

ORDINANCE NO. _____

**BEING AN ORDINANCE TO AMEND THE TEXT OF THE DELAWARE COUNTY
COMPREHENSIVE ZONING ORDINANCE REGARDING CONFINED FEEDING OPERATIONS
AND CONCENTRATED ANIMAL FEEDING OPERATIONS**

WHEREAS, the State enabling act for planning and zoning empowers the Board of Commissioners of Delaware County, Indiana to adopt a zoning ordinance and also provides for amendments to said ordinance as deemed necessary from time to time; and

WHEREAS, a zoning ordinance may, in each district, regulate how real property is developed, maintained, and used; and

WHEREAS, agriculture remains an essential component of the Delaware County economy and, through technology and market trends, agricultural activities continue to evolve ; and

WHEREAS, there is a need to develop additional requirements applicable to animal feeding operations of a certain size and intensity to regulate the location to achieve and secure the benefits and to minimize the impacts; and

WHEREAS, the Board of Commissioners of Delaware County, Indiana, has given reasonable regard to the comprehensive plan; current conditions and the character of current structures and uses in each district; the most desirable use for which the land in each district is adapted; the conservation of property values throughout the jurisdiction; and responsible growth and development.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Delaware County, Indiana, that the text of the Delaware County Comprehensive Zoning Ordinance shall be amended as follows:

SECTION 1. Amend Article XXXIII, Section 2 TERMS AND MEANING by alphabetically inserting the following new definitions, with appropriate recodification:

Animal Feeding Operation (AFO):

A lot or facility, other than an aquatic animal production facility, where all of the following conditions are met: 1) animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and 2) crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over at least fifty percent (50%) of the lot or facility.

[State definition per 327 IAC 19-2-3]

Animal Unit (AU):

A unit of measurement used to determine separation distances and procedures applicable to CAFO operations with 20,000 or more animals units, based on the total number of single animals or combination of animal types and sizes which are fed, maintained, or stabled at a location/site/property , as follows:

Animal Type	Animal Unit
Mature dairy cow	1.4
Beef cattle or heifer	1.0
Swine over 55 pounds	0.4
Swine under 55 pounds	0.1
Ducks (non-liquid manure systems)	0.03
Ducks (liquid manure systems)	0.2
Chickens (liquid manure systems)	0.03
Chickens (non-liquid manure systems)	0.01
Veal calves	1.0
Horses	2.0
Sheep or lambs	0.1
Turkeys	0.02
Animals not listed – use average weight of the animal in pounds and divide by 1,000 to arrive at the Animal Unit	

[Animal Units derived by dividing 1000 by the number and type of animals cited in the CAFO definition]

Child Care Center:

A nonresidential building, licensed by the State of Indiana, where at least one (1) child receives child care from a provider as follows: while unattended by a parent, legal guardian or custodian; for regular compensation; and for more than four (4) hours but less than twenty-four (24) hours in each of ten (10) consecutive days per year, excluding intervening Saturdays, Sundays and holidays. Also known as a day care center.

Concentrated Animal Feeding Operation (CAFO):

An animal feeding operation that stables or confines at least as many as or more than the numbers of animals specified in any of the following categories:

- 1) 700 mature dairy cows, whether milked or dry;
- 2) 1,000 veal calves;
- 3) 1,000 cattle, other than mature dairy cows and veal calves, cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- 4) 2,500 swine each weighing 55 pounds or more;
- 5) 10,000 swine each weighing less than 55 pounds;
- 6) 500 horses;
- 7) 10,000 sheep or lambs;
- 8) 55,000 turkeys;
- 9) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- 10) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- 11) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- 12) 30,000 ducks, if the AFO uses other than a liquid manure handling system; or
- 13) 5,000 ducks, if the AFO uses a liquid manure handling system.

[Federal definition 40 CFR 122.23]

Confined Feeding:

Confined feeding for purposes of this Ordinance means the confined feeding of animals for food, fur, or pleasure purposes in lots, pens, ponds, sheds, or buildings where:

- 1) animals are confined, fed, and maintained for at least forty-five (45) days during any twelve (12) month period; and

- 2) ground cover or vegetation is not sustained over at least fifty percent (50%) of the animal confinement area.

The term does not include the following: 1) a livestock market where animals are assembled from at least two sources to be publicly auctioned or privately sold on a commission basis and that is under state or federal supervision; and 2) a livestock sale barn or auction market where animals are kept for not more than ten (10) days.

[State definition 327 IAC 19-2-6]

Confined Feeding Operation (CFO):

Confined feeding operation for purposes of this Ordinance means any:

- 1) confined feeding of at least:
 - a. three hundred (300) cattle;
 - b. six hundred (600) swine or sheep;
 - c. thirty thousand (30,000) fowl; or
 - d. five hundred (500) horses.
- 2) animal feeding operation electing to be subject to IC 13-18-10; or
- 3) animal feeding operation that is causing a violation of:
 - a. water pollution control laws;
 - b. any rules of the water pollution control board; or
 - c. IC 13-18-10.

[State definition 327-IAC 19-2-7]

The term CFO is intended to include all of the production area involved in the operation. Two or more operations under common ownership are considered to be a single operation for purposes of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of waste.

Drainage Inlet:

Any surface opening to an underground Regulated Drain Tile system that drains to surface waters of the state; the term includes water and sediment control basins.

Existing CFO/CAFO:

A CFO or a CAFO is considered to be existing for purposes of this ordinance if the CFO's or CAFO's confinement structure(s) or manure storage facility(s) have been constructed. An existing CFO or CAFO is considered a conforming use that may have nonconforming characteristics such as setbacks less than required by this ordinance.

Expansion of an Existing CFO/CAFO:

A term meaning increasing the number of animals beyond the number of animals allowed per a CFO or CAFO permit issued by the Indiana Department of Environmental Management. Expansion of a CFO or CAFO in a rural residential area is subject to the requirements of Article XXXI, Section 12. Expansion of a CFO or CAFO with nonconforming characteristics in a rural agricultural area may occur provided such expansion does not further encroach upon the nonconforming characteristic(s).

Floodplain:

The channel proper and the areas adjoining any wetland, lake or watercourse, which have been, or hereafter may be covered by the regulatory flood. The flood plain includes both the floodway and the floodway fringe districts as set forth in the Floodplain Management Ordinance for Delaware County, Indiana. The regulatory flood is a flood having a one percent probability of being equaled or exceeded in any given year, as calculated

by a method and procedure acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency.

Institution for Human Care: Residential facilities that provide on-site living and/or medical assistance for those unable to independently care for themselves such as a nursing home, an assisted living facility, a convalescent facility, or similar facility.

Manure Storage Facility:

Manure storage facility means any:

- 1) Pad;
- 2) Pit;
- 3) Pond;
- 4) Lagoon;
- 5) Tank;
- 6) Building; or
- 7) Manure containment area;

used to store or treat manure, including any portions of buildings used specifically for manure storage or treatment.

[State definition 327 IAC 19-2-28]

Private School: An accredited nonpublic school, private or parochial, that is determined to be in compliance with the standards for the recognition of nonpublic schools as set by the Indiana State Board of Education.

Production Area:

Production area means that part of an animal feeding operation that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barn, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes, but is not limited to, lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers, and bedding materials. The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate uncontaminated storm water. The term includes any egg washing or egg processing facility, and any area used in the storage, handling, treatment or disposal of mortalities.

[State definition 327 IAC 19-2-34]

Public Use Recreational Area: A use of land owned by any federal, state or local governmental entity, or a nonprofit entity, which is operated to attract the public and allow them to congregate for significant periods of time for recreational purposes such as parks, campgrounds, and nature preserves. Road right-of-way, parking areas, recreational trails and any other area used by the public as a passageway or temporary parking area is not considered a public use recreational area.

Public Water Supply Well:

Any well that provides water to the public through a water distribution system that serves at least twenty-five (25) persons per day for drinking, domestic use or other purposes, or that has at least fifteen (15) service connections.

[State definition 327 IAC 19-2-36]

Regulated Drain Tile: A drainage tile under the jurisdiction of the Delaware County Drainage Board; also known as a legal drain tile.

Rural Agricultural Area: Any area classified in the F Farming Zone where there are thirty-two (32) or fewer dwelling units in a circular area equal to a square mile as measured from the center point of the production area with a radius of 2,979 feet. Rural agriculture areas shall consist of two levels as follows: Level 1 shall be those areas with 16 or fewer dwelling units within the square mile area described herein; and Level 2 shall be those areas with 17 to 32 dwelling units within the square mile area described herein.

Rural Residential Area: Any area classified in the F Farming Zone where there are 33 or more dwelling units in a circular area equal to a square mile as measured from the center point of the production area with a radius of 2,979 feet.

Sensitive Area:

Sites where conditions pose a specific water quality threat to one or more of the following:

- Public water supply wells
- Wellhead protection areas
- Drinking water supply reservoirs
- Areas requiring special protection such as wetlands (except for wetlands constructed for manure management), Karst terrain, critical habitat of an endangered species, public use recreational areas.

Surface Waters of the State:

A lake, reservoir, marsh, waterway or other water under public ownership, jurisdiction or lease.

SECTION 2. That Article XII, F Farming Zone, Section 1 Permitted Uses, Items 1 and 2 shall be amended by inserting new language as underlined below and substituting “aquatic animals” for “aquariums”, and by inserting a new Item 3, with appropriate recodification, to read as follows:

1. Single family dwellings, subject to reciprocal separation distances as applicable, as set forth in Article XII, Section 9(C) Land Use Separation Distance Requirements.
2. Agricultural Uses including: field crops; dairies; tree crops; flower and vegetable gardening; nurseries; orchards; horse farms and farms (that are not CFO’s or CAFO’s) for the breeding, raising and sale of chickens, hogs, cattle, turkeys, sheep, aquatic animals or other animals; breeding, boarding or sale of dogs. All such animal uses (that are not CFO’s or CAFO’s) and buildings or premises shall be at least two hundred (200) feet from a dwelling (other than a farm dwelling), school, church, hospital or institution for human care.
3. Confined feeding operations (CFO’s) and concentrated animal feeding operations (CAFO’s) that are located in rural agricultural areas subject to the requirements set forth herein in Article XII, Section 9.

SECTION 3. That Article XII, F Farming Zone, Section 2 Special Uses shall be amended by inserting a new Item 14 to read as follows:

14. Confined feeding operations (CFO’s) and concentrated animal feeding operations (CAFO) located in rural residential areas, provided they comply with the requirements set forth in Article XXXI, Section 12.

SECTION 4. That Article XII, F Farming Zone shall be amended by inserting a new Section 9 as follows:

Section 9. CFO/CAFO REQUIREMENTS

- A Purpose and Intent:** The purpose of these requirements is to acknowledge that agriculture remains an essential component of the Delaware County economy and that, through technology and market trends, agricultural activities have evolved into efficient agricultural businesses. These requirements apply to any new Confined Feeding Operation (CFO) or Concentrated Animal Feeding Operation (CAFO) and to any expansion of an existing CFO or CAFO and are intended to minimize the impact of such feeding operations on surrounding land uses and the environment. These requirements are in addition to the rules, regulations and procedures set forth by the Indiana Department of Environmental Management (IDEM), the United States Environmental Protection Agency (USEPA), or any other agency or board designated at the federal, state or local level to monitor or regulate confined feeding operations. In the case of conflicting requirements and/or regulations, the more restrictive shall prevail. Compliance with these requirements shall be maintained throughout the life of the operation and prior to the proper closure of the operation. To ensure that compliance with the requirements set forth herein is maintained, annual inspections will be conducted by the Plan Commission Office and the Health Department.
- B Determination of Rural Agricultural Area:** Prior to making application for local building and improvement location permits, the applicant shall consult with the Plan Commission Office to determine if the location of a proposed CFO or CAFO is in a rural agricultural area or a rural residential area. If it is determined to be in a rural agricultural area, the applicant may proceed in accordance with this Section. If it is determined to be in a rural residential area, the applicant must proceed in accordance with Article XXXI, Sections 2 and 12 for a special use approval from the Delaware-Muncie Metropolitan Board of Zoning Appeals. In making the determination, the Plan Commission Office shall consider all dwelling units regardless of jurisdictional boundaries using the best available data.
- C Permitting Requirements:** Local permits (which may include drainage, driveway, septic system, wells, stormwater quality, building, electrical) shall be required as applicable for any new CFO or CAFO and for the expansion of an existing CFO or CAFO. An application for local building and improvement location permits shall be submitted to the Building Commissioner and Zoning Administrator and shall include the following information. All information must be submitted and the proposed operation found to be in compliance with these requirements in order for permits to be issued.
1. An overall site plan map that includes the boundaries of the property, a site layout of the production area, other buildings and structures, driveways, on-site and off-site parking and circulation patterns and the general drainage plan.
 2. The maximum number and type of animals to be confined.
 3. Manure management plan as submitted to the Indiana Department of Environmental Management, including best management practices, if applicable.
 4. Emergency spill response plan as submitted to the Indiana Department of Environmental Management.
 5. A signed affidavit stating that the proposed operator has no outstanding or unresolved violations relating to animal feeding operations nor is there a history of recurring violations, as measured over the last five (5) years, with the Indiana Department of Environmental Management, the U.S. EPA, or other governmental agency relating to animal feeding operations.

6. A copy of all necessary and applicable state and/or federal approvals from the Indiana Department of Environmental Management, the U.S. Environmental Protection Agency, or other applicable agency dealing with animal feeding operations.
7. For CAFO operations with lagoon systems only, a performance bond or other acceptable surety in favor of the Delaware County Commissioners, which shall remain in effect for the life of the operation to ensure proper closure of the manure storage structure and/or to prevent discharge contamination into surface waters of the state, in an amount equal to \$1,500 for each 100,000 gallons of waste storage capacity.
8. Stamped envelopes addressed to owners of all property located in the applicable separation distance area as set forth in the table below. The Building Commissioner's address shall be the return address.
9. A general area map showing compliance with the setbacks set forth in this Section. Delaware County's GIS information is available and may be used as the best available data source for showing compliance. GIS information from surrounding counties may also be available and used or if not available, information contained on the state GIS site known as www.indianamap.org may be used.
10. Copies of any signed and notarized affidavits waiving a setback requirement.
11. A copy of the routing plan, showing the roads that will regularly be used for the transport of animals, and the approval of the routing plan from the Delaware County Engineering Department.

D Land Use Separation Distance Requirements: The production area of a Confined Feeding Operation and/or a Concentrated Animal Feeding Operation shall maintain, at a minimum, the following separation distances with all distances measured in feet:

	Residence (not on CFO/ CAFO site, not owned/ occupied by applicant)	Residence Zone	Developed Platted Subdivision (homes on more than 50% of lots)	Public/ Private School (not home or temporary school)	Corporate Limits of any City or Town	Public Use Recreation Area	Hospital, Institution for Human Care, Child Care Centers	Church/ Religious Institution
Level 1 Rural Ag Area	CFO - 500 CAFO – 1,000	1,320	1,320	5,280	< 5000 pop. - 2,640 >5000 pop. - 5,280	1,320	5,280	1,320
Level 2 Rural Ag Area	CFO - 660 CAFO – 1,320	1,320	1,320	5,280	<5000 pop. - 2,640 >5000 pop. - 5,280	1,320	5,280	1,320

a. Measurement of Distances: Separation distances shall be measured as the straight line distance from the nearest point of a building or structure in the production area of a CFO or CAFO operation to the nearest point of a structure containing a residence, school, hospital, institution for human care, or church and to the nearest boundary of a residence zone, platted subdivision, or corporate limit line. Only structures (including structures for which permits have been issued) and boundaries in existence as of the date of the permit application shall be used to establish the required separation distances. An owner of property may waive a setback requirement with a written, signed and notarized affidavit.

b. Additional Requirements for Operations with 20,000 or more animals units: For CAFO's involving 20,000 or more animals units located in a Level 1 Rural Agricultural Area, the Land Use Separation Distance Requirements for Level 2 shall apply. For CAFO's involving 20,000 or more animal units located in a Level 2 Rural Agricultural Area, the operation will be classified as a special use requiring approval from the Delaware-Muncie Metropolitan Board of Zoning Appeals as set forth in Article XXXI, Section 12. For CAFO's involving 20,000 or more animal units located in either Level 1 or Level 2, an odor abatement measure with proven effectiveness shall be required in addition to a shelterbelt.

c. Protection and Applicability of Separation Distances: No permits for new residential, public or private development shall be issued during the CFO/CAFO permit process that would adversely affect compliance of the CFO or CAFO operation. A CFO or CAFO has the responsibility of declaring its location to the Building Commissioner and Plan Commission once their state and/or local permit process starts. A local CFO or CAFO permit shall remain in effect for 1 year, however, the permittee may request an extension of time from the Building Commissioner prior to the 1 year expiration up to a maximum of 5 years from the date of the original permit. Separation distances shall be reciprocal. Notice that a CFO or CAFO permit application has been made shall be sent by first class mail to all property owners of record whose property would be subject to the reciprocal separation distances. Once a CFO or CAFO permit is issued under this Section, no permit shall be issued for a residence, school, hospital, institution for human care or church and no approvals shall be given to a platted subdivision located in the separation distances unless the owner signs, and records as a deed or plat restriction, a waiver, notice and acknowledgement of CFO/CAFO agricultural activity.

E Environmental Separation Requirements for Sensitive Areas: The production area of a Confined Feeding Operation and/ or a Concentrated Animal Feeding Operation shall maintain, at a minimum, the following separation distances, based on the waste management system:

ENVIRONMENTAL FEATURE/SENSITIVE AREAS	LAGOON SYSTEM	NON-LAGOON SYSTEM
Public Water Supply Wells, Rivers (White and Mississinewa) and Prairie Creek Reservoir	2 miles	1 mile
Surface Waters of the State, Regulated Open Drains (ditches, waterways, wetlands)	5,280 ft.	300 ft.
100 Year Floodplain	5,280 ft.	300 ft.
Drainage Inlets & Off-site Water Wells	1,320 ft.	300 ft.
On-site Water Wells	400 ft.	100 ft.
Regulated Drain Tiles	400 ft.	100 ft.

For purposes of this ordinance and the above setbacks, a lagoon shall mean an uncovered open-air liquid manure storage facility such as a pit, pond, tank or earthen berm containment area used to store or treat manure as defined in 327 IAC 19-2-25.

F Setbacks: The production area of a Confined Feeding Operation and/or a Concentrated Animal Feeding Operation shall maintain the following setbacks:

- a. 200' from any public road right-of-way, existing or proposed, whichever is greater.
- b. 400' from a side or rear property line.

c. 1 mile from any other CAFO production area.

F Lot Area: The minimum lot size on which confined feeding operations and concentrated animal feeding operations shall be permitted is 40 acres.

H Transportation, Public Road Access, Parking and Loading: A minimum driveway width and design specifications for entrances to CFO/CAFO sites shall be set by the County Engineer to prevent damage to the public road on which the entrance is situated. For the driveway approach, there shall be at least 20 feet of hard surface from the public road pavement leading into the site. A suitable truck turn-around area shall be provided on-site. The turn-around area shall be an all-truck turn-around so that vehicles do not have to back into the public road, through T-turns or a turning area with the proper radius to accommodate the vehicles. The entire drive and turn-around area must have a surface to minimize dust and to avoid caking of mud on truck wheels. If trucks will be parked or stored on the site overnight or long-term, there shall be a parking space for each such truck and the parking space(s) must not reduce or impede the turn-around area. A routing plan, showing the roads that will regularly be used for the transport of animals, shall be submitted and approved by the County Engineering Department.

I Shelterbelt Requirements: Each CAFO shall be required to install and maintain a shelterbelt downwind of the operation and adjacent to any exhaust fans. The shelterbelt shall be located at least fifty (50) feet outside of the production area or 10 times the exhaust fan diameter, whichever is greater. The shelterbelt shall be fully within the property line of the subject property. The shelterbelt shall consist of a minimum of 2 rows of shrubs (located closest to the production area) followed by 2 rows of shade trees and then 2 rows of evergreen trees. If the owner of the CFO or CAFO maintains a forested buffer of adjacent land at least 150 feet in depth to the east of the operation, it may be used as the shelterbelt. Trees shall be a minimum of 6 feet tall at planting and shrubs shall have a minimum diameter of 12 inches.

The shelterbelt shall consist of the following types of plants and be planted in the following manner:

1. Shrubs. Two or more species of shrubs shall be planted at 1 shrub for every 10 feet of shelterbelt distance per row, all equally spaced. Shrub rows shall be separated by 6 feet with the shrubs staggered from the shrubs in the adjacent rows.
2. Shade trees (deciduous trees with an average mature height over 45 feet): Two or more species of shade trees shall be planted at 1 tree for every 30 feet of shelterbelt per row, all equally spaced.
3. Evergreen trees. Two or more species of evergreen trees shall be planted at 1 tree for every 30 feet of shelterbelt distance per row, all equally spaced.

Each row of trees shall be separated by 30 feet with the trees staggered from the trees in neighboring rows.

All required shelterbelt plantings shall be installed prior to the commencement of operations. If it is not possible to install the required plantings due to weather conditions or other circumstances, all plantings shall be installed within eight (8) months of the first occupancy of the buildings on the site. Surety may be required to ensure installation, such as, but not limited to, bonds or personal guaranties.

The shelterbelt requirement is intended to be an odor abatement measure and there may be sites where the separation distances from the production area to a residence(s), or other listed land use, exceed the required distance such that the shelterbelt's purpose is achieved through distance. In these instances, the applicant may request a variance from this requirement from the Delaware-Muncie Metropolitan Board of Zoning Appeals, under established rules and procedures, with the increased distance being an

acknowledged hardship.

J Animal Mortalities: Animal landfills shall not be permitted. All mortalities shall be disposed of in accordance with the requirements of the State of Indiana Board of Animal Health.

K Manure Management: All new manure storage facilities for a CFO/CAFO must be designed, constructed and maintained with a combined storage capacity of at least 360 days storage for manure and, if applicable, the expected rainfall and run-off from a 100 year, 24 hour precipitation event that falls on the drainage area around a liquid manure storage structure (i.e. lagoon, pond). All confined feeding operations for poultry shall use a dry manure handling system.

The following manure application requirements shall apply to any manure derived from CFO's or CAFO's within Delaware County, Indiana, or to be applied to land within Delaware County, Indiana.

1. Any manure that is to be applied to land within Delaware County, Indiana shall be covered and bermed within 72 hours of delivery.
2. All manure management requirements of the Indiana Department of Environmental Management and the Office of the Indiana State Chemist shall be followed.

Satellite manure storage facilities, which are manure storage structures not located at a livestock or poultry production area, shall meet the same Land Use Separation Distance Requirements and Environmental Separation Requirements that apply to a CFO or CAFO as set forth herein.

L Manure Storage Facility Closure:

The owner/operator of confined feeding or concentrated animal feeding operations that plans to close or discontinue use of a manure storage facility must comply with the requirements set forth herein in addition to all applicable state requirements. The following items shall be filed with the Plan Commission, the Delaware County Health Department, and the Delaware County Zoning Administrator:

1. Written notice of the anticipated date to cease operation shall be forwarded not less than 60 days prior to closure. At this time, the Commission, the Health Department and/or the Zoning Administrator should forward any local concerns dealing with closure to IDEM.
2. A copy of the certification submitted by the owner/operator to IDEM that states compliance with all state requirements for the closure or discontinued use of a manure storage structure, a copy of any additional closure requirements imposed on the owner/operator by the state, and a copy of the letter of confirmation from the Indiana Department of Environmental Management verifying that the state requirements for closure have been met.

Within 180 days of the notice to discontinue use of the manure storage structure, the owner/ operator shall start the process of manure removal and within 365 days of the notice, shall complete the process and meet the IDEM requirement of no remaining potential to discharge. If, at the end of the 365 days, the terms of Item 2 above have not been met, the Delaware County Commissioners may utilize the bond/surety to accomplish proper closure of the manure storage structure. Additional costs in excess of the bond/surety, incurred by the Delaware County Commissioners, shall be assessed as a lien against the property.

SECTION 5. That Article XXXI, SPECIAL USES, shall be amended and supplemented by inserting a new Section 12 as follows:

ARTICLE XXXI

Section 12 RURAL RESIDENTIAL CONFINED FEEDING OPERATIONS AND CONCENTRATED ANIMAL FEEDING OPERATIONS

A DEFINITION

A confined feeding operation (CFO) or concentrated animal feeding operation (CAFO) that is proposed to be located in a rural residential area as defined in this ordinance.

B ZONES IN WHICH PERMITTED

A CFO or CAFO may be permitted in the F Farming Zone subject to the determination of the Delaware-Muncie Metropolitan Board of Zoning Appeals.

C APPLICATION

In addition to the information required on the standard application for appeal, the following information shall be supplied and may be indicated on the standard application map where applicable if it is of adequate size and scale:

1. An overall site plan map that includes the boundaries of the property, a site layout of the production area, other buildings and structures, driveways, on-site and off-site parking and circulation patterns and the general drainage plan.
2. The maximum number and type of animals to be confined.
3. Manure management plan as submitted to the Indiana Department of Environmental Management, including best management practices, if applicable.
4. Emergency spill response plan as submitted to the Indiana Department of Environmental Management.
5. A signed affidavit stating that the proposed operator has no outstanding or unresolved violations relating to animal feeding operations nor is there a history of recurring violations, as measured over the last five (5) years, with the Indiana Department of Environmental Management, the U.S. EPA, or other governmental agency relating to animal feeding operations.
6. A copy of all necessary and applicable state and/or federal approvals from the Indiana Department of Environmental Management, the U.S. Environmental Protection Agency, or other applicable agency dealing with animal feeding operations.
7. Stamped envelopes addressed to owners of all property located in the applicable separation distance area as set forth in the table below. The Building Commissioner's address shall be the return address.
8. A general area map showing compliance with the setbacks set forth in this Section. Delaware County's GIS information is available and may be used as the best available data source for showing compliance. GIS information from surrounding counties may also be available and used or if not available, information contained on the state GIS site known as www.indianamap.org may be used.
9. Copies of any signed and notarized affidavits waiving a setback requirement.
10. A copy of the routing plan, showing the roads that will regularly be used for the transport of animals, and a copy of the approval from the Delaware County Engineering Department.

The Plan Commission or the Board of Zoning Appeals may require additional information as deemed necessary to determine compliance with the standards set forth herein and the general standards for special uses set forth in Article XXXI, Section 2.

D STANDARDS

Any proposed CFO or CAFO facility shall meet the following standards and shall continue to meet such standards throughout the life of the operation.

- 1. Land Use Separation Distance Requirements:** The production area of a Confined Feeding Operation and/or a Concentrated Animal Feeding Operation shall maintain, at a minimum, the following separation distances with all distances measured in feet:

Residence (not on CFO/CAFO site, not owned/occupied by applicant)	Residence Zone	Platted Subdivision	Public/Private School (not home or temporary school)	Corporate Limits of any City or Town	Public Use Recreation Area	Hospital, Institution for Human Care, Child Care Centers	Church/Religious Institution
CFO - 750 CAFO - 1,500	2,640	2,640	5,280	5,280	1,320	5,280	1,320

a. Measurement of Distances: Separation distances shall be measured as the straight line distance from the nearest point of a building or structure in the production area of a CFO or CAFO operation to the nearest point of a structure containing a residence, school, hospital, institution for human care, or church and to the nearest boundary of a residence zone, platted subdivision, or corporate limit line. Only structures (including structures for which permits have been issued) and boundaries in existence as of the date of the permit application shall be used to establish the required separation distances. An owner of property may waive a setback requirement with a written, signed and notarized affidavit.

b. Protection and Applicability of Separation Distances: No permits for new residential, public or private development shall be issued during the CFO/CAFO permit process that would adversely affect compliance of the CFO or CAFO operation. A CFO or CAFO has the responsibility of declaring its location to the Building Commissioner and Plan Commission once their state and/or local permit process starts. A local CFO or CAFO permit shall remain in effect for 1 year, however, the permittee may request an extension of time from the Building Commissioner prior to the 1 year expiration up to a maximum of 5 years from the date of the original permit. Separation distances shall be reciprocal. Notice that a CFO or CAFO permit application has been made shall be sent by first class mail to all property owners of record whose property would be subject to the reciprocal separation distances. Once a CFO or CAFO permit is issued under this Section, no permit shall be issued for a residence, school, hospital, institution for human care or church and no approvals shall be given to a platted subdivision located in the separation distances unless the owner signs, and records as a deed or plat restriction, a waiver, notice and acknowledgement of CFO/CAFO agricultural activity.

- 2. Environmental Separation Requirements for Sensitive Areas:** The production area of a Confined Feeding Operation and/ or a Concentrated Animal Feeding Operation shall maintain, at a minimum, the following separation distances, based on the waste management system:

ENVIRONMENTAL FEATURE/SENSITIVE AREAS	LAGOON SYSTEM	NON-LAGOON SYSTEM
Public Water Supply Wells, Rivers (White and Mississinewa) and Prairie Creek Reservoir	2 miles	1 mile
Surface Waters of the State, Regulated Open Drains (ditches, waterways, wetlands)	5,280 ft.	300 ft.
100 Year Floodplain	5,280 ft.	300 ft.
Drainage Inlets & Off-site Water Wells	1,320 ft.	300 ft.
On-site Water Wells	400 ft.	100 ft.
Regulated Drain Tiles	400 ft.	100 ft.

For purposes of this ordinance and the above setbacks, a lagoon shall mean an uncovered open-air liquid manure storage facility such as a pit, pond, tank or earthen berm containment area used to store or treat manure as defined in 327 IAC 19-2-25.

3. **Setbacks:** The production area of a Confined Feeding Operation and/or a Concentrated Animal Feeding Operation shall maintain the following setbacks:
 - a. 200' from any public road right-of-way, existing or proposed, whichever is greater.
 - b. 400' from a side or rear property line.
 - c. 1 mile from any other CAFO production area.

4. **Lot Area:** The minimum lot size on which confined feeding operations and concentrated animal feeding operations shall be permitted is 40 acres.

5. **Transportation, Public Road Access, Parking and Loading:** A minimum driveway width and design specifications for entrances to CFO/CAFO sites shall be set by the County Engineer to prevent damage to the public road on which the entrance is situated. For the driveway approach, there shall be at least 20 feet of hard surface from the public road pavement leading into the site. A suitable truck turn-around area shall be provided on-site. The turn-around area shall be an all-truck turn-around so that vehicles do not have to back into the public road, through T-turns or a turning area with the proper radius to accommodate the vehicles. The entire drive and turn-around area must have a surface to minimize dust and to avoid caking of mud on truck wheels. If trucks will be parked or stored on the site overnight or long-term, there shall be a parking space for each such truck and the parking space(s) must not reduce or impede the turn-around area. A routing plan, showing the roads that will regularly be used for the transport of animals, shall be submitted and approved by the County Engineering Department.

6. **Shelterbelt Requirements:** Each CAFO shall be required to install and maintain a shelterbelt downwind of the operation and adjacent to any exhaust fans. The shelterbelt shall be located at least fifty (50) feet outside of the production area or 10 times the exhaust fan diameter, whichever is greater. The shelterbelt shall be fully within the property line of the subject property. The shelterbelt shall consist of a minimum of 2 rows of shrubs (located closest to the production area) followed by 2 rows of shade trees and then 2 rows of evergreen trees. If the owner of the CFO or CAFO maintains a forested buffer of adjacent land at least 150 feet in depth to the east of the operation, it may be used as the shelterbelt. Trees shall be a minimum of 6 feet tall at planting and shrubs shall have a minimum diameter of 12 inches.

- The shelterbelt shall consist of the following types of plants and planted in the following manner:
- a. Shrubs. Two or more species of shrubs shall be planted at 1 shrub for every 10 feet of shelterbelt distance per row, all equally spaced. Shrub rows shall be separated by 6 feet with the shrubs staggered from the shrubs in the adjacent rows.
 - b. Shade trees (deciduous trees with an average mature height over 45 feet): Two or more species of shade trees shall be planted at 1 tree for every 30 feet of shelterbelt per row, all equally spaced.
 - c. Evergreen trees. Two or more species of evergreen trees shall be planted at 1 tree for every 30 feet of shelterbelt distance per row, all equally spaced.

Each row of trees shall be separated by 30 feet with the trees staggered from the trees in neighboring rows.

All required shelterbelt plantings shall be installed prior to the commencement of operations. If it is not possible to install the required plantings due to weather conditions or other circumstances, all plantings shall be installed within eight (8) months of the first occupancy of the buildings on the site. Surety may be required to ensure installation, such as, but not limited to, bonds or personal guaranties.

For CAFO's involving 20,000 or more animal units, an odor abatement measure with proven effectiveness shall be required in addition to a shelterbelt.

7. **Animal Mortalities:** Animal landfills shall not be permitted. All mortalities shall be disposed of in accordance with the requirements of the State of Indiana Board of Animal Health.
8. **Manure Management:** All new manure storage facilities for a CFO/CAFO must be designed, constructed and maintained with a combined storage capacity of at least 360 days storage for manure and, if applicable, the expected rainfall and run-off from a 100 year, 24 hour precipitation event that falls on the drainage area around a liquid manure storage structure (i.e. lagoon, pond). All confined feeding operations for poultry shall use a dry manure handling system.

The following manure application requirements shall apply to any manure derived from CFO's or CAFO's within Delaware County, Indiana, or to be applied to land within Delaware County, Indiana.

- a. Any manure that is to be applied to land within Delaware County, Indiana shall be covered and bermed within 72 hours of delivery.
- b. All manure management requirements of the Indiana Department of Environmental Management and the Office of the Indiana State Chemist shall be followed.

Satellite manure storage facilities, which are manure storage structures not located at a livestock or poultry production area, shall meet the same Land Use Separation Distance Requirements and Environmental Separation Requirements that apply to a CFO or CAFO as set forth herein.

9. Manure Storage Facility Closure:

The owner/operator of confined feeding or concentrated animal feeding operations that plans to close or discontinue use of a manure storage facility must comply with the requirements set forth herein in addition to all applicable state requirements. The following items shall be filed

with the Plan Commission, the Delaware County Health Department, and the Delaware County Zoning Administrator:

- a. Written notice of the anticipated date to cease operation shall be forwarded not less than 60 days prior to closure. At this time, the Commission, the Health Department and/or the Zoning Administrator should forward any local concerns dealing with closure to IDEM.
- b. A copy of the certification submitted by the owner/operator to IDEM that states compliance with all state requirements for the closure or discontinued use of a manure storage structure, a copy of any additional closure requirements imposed on the owner/operator by the state, and a copy of the letter of confirmation from the Indiana Department of Environmental Management verifying that the state requirements for closure have been met.

Within 180 days of the notice to discontinue use of the manure storage structure, the owner/operator shall start the process of manure removal and within 365 days of the notice, shall complete the process and meet the IDEM requirement of no remaining potential to discharge. If, at the end of the 365 days, the terms of Item 2 above have not been met, the Delaware County Commissioners may utilize the bond/surety to accomplish proper closure of the manure storage structure. Additional costs in excess of the bond/surety, incurred by the Delaware County Commissioners, shall be assessed as a lien against the property.

SECTION 6. That Article XXXIII, DEFINITIONS, Section 1 General shall be amended by inserting a new sentence at the end of as follows: Where definitions are based on state or federal definitions and citations may change, the term(s) continues to be defined as set forth in applicable state or federal regulations.

SECTION 7. That this Ordinance shall be in full force and effect from and after its passage by the Board of Commissioners of Delaware County, Indiana and such publication as required by law.

SECTION 8. That this Ordinance is hereby adopted this _____ day of _____, 2018.

**BOARD OF COMMISSIONERS
DELAWARE COUNTY, INDIANA**

James King, President

Sherry Riggin,

Shannon Henry

ATTEST:

Steven G. Craycraft, Delaware County Auditor