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WABASH COUNTY RECORDER  
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**BEFORE THE BOARD OF COMMISSIONERS OF WABASH COUNTY, INDIANA**

**ORDINANCE NO. 2019-85-03**

**AN ORDINANCE AMENDING THE WABASH COUNTY  
(CFO) CONFINED FEEDING OPERATIONS  
ORDINANCE**

Be it ordained by the Board of Commissioners of Wabash County, Indiana as follows:

General Ordinance Number 85-3-2007 adopted March 2, 2007 entitled An Ordinance Regulating Confined Animal Feeding Operations and Concentrated Animal Feeding Operations in Wabash county, Indiana, and General Ordinance Number 2017-85-10, adopted December 18, 2017 entitled Wabash County Confined Feeding Ordinance (CFO) are hereby amended AND restated per the attached document.

The amendments and restatement of the Wabash County (CFO) Confined Feeding Ordinance as per the attached document, shall be in full force and effect upon passage, according to the laws of the State of Indiana.

Passed by the Board of Commissioners of Wabash County, Indiana this 10<sup>th</sup> Day of June, 2019.

*Jeff D. Dawes*  
COMMISSIONER  
Jeff D. Dawes

*Barry J. Eppley*  
COMMISSIONER  
Barry J. Eppley

*Brian K. Haupt*  
COMMISSIONER  
Brian K. Haupt

*Marcie Shepherd*  
ATTEST: AUDITOR  
Marcie Shepherd



**WABASH COUNTY CONFINED FEEDING ORDINANCE (CFO)  
ORDINANCE # 2019-85-03**

**6.25 A Purpose**

- A. The purpose of this Section of the Wabash County Zoning Ordinance is to establish certain minimum standards for all Confined Feeding Operations (CFOs) in Wabash County, in order to assure reasonable compatibility between such livestock operations and other uses.
- B. These standards, along with any relevant requirements of the Indiana Department of Environmental Management (IDEM), National Pollutant Discharge Elimination System (NPDES), Environmental Protection Agency (EPA), or the Office of Indiana State Chemist (OISC) are intended to create a reasonable balance between needed livestock production and other uses in Wabash County, Indiana.

**6.25 B Pre-application Permit Policy**

- A. Prior to submitting a permit application to IDEM, a Wabash County CFO Applicant shall complete and submit a Pre-Application Permit with the Wabash County Plan Commission. Except as provided hereinafter, for a period of Twelve (12) months, Eighteen (18) months if granted an extension, after the issuance of a Pre-Application Permit, the Wabash County Plan Commission shall not issue any building permit for a residential dwelling or business structure to be located within the established setback of the proposed CFO site.
- B. The initial Pre-Application permit is good for 12 months, and may be renewed One time for an additional 6 months if the applicant proves diligence in seeking the IDEM operating permit.
- C. An IDEM permit is valid for 5 years, however, the filed pre-application shall only secure the CFO Pre-application site for the 12 month period, or 18 month period, when a 6 month extension is granted.
- D. For any approved IDEM CFO permit containing multiple structures, the county's 12 or 18 month timeline apply to the start time for the initial (1<sup>st</sup>) structure.
- E. No Pre-Application Permit shall be issued to any Applicant, LLC or Corporation with a member, who has any significant connection with any pending or otherwise un-resolved violation of any environmental related statute, rule, regulation, or order of any Federal, State or local governing body.
- F. No Pre-Application Permit may be transferred to any other location, owner, or entity.
- G. A Pre-Application Permit fee, based on the current Permit Fee Schedule, shall be assessed when a Pre-Application is submitted. A portion of such fee, less expenses, may be refunded if, after review by the Wabash County Plan Commission, it is determined that the applicant's state permit has been denied, or if circumstances beyond the applicant's control prevent continuation of the application process. However, no refund shall be granted after IDEM approval or commencement of excavation or construction at said site.
- H. Each Pre-Application Permit applicant shall acknowledge in writing that said applicant has reviewed and understands the requirements of the Wabash County Confined Feeding Ordinance.

- I. Within Thirty (30) days, after the issuance of a Pre-Application Permit, each property owner within the required setback of the proposed new CFO site shall be notified of the proposed CFO Pre-Application site. Such notification shall be prepared and mailed by the Wabash County Plan Commission.
- J. The notice requirement prescribed herein shall be in addition to all other notification requirements, including those imposed by Indiana Code 13-18-10-2, as amended.

**6.25 C Improvement Location Permit**

- A. No Improvement Location Permit shall be issued to any Applicant, LLC or Corporation with a member, who has any significant connection with any pending or otherwise unresolved violation of any environmental related statute, rule, regulation, or order of an any Federal, State or local governing body.
- B. After a CFO applicant has received permit approval from IDEM, received approval from the Wabash County Drainage Board and notified the Wabash County Soil and Water Conservation District, the applicant shall provide copies of such approvals and notifications to the Wabash County Plan Commission and shall apply for an Improvement Location Permit.
- C. An Improvement Location Permit shall be required for:
  - 1. All new CFO structures, lagoons, pits, ponds, holding tanks, dry manure storage, waste processing systems, compost bldgs., satellite manure storage structures, etc.,
  - 2. Expansion, extension, or enlargement of any existing CFO structures, lagoons, pits, ponds, holding tanks, dry manure storage, waste processing systems, compost bldgs., or satellite manure storage structures, etc.

**6.25 D Setbacks**

Any Confined Feeding Operation, (new site construction or existing site expansion), including its lagoons, pits, ponds, holding tanks, dry manure storage, waste processing system, compost buildings, and livestock structures, must have a minimum separation distance from the following designated areas as stated herein below:

- A. A setback of 1,000 feet from a public water supply surface intake structure and any off site water well.
- B. A setback of 300 feet for liquid manure storage structures and 100 feet for solid manure storage structures from surface waters of the state, drainage inlets (including water and sediment control basins), sinkholes (measured from the opening of lowest point), and
- C. A setback of 100 feet from any on-site water wells.

**D. Chester Township**

**LIBERTY MILLS**

2640 Feet  
 North of the North platted boundary of Liberty Mills  
 East of the East platted boundary of Liberty Mills  
 South of the South platted boundary of Liberty Mills  
 West of State Road 13

NORTH MANCHESTER

1320 Feet or 1600 Feet for open waste storage structures.  
Outside of corporate jurisdictional permitting boundary of the City of  
N Manchester and meet required A1, A2 Zoning Setback

SERVIA

2640 Feet  
North of Co Rd 900 N road center line  
East of the East platted boundary of Servia  
South of the South platted boundary of Servia  
West of the West platted boundary of Servia

**E. Lagro Township**

LAGRO TOWN

2640 Feet  
Outside of corporate jurisdictional boundary of  
Lagro and meet required A1, A2 Zoning Setback

LINCOLNVILLE

2640 Feet  
Outside all zoning except A1, A2

SALAMONIE RESERVOIR AREA

2640 Feet outside all zoning except A1, A2

URBANA

2640 Feet  
Outside all zoning except A1, A2

**F. Liberty Township**

TREATY

2640 Feet  
Required setback from intersection  
of County Road 700 S and 50 E

LAFONTAINE

2640 Feet  
Outside of corporate jurisdictional boundary of  
Lafontaine and meet required A1, A2 Zoning Setback

**G. Noble Township**

RICHVALLEY

2640 Feet  
Outside all zoning except A1, A2

WABASH CITY

1320 Feet 1600 Feet  
Outside of corporate jurisdictional permitting boundary of  
Wabash City and meet required A1, A2 Zoning Setback

**H. Paw Paw Township**

ROANN

2640 Feet

Outside of corporate jurisdictional boundary of Roann and meet required A1, A2 Zoning Setback. North of river road between 650 W and 800 W.

URBANA

2640 Feet

Outside all zoning except A1, A2

**I. Pleasant Township**

DISKO & TWIN LAKES

1320 Feet

Required setback from a dwelling

HAMSVILLE

2640 Feet

Outside all zoning except A1, A2

LAKETON, SANDY BEACH, IRELAND BEACH

2640 Feet

Outside all zoning except A1, A2

**J. Waltz Township**

SOMERSET, MT. VERNON

2640 Feet

Outside all zoning except A1, A2

MISSISSINEWA RESERVOIR AREA

2640 Feet outside all zoning except A1, A2

**K. Public Schools & Whites Residential**

Minimum Setback 2640 feet

All North Manchester Community Schools

Manchester College

All Metropolitan Community Schools

Whites Residential

All Wabash City Schools

**L. Public Wells**

Minimum Setback 2640 feet

Wabash City Public Wells                      2 sites

North Manchester Public Wells              2 sites

Marion City Public Wells                      2 sites

Lafontaine Public Wells                      2 sites

Roann Public Wells                              2 sites

Lagro Public Wells                              2 sites

**M. Public Areas / Buildings / Businesses**      Required CFO Setback

**N. Churches**    Required CFO Setback

1. List of Churches (As recognized on the listing of churches by the Wabash County Assessor's Office).

**6.25 E Agriculture Zoned Setbacks**

- A. All Confined Feeding operation structures shall be a minimum of One Thousand Three Hundred Twenty (1,320) feet from any residence or business structure unless the requirements of Section 6.25 F of this Ordinance are met and approved.
- B. All Confined Feeding Operation single stage or multi-stage lagoons shall be a minimum of One Thousand Six Hundred (1,600) feet from any residence or business structure unless the requirements of Section 6.25 F of this Ordinance are met and approved.
- C. No new dwelling or business structure may be constructed within One Thousand Three Hundred Twenty (1320) feet of a Confined Feeding Operation structure unless the Requirements of Section 6.25 F of this Ordinance are met and approved.
- D. No new dwelling or business structure may be constructed within One Thousand Six Hundred (1,600) feet of a Confined Feeding Operation structure open holding tanks or lagoons, unless the requirements of Section 6.25 F of this Ordinance are met and approved.

**6.25 F Consideration for Variance from Setbacks**

In the event any CFO applicant wishes to have reduced setbacks, said applicant must submit and complete the following:

- A. Complete the Variance Application process.
- B. Record, in the Office of the Wabash County Recorder, a statement substantially in the form of the following Covenants, Conditions, Restrictions
- C. Be granted a favorable recommendation from the Wabash County BZA.

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**Covenants, Conditions, Restrictions**

This declaration of covenants, conditions and restrictions is made by \_\_\_\_\_ hereinafter referred to as "Declarant."

WHEREAS, Declarant is the (owner) (purchaser) of the following described real estate in Wabash County, Indiana:

Deed Ref #: \_\_\_\_\_

WHEREAS, Declarant acknowledges that Declarant's proposed or current residential or business use is within the established set-back requirements for a Confined Feeding Operation that is either existing or proposed; and

WHEREAS, Declarant acknowledges that such residential or business use may be adversely affected by aromas and noise customary to a Confined Feeding Operation.

WHEREAS, Declarant seeks, nevertheless, to establish or maintain a residential or business use in close proximity to a Confined Feeding Operation site.

WHEREAS, Declarant acknowledges that Declarant's property line may be within an IDEM approved distance or 100 to 299 feet from the proposed Confined Feeding Operation Structure and/or the Declarants structure may be within 400 to 1319 feet from the

proposed Confined Feeding Operation Structure.

WHEREAS, Declarant seeks, nevertheless, to permit the Confined Feeding Operation structures to be:

\_\_\_\_\_ between 100 and 299 feet from the adjoining property line.

\_\_\_\_\_ between 400 and 1,319 feet from the proposed or current residence.

THEREFORE, Declarant, for (himself) (herself) (themselves) (itself), and for all persons, firms, entities, personal representatives, heirs, devisees, successors and assigns hereafter claiming ownership from or through Declarant, hereby waive(s) any rights which they might otherwise have as owners of real estate, to object to, petition against, or to file any lawsuit for damages, injunctions or other legal or equitable relief against the owners or operators of this agricultural enterprise, including, but not limited to:

1. the use of buildings and the construction or expansion of buildings, for raising, breeding or feeding of livestock, provided the construction and operations of this CFO are compliant with all applicable federal, state and local laws, rules and regulations.
2. The use of agricultural real estate for any lawful agricultural uses, including but not limited to, the spreading of manure, effluent, wastes, fertilizer, chemicals and the like.

These covenants shall run with the land, for the above described real estate and be enforceable by the owner or operator of the CFO enterprise.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public \_\_\_\_\_

My Commission Expires \_\_\_\_\_

[Signatures, Notary and any other requirement for recording.]

**6.25 G Existing CFO**

Any currently permitted IDEM CFO established prior to 3/2/2007 shall be considered a conforming use that may have non-conforming characteristics. Request for expansion of a CFO with non-conforming characteristics shall submit a S.E. Application. The Special Exception request must be approved by the Wabash County Plan Commission Board, Wabash County Board of Zoning Appeals, and the Wabash County Drainage Board in addition to obtaining the required IDEM permitting.

Structure alterations, expansion or additions required by law shall complete the S.E. Application process to ensure compliance with the law and minimal disruption to the CFO site.

No land upon which a CFO exists, or for which a CFO Improvement Location Permit has been issued, shall be sold, transferred, conveyed or leased to any person or entity that has any pending or otherwise unresolved violation of any environmental related statute, rule, regulation, or order of any Federal, State, or local governing body.

Any IDEM permitted CFO structure that existed prior to the date of the Wabash County CFO Ordinance, established 3/2/2007, and is not in violation of any Federal, State, or local statute, rule or regulation, shall be eligible to apply for expansion on the existing CFO site provided:

- A. The new structure is located at the same immediate location, ("immediate" meaning within Five Hundred (500) feet of a currently active and permitted IDEM CFO



structure that was permitted prior to 3/2/2007).

- B. Such expansion meets or exceeds the written setbacks currently required by IDEM per 327- IAC-19-12-3, as amended.
- C. The currently permitted CFO site and owner(s) have no pending or otherwise unresolved violation of any environmental related statute, rule, regulation or order of any Federal, State, or local governing body.
- D. The ownership of the CFO site, applying for expansion of an existing site, has not changed since the establishment of the Wabash County CFO Ordinance dated 3/2/2007.
  - 1. If listed as an LLC or Corporation, at least one member of the LLC or Corporation must still be a financially invested member of the board.
  - 2. A generational family farm may have ownership name change provided the name change is to a subsequent generation of the family farm.
- E. Expansion is limited to a onetime expansion plan for the addition or expansion of one CFO Structure.
- F. The expansion, extension, enlargement must only be in a direction that would not increase the nonconformity. (ie. away from the residential or non-agriculture business structure)
- G. Screening and / or landscape barriers shall be required and properly maintained for all new CFO structures, lagoons, pits, ponds, holding tanks, waste processing systems, compost buildings.

#### 6.25 H New CFO Site

All newly constructed CFO structures, lagoons, pits, ponds, holding tanks, dry manure storage, waste processing systems, compost bldgs., must be set back a minimum of Three Hundred (300) feet from public roads.

All newly constructed CFO structures, lagoons, pits, ponds, holding tanks, dry manure storage, waste processing systems, compost bldgs., must be set back a minimum of Three Hundred (300) feet from all neighboring property lines.

- A. All newly constructed Confined Feeding Operations shall be located on a parcel of no less than Ten (10) acres.
- B. Screening and /or landscape barriers shall be required for all new CFO structures, lagoons, pits, ponds, holding tanks, waste processing systems, compost bldgs., and satellite manure storage facilities.
  - 1. All such screening shall conform to Wabash County Zoning Ordinance requirements, and shall be properly maintained by the Confined Feeding Operation operator / owner.
  - 2. Screen planting that will be tight and reach 10 feet in height shall be required within Five (5) years from the issue date of the County CFO Improvement Location Permit.

#### 6.25 I Termination

Termination of a CFO shall be acknowledged when IDEM approves an owner's application request for "CFO Request for Approval Voidance", or whenever IDEM determines that the revocation of a CFO Permit is necessary.

#### 6.25 J Waste Management

Any owner or operator of a Confined Feeding Operation and anyone who distributes, stages, uses, or transports animal waste or animal process waste for the purpose of producing an agriculture crop, producing methane gas, or organic fertilizer production shall meet or exceed requirements of Title IAC 355, State Chemist of the State of Indiana, Article 7 and 8 as may be amended.

#### 6.25 K Conformance

In the event that IDEM determines that setbacks of a greater distance than those established by this Ordinance are required, then such IDEM requirements shall prevail.

#### 6.25 L Satellite Manure Storage Structures (SMSS)

Under IC 13-18-10.5, as amended, a person may not start the following activities regarding a SMSS, as defined in IC 13-11-2-196.2, as amended, without obtaining the prior approval of the department and a permit from the Wabash County Plan Commission:

(1) Construction.

(2) Expansion that increases manure containment capacity.

(b) The storage or manure containment capacity shall be determined by the greatest amount of manure the SMSS is able to hold after meeting the minimum standards of this article for:

(1) secondary containment;

(2) freeboard; and

(3) headspace.

(c) If the owner or operator of a regulated CAFO or CFO deposits any manure from the owner or operator's CAFO or CFO into a storage structure also under the control of the owner or operator, the structure shall not be considered a SMSS. This action shall constitute an expansion of the owner or operator's CAFO or CFO operation and require IDEM and county permitting accordingly.

(d) Storage, for purposes of this article, shall not include staging as defined in 327 IAC 19-2-43, as amended, (Water Pollution Control).

A. All setbacks for satellite manure storage structures, regardless of size, shall follow the setbacks as stated below or in the satellite manure storage structure permitting program under 327 IAC 20-5-1 as amended, whichever is more restrictive:

1. 1,000 feet from a public water supply surface intake structure and any off site water well.
2. 300 feet from any surface waters of the state, drainage inlets, (including water and sediment control basins), sinkholes, (measured from the opening of the lowest point),
3. 300 feet from any off- site neighboring property line or a public road,
4. 1320 feet from any existing off-site residential or business structure.

#### 6.25 M Staging Manure. Un-manipulated Organic Fertilizer

A. Setbacks for staging manure, whether covered, open, or a gradient barrier is installed shall be as follows:

1. 1,000 feet from a public water supply surface intake structure and any off-site water well,
2. 300 feet from any surface waters of the state, drainage inlets, (including water and sediment control basins), sinkholes, (measured from the opening of the lowest point),
3. 100 feet from any off-site neighboring property line or a public road, on-site water well,
4. 400 feet from existing off-site residential or public buildings,

B. The following policies of 355 IAC 8-4-2 as amended, shall also apply.

1. Manure shall not be staged on an area with a slope greater than 6% unless run-on and run-off are controlled.
2. Manure that is staged for more than 72 hours shall be protected by a cover or have a gradient barrier.
3. Manure must be applied within Ninety (90) days of staging.

**6.25 N Severability**

If any title, article, section, clause, paragraph, provision or portion of this Ordinance or the application of any provision to particular circumstances is held to be unconstitutional or invalid by any court of proper jurisdiction courts, such decision shall not affect any other title, article, section, clause, paragraph, provision or portion of the remainder of this Ordinance or the application of such provision to other circumstances shall not be affected.

