



July 27, 2021

Town of Laketown Board of Supervisors
Laketown Town Hall
2153 275th Ave.
Cushing, WI 54006

Delivered via email to:
djrsking@yahoo.com

Dear Chairman King,

My name is Corydon Fish and I am the General Counsel at Wisconsin Manufacturers and Commerce (WMC). I am writing this joint letter on behalf of WMC, the Wisconsin Dairy Alliance (WDA), and Venture Dairy Cooperative (VDC), to you today about the recent extension of Laketown Ordinance No. 19-02, Moratorium on Livestock Facilities Licensing (July 23, 2019) (Ordinance). The June 22, 2021 expansion of which will extend the life of the moratorium until January 2022, two and a half years after the original Ordinance was passed. The Town of Laketown's (Town) adoption, and extension, of the Ordinance exceeds its authority and harms Wisconsin's livestock agricultural industry.

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. VDC supports dairy farmers through leadership, technical assistance, advocacy, and defends the changing face of dairy in Wisconsin.

We are deeply concerned with the lack of citation to valid legal authority for the Town to implement a moratorium of this kind. Moratoriums 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 Town does not appear to have either.

The Town first cites to unspecified constitutional powers. It is unclear what power the Town derives from the constitution to prohibit the creation or expansion of agricultural enterprises in Wisconsin. While towns are referenced 24 times throughout the constitution, they are not referenced in any section relevant to the powers the Town is attempting to assert here. Further, towns do not have constitutional home rule authority, but rather only the powers the legislature specifically delegates, or can be necessarily implied to implement a specific delegation. *Wis.*

Dolls v. Town of Dell Prairie, 2012 WI 76, ¶44, 342 Wis. 2d 350, 815 N.W.2d 350. The legislature has not delegated any such powers, nor can they be implied, here.

The Town is preempted¹ from imposing a moratorium. The Wisconsin Supreme Court interpreted § 93.90 in the case *Adams v. Wis. Livestock Facilities Siting Review Bd.* In its decision, the Court found that the Legislature expressly withdrew the authority political subdivisions previously had to disapprove livestock facility siting permits. 2012 WI 85 ¶46, 342 Wis. 2d 444, 820 N.W.2d 404. That is, the Wisconsin Supreme Court's holding renders any authority political subdivisions may have previously had to impose moratoriums inoperative as it relates to regulating the siting or expansion of a livestock facility. Therefore, the Town's authority to impose a moratorium on the creation or expansion of livestock facilities, including the moratorium created in the Ordinance, has been preempted by state law.

Even if the Town were not preempted, Wis. Stat. § 60.10(2)(i) does not give the Town the authority it seeks. Wis. Stat. § 60.10(2)(i) gives towns the authority to “engage in watershed protection, soil conservation or water conservation activities.” The Town, through the Ordinance, is not engaged in any such activities. The Town admits in the Ordinance that the Town does not even know if livestock facilities are harmful to water or soil—hence the need for the study—and the Ordinance certainly does not require Town employees or private entities to engage in any activities to protect watersheds or conserve soil or water. Further, the statute (and the entirety of Chapter 60) does not mention the power to impose moratoriums at all.

The Town's citation to Wis. Stat. § 93.90(4)(e) is equally misguided. That statute gives political subdivisions authority to approve or disapprove *individual* livestock siting or expansion applications, not preemptively ban all prospective applicants from ever submitting an application at all. The power conveyed to political subdivisions in Wis. Stat. § 93.90(4) to reject an *individual* application is narrow. The only way a town like Laketown could do so is if the town finds the applicant did not comply “with the rules promulgated under [Wis. Stat. § 93.90(2)(e)1].”² Wis. Stat. § 93.90(4)(d). The only authority sub. (e) provides a political subdivision is the ability to take more time to make a determination on individual applications. Neither Wis. Stat. § 93.90(4)(e), or any other section of Chapter 93, discusses “moratoriums” on the siting or expansion of livestock facilities.

¹ The Wisconsin Supreme Court has said, “[a]n ordinance is preempted when any of the following four tests are satisfied: (1) the legislature has expressly withdrawn the power of the municipality to act, (2) the ordinance logically conflicts with state legislation, (3) the ordinance defeats the purpose of state legislation, or (4) the ordinance violates the spirit of state legislation.” *Anchor Sav. & Loan Ass'n v. Equal Opportunities Comm'n*, 120 Wis.2d 391, 397, 355 N.W.2d 234 (1984) (emphasis ours). Ordinances that conflict with state law are preempted. *DeRosso Landfill Co. v. City of Oak Creek*, 200 Wis.2d 642, 651, 547 N.W.2d 770 (1996).

² Note, we understand political subdivisions also can reject *individual* permits under certain circumstances listed in Wis. Stat. § 93.90(3), but none of those circumstances are relevant here.

Finally, the Town 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 livestock operations harming the people or environment of the Town of Laketown. 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 ordinance 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 livestock facilities in the Town.

This moratorium ordinance is 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. We ask that you honor that oath, and repeal the Ordinance.

Respectfully and Sincerely,

/s/ Corydon Fish

Corydon Fish
General Counsel
Wisconsin Manufacturers & Commerce