

WABASH COUNTY (CFO) CONFINED FEEDING ORDINANCE

ORDINANCE# 2017-85-10

AMENDED 12/18/2017

Table of Contents

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>PAGE #</u>
6.25A	Purpose	1
6.25B	Pre-Application Permit	1-3
6.25C	Improvement Location Permit	3
6.25D	Transfer	3
6.25E	Setbacks	3-5
6.25F	Agriculture Zoned Setbacks	6
6.25G	Existing CFO	6
6.25H	New CFO	6-7
6.25I	Termination	7
6.25J	Waste Management	7
6.25K	Conformance	7
6.25L	Satellite Manure Storage	7
6.25M	Staging Manure	7

**WABASH COUNTY CONFINED FEEDING ORDINANCE (CFO)
ORDINANCE # 2017-85-10**

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

Prior to submitting a permit application to IDEM, a Wabash County CFO Applicant shall complete 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 to be located within the estimated 1320 or 1600 foot setback of the area of the proposed CFO site. Upon establishment of the CFO structures, the 1320 or 1600 foot setback shall be clearly identified and remain enforced throughout the life of the CFO.

NOTE:

Granting a reduction of the 1320 or 1600 foot setback for a CFO to be from a business or a residential structure shall only be considered by the BZA when the business and / or residence, along with the associated property being considered, is owned by the CFO owner or the immediate family of the CFO owner. No reduction of the 1320 or 1600 foot setback distance between a CFO and a residential or business structure shall otherwise be accepted for review or consideration by the Wabash County BZA.

This restriction shall not prevent the owner of the proposed CFO site, or a member of such owner's immediate family, from obtaining such building permit, if such person shall record, in the office of the Wabash County Recorder, a statement substantially in the following form:

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 grants, 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 residence may be within 500 to 1319 feet from the proposed Confined Feeding Operation Structure.

WHEREAS, Declarant acknowledges that the placement of a residential dwelling or business in relation to the placement of a Confined Feeding Operation Structure may or may not adversely affect said property with aromas and noise customary to a Confined Feeding Operation:

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

_____ less than 100 feet from the adjoining property line as approved by the applicants IDEM Permit.

_____ between 100 and 299 feet from the adjoining property line.

_____ between 500 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 or any agricultural enterprise, including, but not limited to, the following:

The use of buildings and the construction or expansion of buildings, for raising, breeding or feeding of livestock, provided the construction and use of such buildings are within applicable federal, state and local laws, rules and regulations.

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.]

- A. No Pre-Application Permit shall be issued to any Confined Feeding Operation applicant 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.
- B. No Pre-Application Permit may be transferred to any other location, owner, or entity.

- C. A Pre-application permit is good for One (1) year, and may be renewed One (1) time for an additional Six (6) months if the applicant proves diligence in seeking the IDEM operating permit.
- D. A Pre-Application Permit fee shall be assessed at the time of Pre-application based on the current Permit Fee Schedule.
 - 1. 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.
- E. Each Pre-Application Permit applicant shall acknowledge in writing that said applicant has reviewed and understands the requirements of the Confined Feeding Ordinance.
- F. 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.
- G. 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. After a CFO applicant has received permit approval from IDEM, notified the Wabash County Drainage Board and the Wabash County Soil and Water Conservation District, the applicant may then apply for an Improvement Location Permit for the planned structure(s).
- B. 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 facility.

6.25 D Transfer

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.

6.25 E Setbacks

Any Confined Feeding Operation, 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. 1320 Feet for Structures.
- B. 1600 Feet for Lagoons.

C. Chester Township

LIBERTY MILLS

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

Outside of corporate jurisdictional permitting boundary of the City of
N Manchester and meet required A1, A2 Zoning Setback

SERVIA

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

D. Lagro Township

LAGRO TOWN

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

LINCOLNVILLE

Outside all zoning except A1, A2

SALAMONIE RESERVOIR AREA

2640 Feet outside all zoning except A1, A2

URBANA

Outside all zoning except A1, A2

E. Liberty Township

TREATY

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

LAFONTAINE

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

F. Noble Township

RICHVALLEY

Outside all zoning except A1, A2

WABASH CITY

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

G. Paw Paw Township

ROANN

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

Outside all zoning except A1, A2

H. Pleasant Township

DISKO & TWIN LAKES

Required setback from a dwelling

IJAMSVILLE

Outside all zoning except A1, A2

LAKETON, SANDY BEACH, IRELAND BEACH

Outside all zoning except A1, A2

I. Waltz Township

SOMERSET, MT. VERNON

Outside all zoning except A1, A2

MISSISSINEWA RES AREA

2640 Feet outside all zoning except A1, A2

J. 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

K. 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

L. Public Areas / Buildings / Businesses Required CFO Setback

M. Churches Required CFO Setback

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

6.25 F 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 unless the requirements of Section 6.25 B of this Ordinance are met.
- 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 unless the requirements of Section 6.25 B of this Ordinance are met.
- C. No new dwelling or business structure may be constructed within One Thousand Three Hundred Twenty (1320) feet of a Confined Feeding Operation, unless the Requirements of Section 6.25B of this Ordinance are met.
- D. No new dwelling or business structure may be constructed within One Thousand Six Hundred (1,600) feet of a Confined Feeding Operation open holding tanks or lagoons, unless the requirements of Section 6.25B of this Ordinance are met.

6.25 G Existing CFO

Any CFO that existed prior to the date of the CFO Ordinance, established 3/2/2007, and which has obtained or has applied for IDEM permits prior to the date of this Ordinance, and is not otherwise in violation of any Federal, State or local statute, rule or regulation, may expand its operation, at the same immediate ("immediate" meaning within Five Hundred (500) feet) location if:

- A. Such expansion meets or exceeds the setbacks as required by IDEM per 327-IAC-19-12-3, as amended.

6.25 H New CFO

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 neighboring property lines.

- A. The Wabash County BZA may waive, but shall not be required to waive, the separation distance between a Confined Feeding Operation structure and an adjoining property line. The adjoining property owner shall sign the Covenants, Conditions, and Restrictions Document, as presented in Chapter 6, Section 6.25 B of this Ordinance in order for the reduced setback to be considered by the BZA. The minimum allowable separation distance from a neighboring property line shall be One Hundred (100) feet, or the applicants IDEM approved setback.
 - 1. Applicant shall be responsible for presenting BZA approved waiver to the Wabash County Recorders Office for recording.
- B. All newly constructed Confined Feeding Operations shall be located on a parcel of no less than Ten (10) acres.
- C. Screening and /or landscape barriers shall be required for all new CFO structures, lagoons, pits, ponds, holding tanks, waste processing systems, and compost bldgs., that are located Three Hundred (300) feet or less from a property line or county road.
 - 1. All such screening shall conform to Wabash County Zoning Ordinance

requirements, and shall be properly maintained by the Confined Feeding Operation operator.

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 manure 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

- 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. 1000 feet from a public water supply well or public water intake structure,
 2. 300 feet from any surface waters, drainage inlet, water wells, sediment control basins, sinkholes,
 3. 100 feet from any off-site neighboring property line or a public road,
 4. 400 feet from any existing off-site residential or public buildings,

6.25 M Staging Manure

- A. Setbacks for staging manure, whether covered, open, or a gradient barrier is installed shall be as follows:
 1. 1000 feet from a public water supply well or public water intake structure,
 2. 300 feet from any surface water, drainage inlets, including water and sediment control basins, off-site water wells, sinkholes,
 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.