

AN ORDINANCE ESTABLISHING REGULATIONS FOR CONFINED ANIMAL FEEDING OPERATIONS WITHIN ADAMS COUNTY; SETTING AN EFFECTIVE DATE; ESTABLISHING SEVERABILITY; ESTABLISHING A REPEALER; ESTABLISHING A PENALTY;

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ADAMS COUNTY, IDAHO;

SECTION 1: There is hereby created a new Article 10 of the Adams County Code. It shall consist of Sections 1 through 15 and which Article 10 shall read as follows:

1. CONTENTS:

CONFINED ANIMAL FEEDING OPERATIONS

1. Contents
2. Purpose
3. Definitions
4. Animal Units Equivalency
5. Existing Confined Animal Feeding Operations
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8. CAFO Siting Permits
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10. Application Process, Notice of Hearing and Public Hearing Procedure
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2. PURPOSE:

The purpose of this ordinance is to provide regulations and standards for the creation of confined animal feeding operations (CAFOs) in Adams County. The regulations contained herein are designed to protect and promote the public health, safety and community welfare of the County and to encourage and promote managed development of new confined animal feeding operations.

3. DEFINITIONS:

Administrator: The official appointed by the Board of Adams County Commissioners to administer the Adams County Zoning Ordinance.

Affected Person: As used herein, an affected person shall mean one having an interest in real property within a one mile radius of the CAFO, which may be adversely affected by the one-mile issuance or denial of a permit.

Applicant: Any person or other legal entity seeking any approval or permits pursuant to this chapter.

Animal Units: An Animal Unit is equal to the number of animals in a CAFO multiplied by the applicable animal equivalency factor listed in Section 4 of this ordinance.

Board: The Board of County Commissioners of Adams County.

Building Inspector: The official appointed by the Board of County Commissioners to administer Adams County Building Codes.

CAFO Site Advisory Team: Representatives of Idaho State Department of Agriculture, Idaho Department of Environmental Quality, and Idaho Department of Water Resources, with the Idaho State Department of Agriculture as the team lead, who review a site proposed for a CAFO, determine the environmental risks, and submit a site suitability determination to the county that has requested the determination.

CAFO Siting Permit: Permit required before a CAFO can be developed, operated or transferred.

Commission: Planning and Zoning Commission.

Confined Animal Feeding Operation (CAFO): A contiguous area, lot, facility or parcel of land or the use of a contiguous area, lot, facility or parcel of land, upon which there are confined or stabled, livestock, swine, poultry or other animals defined as follows:

Any combination of animal units, which total one thousand (1000) or more and which are confined for 90 consecutive days or more on land which does not sustain crops, vegetation, or forage growth in the normal growing season, or post-harvest residues.

Expansion Permit: A permit obtained by a registered CAFO wishing to increase the Animal Unit capacity of the CAFO so as to constitute a Material Change.

Hearing Examiner: A person authorized by the Board to conduct public hearings.

Lagoon: A body of liquid waste.

Land Application Area: Parcels of land owned or controlled by the CAFO used for land application of animal waste as authorized under an Idaho State Department of Agriculture approved nutrient management plan.

Liquid Waste: A liquid substance containing any of the following separately or in any combination: wastewater, waste or other waste products.

Material Change: An increase in Animal Unit capacity of more than 30% in any five (5) year period at an existing, permitted CAFO.

Nutrient Management Plans: A plan approved by the Director of the Idaho State Department of Agriculture or his/her designee for managing the amount, source, placement, form and timing of the land application of nutrients and soil amendments for plant production and to minimize potential for environmental degradation, particularly impairment of water quality.

Permittee (or Registrant): One who holds a siting permit or who succeeds to a permitted CAFO.

Residence: Includes dwelling, church, school, or other building used for human occupancy and includes subdivisions and planned unit developments.

Storm Run-off Containment: The storage facility that intercepts and holds precipitation runoff off from a Confined Animal Feeding Operations (CAFOs). Sizing shall be based on the correct sizing the Idaho State Department of Agriculture has approved for this facility.

Waste: A by-product normally associated with a confined animal feeding operation, which may include manure, urine, sediment, Wastewater, and feed residues.

Waste Treatment System: The process, area, or mechanism employed for the retention, storage and treatment of wastes or Wastewater.

Wastewater: Water that has been used for washing, flushing, or in a manufacturing process, which may also contain animal waste products.

4. ANIMAL UNIT EQUIVALENCY (AUE):

Multiply the number of animals by the animal equivalency fact to determine animal units:

<u>Animal Types</u>	<u>Animal Equivalency Factor</u>
<i>Dairy Cattle</i>	<i>Milking and dry cow</i> 1.40
	<i>Heifers (2 years and older)</i> 1.00
	<i>Heifers (1 to 2 years old)</i> .70
	<i>Calves (3 months to 1 year)</i> .40
	<i>Calves (under 3 months)</i> .25
<i>Beef Cattle/Bison</i>	<i>Bull (each)</i> 1.40
	<i>Steers/Cows (over 800 lbs)</i> 1.00
	<i>Calves (under 600 lbs)</i> .60
<i>Swine</i>	<i>Pigs (55 lbs to market)</i> .40
	<i>Pigs (up to 55 lbs)</i> .10
	<i>Sows (each)</i> .60
	<i>Boars (each)</i> .60
<i>Sheep (each)</i>	.10
<i>Horses (each)</i>	1.40
<i>Fish (500 lbs)</i>	1.00
<i>Chickens (each)</i>	.01
<i>Mink (each)</i>	.01
<i>Species not specifically identified (1,000) lbs</i>	1.00

5. EXISTING CONFINED ANIMAL FEEDING OPERATIONS:

At the time of adoption of this ordinance, there are no operations in Adams County that meet the definition of a CAFO as specified herein. If the number of animals, the vegetation conditions, or the length of the confinement period change so that an existing operation does

meet the definition of a CAFO contained in this ordinance, the owner/operator shall then apply for a CAFO Siting Permit as specified herein.

Included in the application for an Expansion Permit:

- a. Landscaping, architectural and/or screening improvements may be made conditions of the approval.
- b. Any modifications made after the Administrator's decision will require the applicant to re-submit the application with the necessary changes made.
- c. All existing registered CAFOs applying for an Expansion Permit shall resubmit their original Site Permit Application, including the changes that the expansion would create, and adhere to the setbacks stated in this chapter for new CAFOs for any new improvements made. However, variances may be made by the Administrator if the existing facility cannot realistically accommodate these setbacks. The Administrator may seek the advice of any regulating state or federal agency as to their opinion on the matter and if compliance would still be possible with the proposed variance. Any application including a variance or variances will include an additional \$100 dollar fee.

6. AREAS ALLOWING CONFINED ANIMAL FEEDING OPERATIONS:

Confined Animal Feeding Operations are permitted in an ATG zone only by a CAFO Siting Permit. CAFO's are not permitted in any other zone.

7. AREAS PROHIBITING NEW CONFINED ANIMAL FEEDING OPERATIONS:

No *new* CAFOs shall be permitted in the following zones or areas.

- a. Rural residential zones (R).
- b. Historical sites, as defined by state and/or federal regulation.
- c. City Impact Areas (except for existing CAFOs applying for Expansion permits)
- d. 100 year flood zone (as defined by the flood insurance map)
- e. Wetlands, as described be state and/or federal regulation.

8. CAFO SITING PERMITS:

A CAFO siting permit and required building permits are required prior to commencing any construction of a new CAFO facility, its waste treatment system, or any improvement made to the site to aid in the construction of the new facility (except for land leveling).

Requirements for a new CAFO Siting Permit:

- a. The name, address, legal description of affected property and telephone number of the applicant.
- b. Total acreage owned/operated by the CAFO.
- c. Written notification from the governing agencies certifying compliance to state and federal regulations.

- d. Proposed AU (able to be reached within ten years).
- e. Site plan, prepared by a civil engineer, licensed surveyor, or qualified professional, showing the following information which occurs within a one-mile radius (minimum size of 18" X 24" and minimum scale of 1" = 100 feet):
 - 1. Building locations (existing and proposed).
 - 2. Public water supply wells.
 - 3. Irrigation wells.
 - 4. Existing monitoring or injection wells.
 - 5. Irrigation canals and laterals.
 - 6. Rivers, streams, springs, reservoirs and wetlands.
 - 7. Any proposed improvements, including but not limited to wells, corrals, roads, etc.
 - 8. Traffic access.
 - 9. Location of residences not owned by the CAFO.
 - 10. Outdoor lighting plan. All outdoor lighting systems shall be installed in such a way that the light will not be directed beyond the property boundaries.
 - 11. Setbacks of proposed improvements.
 - 12. Approximate time frame to complete construction or stages construction will be completed.
- f. Nutrient Management Plan.
- g. Proof of water rights or a copy of an application to appropriate water or an application to change the point of diversion, place, or nature of use of an existing water right that has been filed with the Idaho Department of Water Resources, which, if approved, will provide an adequate supply for the operation.
- h. A fee in the amount set by resolution of the Board.
- i. Dead Animal Storage, As per IDAPA 02.04.17, Rules Governing Dead Animal Movement and Disposal.

Vacancy of Use: The Permittee or Registrant of a CAFO Siting Permit shall notify the County within thirty (30) days of ceasing operations at the CAFO. Failure to do so will render the CAFO in violation and subject to the revocation of their CAFO Siting Permit. If the CAFO is vacant for three (3) years, the County may request that the Permittee declare its intentions with respect to the continued non-use of the CAFO. If the Permittee elects to continue non-use the Permittee shall be required to follow the process outlined in Idaho Code 67-6538. A CAFO will lose its permit if the operation is vacant for five (5) years.

9. TRANSFER OF A SITING PERMIT:

Siting permits may be transferred to a new permittee provided that:

- A. The new permittee shall file a transfer statement form with the Administrator within thirty (30) days from the date of purchase, lease or transfer. The transfer statement form shall include the date of transfer, names and mailing addresses of both the transferor and transferee.

- B. The previous permittee shall provide a signed statement, stating that the CAFO is in compliance with all terms of the original permit and all local, state and federal rules and regulations.

10. APPLICATION PROCESS, NOTICE OF HEARING AND PUBLIC HEARING PROCEDURE:

All new CAFOs as defined by this chapter shall apply for and receive a siting permit prior to commencing construction or operation. A public hearing is required as part of the application process for CAFO Siting Permits and Expansion Permits.

- A. *Application Review:* The Administrator shall review application for completeness. After receiving notice that the application is complete, it shall be sent to the CAFO Site Advisory Team for its report.
- B. Upon receipt of the CAFO Site Advisory Team's report, the Administrator shall set the matter for public hearing before the Commission.
- C. *Hearing Notice:* Notice of time, place and purpose of the public hearing shall be published in a newspaper of general circulation in the County at least 15 days prior to such hearing. The applicant shall provide the Administrator with such fee as may be set by the Board and shall provide the Administrator with the names and addresses of all landowners within one mile of the affected site. The Administrator shall then send a notice of the public hearing by first class mail to property owner(s) within one (1) mile of the proposed location. Proof of service of these property owners shall be made a part of the public record.
- D. Notice of public hearings for new comprehensive plan changes or re-zone applications or transfer of development rights within one (1) mile of a CAFO location, shall be sent to the Permittee by first class mail. Proof of service shall be made a part of the public record.
- E. *Public hearing procedure:*
 - 1. The hearing shall be conducted in accordance with the provisions of Adams County Zoning Ordinance 1988-2 or other appropriate county ordinances. The hearing shall be recorded.
 - 2. The applicant will be limited to thirty (30) minutes presentation time.
 - 3. Members of the public will be given the opportunity to be heard. Those who wish to comment must state their name and address and will be given five (5) minutes to testify.
 - 4. The applicant will be limited to ten (10) minutes for rebuttal.
 - 5. In the event any person refuses to comply with the described time limits set herein, the person conducting the hearing shall have the following options.
 - a. Have the violator ejected from the meeting.
 - b. Close oral testimony and have the remainder of the testimony presented in written form within the next ten (10) days.

- c. If all witnesses have testified, close the hearing.
6. At the completion of the hearing, the Commission shall produce findings of fact and conclusions of law, or a reasoned statement, and a final order granting or denying the permit.
7. Such report shall be filed at the Planning and Zoning Department. It will be available to the applicant and the public within sixty (60) working days after the close of the hearing.

11. CRITERIA FOR APPROVAL:

Prior to the Commission's approval of a CAFO Siting Permit the Applicant and his/her application shall meet the following requirements:

A. General Requirements:

1. The applicant's plan must be in compliance with and not be in violation of any federal, state, or local law or ordinance.
2. The applicant must not have begun construction of new improvements for a CAFO at the proposed location other than land leveling. If it is determined that the construction has commenced, penalties shall be imposed in accordance with the provisions of Chapter 15.
3. Applicant's plan must meet the setback and lighting requirements of this chapter. Variances may be granted if denying a variance would impose undue hardship on applicant.
4. Landscaping, screening, and architectural improvements that are conditions of approval shall be accurately described.

B. New CAFO Minimum Setbacks:

1. The closest edge of Lagoon, Storm Runoff Containment, or Waste Treatment Systems shall be located at least five hundred (500) feet away from any residence not belonging to the Applicant.
2. The closest inside edge of retaining wall of any Lagoon, Storm Runoff Containment, or Waste Treatment System shall be at least five hundred (500) feet inside the property lines.
3. The closest inside edge of the retaining wall of any Lagoon, Storm Runoff Containment or corral shall be located at least one hundred (100) feet from a domestic well.
4. The closest inside edge of the retaining wall of any lagoon, storm runoff containment or corral shall be located at least one thousand (1000) feet from a public water supply.
5. The closest edge of corrals and feed storage areas shall set back a minimum of fifty (50) feet from center line of a public road right-of-way.
6. The closest edge of corrals, silage, haylage, potatoes, or any other feed product resulting from the ensilage process which is stored in the open air, or other feed

storage areas, shall be located at least three hundred (300) feet away from any residence not belonging to the Applicant.

7. All new residences not belonging to Applicant shall adhere to the setbacks set forth in this ordinance.
8. All new CAFOs shall be located at least one (1) mile from:
 - a. Existing platted subdivisions with improvements constructed as of the effective date of this ordinance.
 - b. Zoned (R) Residential.
9. Setbacks may be reduced if the CAFO's Waste Treatment System, or Lagoon utilizes technology such as, but not limited to, anaerobic digesters, methane digesters, covered lagoons or comparable odor controlling technology.

12. APPEALS:

- A. Appeals of a decision of the Administrator or shall be directed to the Commission.
- B. Appeals of a decision of the Commission shall be directed to the Board.
- C. Appeals must be filed within fourteen (14) working days after the decision, with the Board.
- D. The Board will evaluate appeals for standing within twenty-eight (28) days. Only Affected Persons may appeal.
- E. The decision of the Board shall constitute an exhaustion of administrative remedies and may be appealed to the District Court within twenty-eight (28) days.

13. VARIANCE FOR A NEW CAFO FACILITY:

An applicant may request a variance from the terms of this ordinance in accordance with Adams County Code. Upon written notification of an agreement between both affected parties as to their approval, variances of these setbacks may be granted.

14. NUTRIENT MANAGEMENT PLANS:

All CAFOs who are required to have a nutrient management plan under Idaho Code 22-4906 and IDAPA 02.04.15 shall follow and be in compliance with a nutrient management plan approved by the appropriate government agency.

15. ENFORCEMENT:

The Administrator, or an authorized agent, shall have the authority to enforce the provisions of this chapter:

A. General procedure:

1. Whenever the Administrator shall determine that a violation of this chapter has occurred or is about to occur, the Administrator may take any action allowed by this chapter in accordance with the provisions of this chapter or any applicable section of the Adams County Code.

2. Complaints made by individuals in relation to the provisions of this chapter shall be in writing and contain the nature of the complaint(s); the name and address of the CAFO; time(s) and date(s) of the occurrence; the name, address and phone number of the complainant. The complainant must reside within a one (1) mile radius of the CAFO site.
3. Upon receipt of a complaint, the Administrator will determine if a violation exists:
 - a. If a violation does not exist, the Administrator will notify the complainant within twenty (20) working days of no violation existing.
 - b. If a violation does exist, the Administrator will notify the complainant and the Applicant in writing within twenty (20) working days and will commence enforcement action, as follows:
 - 1) The Applicant shall receive the notice of violation either by hand delivery or by first class mail. Three days after the notice is mailed or delivered, it shall become effective.
 - 2) After receipt of the notice, the Applicant shall respond in writing to the Administrator within ten (10) working days.
 - a) If the Violation can be corrected within twenty (20) working days, the response shall contain a description of the corrective action(s) to be taken and the estimated time necessary to complete them.
 - b) If the violation is such that it will require additional time to correct, the Applicant will submit in writing within ten (10) working days of receiving the notice of violation, a proposed compliance schedule for review and approval by the Administrator. The compliance schedule will explain in detail the actions to be taken to correct the violation and will propose a time schedule for their completion.
 - c) The Administrator will review the proposed compliance schedule and determine if the time requested is reasonable. The Applicant shall schedule and attend a meeting with the Administrator within twenty (20) working days of submittal to discuss the terms of the compliance schedule.
 - d) If the compliance schedule is not agreed upon between the Administrator and the Applicant, the Administrator will send the proposal to the Board for review. The Board will review the proposal and the recommendations of the Administrator, and will render a decision within twenty (20) working days.
 - e) Upon acceptance of a final compliance schedule by the Board, the Administrator will contact the complainant and the Applicant and provide a copy of the schedule.
 - f) Failure by the Applicant to meet the requirements of this section or to abide by the accepted compliance schedule shall result in enforcement action.

B. Enforcement Action:

In the event it becomes necessary for action to be taken on a violation, the criminal penalty shall be consistent with any violation of Chapter 8 of the Adams County Code (Zoning Ordinance).

**A copy of the CAFO ordinance shall be given to all new applicants.

**Any decision can be appealed through the appeal process of this chapter as stated in Section 12.

**This ordinance shall be in full force and effect immediately upon passage and publication as required by law.

**Any ordinances or resolutions, which are in conflict with this ordinance, are hereby repealed, but only in so far as the conflict exists.

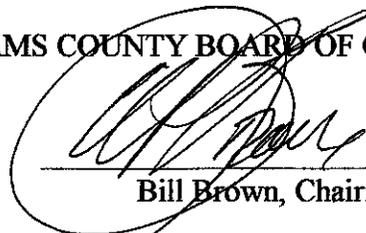
**If any portion of this ordinance should be found to be unconstitutional or unenforceable for any reason, the remainder of the ordinance shall constitute *Ordinance Number 2005-25*.

**This ordinance may be published by summary in accordance with the statutes of the State of Idaho.

**PASSED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS
OF ADAMS COUNTY, IDAHO,**

THIS 11th DAY OF April, 2005.

ADAMS COUNTY BOARD OF COMMISSIONERS



Bill Brown, Chairman

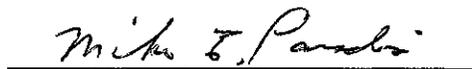


Judy Ellis

ATTEST:



Michael Fisk, Clerk of
the Board



Mike Paradis