and WDA respectfully ask that you honor that oath, and reject this proposal that is clearly at odds with state law.

Sincerely,

*/s/ Lane Ruhland*

Lane Ruhland  
Director of Environmental and Energy Policy  
Wisconsin Manufacturers & Commerce

cc: Members, Burnett County Board of Supervisors  
Nathan Ehalt, Burnett County Administrator  
David Grindell, Burnett County Corporation Counsel