

## **CHAPTER 12 – CONFINED ANIMAL FEEDING OPERATIONS (CAFOs)**

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### **Section 7-12-1: Introduction:**

Economic development, including placement and expansion of new and existing dairies and feedlots, is an essential part of the economic future of Elmore County. However, the Board recognizes that such operations may have impacts on the quiet use, enjoyment and economic value of neighboring property. To minimize those impacts and consequences and allow for economic development, appropriate zoning controls consistent with the Local Land Use Planning Act and the Idaho Right to Farm Act are necessary and have been incorporated into this Chapter.

### **Section 7-12-2: Purpose:**

The purpose of this ordinance is to establish an orderly procedure to regulate the placement and construction of Confined Animal Feeding Operations (“CAFO”) within Elmore County. Elmore County does not have the resources or authority to enforce state or federal environmental laws. However, it is the intent of the Board to require all CAFOs operating in Elmore County to obtain and be in compliance with all applicable Federal and State environmental standards, to be sited within the Agriculture Zone and clearly meet their policies, rules, laws and certain development standards. The Board also feels that it is appropriate to take advantage of all resources and assistance available from other government agencies in making CAFO permit decisions.

### **Section 7-12-3: Interpretation, and Enactment:**

- A. This Chapter shall be known as the Confined Animal Feeding Operations (CAFOs).
- B. Should any section or provision of this Chapter be declared by the Courts to be unconstitutional or invalid, such a decision shall not affect the validity of this Chapter and Ordinance. As a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

**Section 7-12-4: CAFO Site Permit Required:**

- A. The following require a CAFO Siting Permit prior to commencement:
  - 1. Expanding an Existing CAFO; or
  - 2. Material changes to an Existing CAFO; or
  - 3. A New CAFO.
- B. The CAFO Siting Permit may be transferred with the approval of the Commission at a public meeting. The Director shall be given notice of the transfer of a CAFO Siting Permit setting forth the date of the transfer and the name, mailing address and telephone number of the party to whom the permit is being transferred. CAFO Siting Permits are appurtenant to the location for which they are granted, shall not be transferred to any other location, and are binding on transferees.
- C. An Existing CAFO that has registered with the Director or has obtained a CAFO Siting Permit may make changes without applying for another Siting Permit, if such changes do not meet this Chapter and/or Ordinance definitions of material change or Expanding CAFO.

**Section 7-12-5: Contents of Application for CAFO Siting Permit:**

- A. The Application shall contain all information reasonably required by the Commission including but not limited to:
  - 1. Information required by the CAFO Siting Advisory Team as set forth in Idaho Administrative Code § 02.04.18.300, a copy of which is available on request from the Department.
  - 2. A complete site plan that is legible and prepared by a licensed engineer, architect, NRCS agent, an ISDA employee, County Extension Service Educator or other qualified individual approved by the Director. The site plan scale shall be as required for clarity. The size shall be at least twenty-four by thirty-six (24" X 36") inches. The site plan shall include, but not limited to, the following information:

- a. Building locations.
  - b. Animal Waste Management System.
  - c. Dead animal storage.
  - d. Feed storage area.
  - e. Animal confinement areas.
  - f. Perimeter dimensions of the CAFO facility area and distances to determine compliance with setback requirements.
  - g. A map, or maps, that include surface contours, soil depths and types, size and location of natural drainage points of the CAFO site. This information shall be obtained from the Office of the Natural Resource Conservation Service (NCRS) or other source as approved by the Director. Proposed changes to the existing contours shall be shown on a separate contour map prepared by an engineer licensed in the State of Idaho.
  - h. A map showing the location of all private and community domestic wells, irrigation wells, injection wells and monitoring wells that are registered by IDWR; all irrigation conveyance and drainage structures; all streams, ponds and reservoirs; and all wetlands designated by an appropriate state or federal agency, which are located within one (1) mile of the CAFO.
  - i. The site plan shall clearly delineate a line enclosing all CAFO improvements. Proposed expanding or new facility information shall be included in the maps. The above information may be provided on more than one map, where distances and scale make using one map impractical.
3. Best management practices shall be included in the plan and shall be implemented per Idaho Statute § 25-3803, or its most current supplement, and a copy provided to the Commission.
  4. An animal waste management system design plan for animal waste that meets all State and Federal requirements and is approved by the responsible regulatory agencies. If a waste management system is not required, the applicant shall provide satisfactory proof to the commission of such.
  5. A nutrient management plan, if such a plan is required by any regulatory agencies with authority over the proposed CAFO. This information may be exempt from public record requirements pursuant to Idaho Statute § 37-401.

6. An odor management plan, if such a plan is required by any regulatory agencies with authority over the proposed CAFO.
  7. A pest abatement plan, if such plan is required by any regulatory agencies with authority over the proposed CAFO.
  8. If the regulatory agency requiring nutrient management and/or an odor management/pest abatement plan accepts preliminary plans at the design stage, the applicant shall submit a preliminary plan. However, a final plan approved by the responsible regulatory agencies is required prior to issuance of an operation permit. Furthermore, the final plan may require a change to the Siting Permit, if it violates the terms and conditions of that permit or causes a material change to the project.
  9. Written comment on and approval of, the filed site plan from the applicable highway district showing that the site is served by roads designed of such capacity sufficient to carry the traffic generated by the CAFO in order to avoid any undue burden on existing transportation and service facilities in the area.
  10. If the applicant does not have adequate area for land application of animal wastes, the applicant shall provide proof of legal contracts with other parties for disposition of the animal waste. All land upon which animal waste will be applied shall be part of the Nutrient Management Plan.
  11. Composting under the supervision of the Idaho State Department of Agriculture may be an acceptable alternative to land application or any other responsible State agencies.
  12. For all CAFO facilities managing liquid waste a closure plan shall be submitted to the County.
- B. The Applicant shall submit one additional copy of the above information for the CAFO Site Advisory Team, or any other similar entity approved and required by the Board. The Board and Commission shall take any steps necessary to process the information. The CAFO Advisory Team report will be part of the application if such a report is requested, and may be used in determining the suitability of the proposed site.
- C. A fee shall be submitted with the application according to the current fee schedule approved and adopted by the Board.

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**Section 7-12-6: Process of Notice and Application Hearing for CAFO Permit Approval:**

- A. The Applicant shall submit the CAFO application provided by the Department, with

the appropriate fees and with factual documentation as required by the Ordinance.

- B. The public notice and public hearing shall conform with the Ordinance.
- C. All public hearings shall be advertised and conducted according to this Ordinance. Certified letters will be mailed to property owners within two (2) miles of the proposed expansion and/or new CAFO and the property will be posted thirty (30) days prior to the public hearing.

**Section 7-12-7: Expanding and/or New CAFO Facility Criteria, Standards, and Findings for Approval and Development:**

Prior to approval of a CAFO Siting Permit for an expanding and/or New CAFO, and after public hearing, the Commission shall find that the New CAFO as proposed meets the following requirements and findings:

- A. General Requirements and Findings:
  - 1. The expanding and/or New CAFO shall be within an area zoned Agriculture; and
  - 2. The expanding and/or New CAFO Facility Area shall be located a minimum of two (2) miles outside any adopted Area of City Impact and two (2) miles from the legally described perimeter of Mountain Home Air Force Base; and
  - 3. New swine and poultry facility areas shall be located a minimum of three (3) miles outside any adopted Area of City Impact and the legally described perimeter of Mountain Home Air Force Base; and
  - 4. An expanding and/or New CAFO facility area shall not be located within any adopted aquifer recharge or Community Development Overlay; and
  - 5. The expanding and/or New CAFO shall comply with and is not in violation of any Federal, State or local laws or Ordinances; and
  - 6. An applicant shall not begin construction of an expanding and/or New CAFO prior to receiving final approval of the CAFO Siting Permit; and
  - 7. An expanding and/or New CAFO shall provide a pest abatement plan if it is required by any governing agencies; and
  - 8. An expanding and/or New CAFO shall comply with IDAPA rules governing dead animal movement and disposal; and

9. An expanding and/or New CAFO, swine or poultry facility area shall provide a hold harmless agreement pertaining to noise within two (2) miles of the legally described perimeter of the Orchard Training Range; and

B. Animal Waste:

1. The expanding and/or New CAFO shall comply with the terms of its Nutrient Management Plan for Land Application; and
2. The expanding and/or New CAFO shall be in compliance with all environmental regulations, requirements and permits imposed by state or federal law or any regulatory agencies; and
3. Liquid animal waste shall not be applied on snow, ice or frozen soil.

C. CAFO Site Setbacks:

1. The location of animal waste management systems, corrals, wells, and septic systems shall conform to all applicable rules, regulations and specifications as required by any regulatory agencies; and
2. Silage, potatoes or any feed product resulting from the ensilage process shall be located a minimum of seven hundred (700') feet from any existing residence not belonging to the owner or operator of the CAFO; and
3. All agricultural buildings, feed storage areas, feed bunks or feed racks shall be setback a minimum of one hundred (100') feet from property lines and public rights of way; and
4. Lights shall be placed and shielded to direct the light source down and inside the property lines of the expanding and/or New CAFO. All direct glare from the CAFO lights shall be contained within the CAFO facility area; and
5. No expanding and/or New CAFO facility area shall be approved and/or located within a minimum of one and one-half (1 ½) miles of a parcel of property in a residential zone or a platted, approved or developed subdivision or an unincorporated townsite that has been platted for five (5) years or more as of January 20, 1994. If however, a subdivision or un-incorporated townsite has been platted for five (5) years or more and no public improvements have been built, the minimum one and one-half (1½) mile setback shall not be applied to that subdivision or unincorporated townsite. Public improvements are those required by this Ordinance; and
6. The animal waste management system shall not be located or operated closer than a minimum of one thousand three hundred twenty (1,320') feet from an

existing residence belonging to someone other than the Applicant, or be located and/or operated closer than a minimum of three hundred (300') feet from property lines. However, the animal waste management system for new swine or poultry Facilities shall not be located closer than a minimum of two miles of an occupied residence not part of the new facility or owned, occupied or leased by the owner of the new facility. Such setbacks may be reduced if the owner and occupant of the residence consent in writing; and

7. No animal waste management system shall be located and/or operated closer than a minimum of five hundred (500') feet from a domestic well; and
8. No animal waste management system shall be located closer than a minimum of three hundred (300') feet from a public right of way; and
9. No expanding and/or New CAFO facility area shall be approved and/or located within a minimum of one and one-half (1 ½) miles of the Snake and/or Boise Rivers or within a floodplain as set out on the most recent Federal Emergency Management Agency Flood Insurance Rate Map for Elmore County; and
10. Aquaculture CAFOs are exempt from the setbacks contained herein except for the storage of solid waste on the land; and
11. The setbacks contained herein shall not apply to Land Application, except that Animal Waste from a swine or poultry CAFO facility area shall not be land applied within a minimum of one (1) mile of a residence not part of the New CAFO or owned, occupied or leased by the owner of the New CAFO. Such setback may be reduced if the owner and occupant of the residence consent in writing.

D. Exemption to Site Setbacks: Certain land parcels may not be conducive to the setback requirements due to unique locations and demographics. Where appropriate, the Commission and/or Board may grant a variance to the setback requirements pursuant to the requirements of the Ordinance. If this setback includes animal waste management systems, the system shall meet all state and federal regulations and be approved by the regulatory agencies with authority.

#### **Section 7-12-8: CAFO Variance Process:**

A variance may be sought relating to the setback requirements contained in this Ordinance by making a written request for a Variance at the time of filing the CAFO Siting Permit Application. The Variance shall be processed in accordance with the Ordinance.

#### **Section 7-12-9: Grant or Denial of CAFO Siting Permit:**

- A. If the Commission finds that the applicant has shown that the proposed expanding or new CAFO meets the criteria set forth herein, the Commission shall grant the CAFO Siting Permit requested. The CAFO Siting Permit shall be in the form of a Findings of Fact, Conclusions of Law and Order. If the Commission does not find that the Applicant has shown that the proposed Expanding or New CAFO meets the criteria set forth herein, the Commission shall deny the CAFO Siting Permit in writing setting forth reasons for the denial and the relevant law relied upon. In making such decision, the Commission may use information and consider recommendations received from the State of Idaho CAFO Advisory Team or any other similar group.
- B. Special Conditions: The Commission may require any special conditions allowed by Idaho Statute § 67-6512 and make those conditions part of the Applicant's Siting Permit.
- C. If construction is not commenced within one (1) year of issuance of the New or Expanding CAFO Siting Permit, the applicant shall appear before the Commission to show proof of measurable progress toward a complete project and must be presented before the Commission. The Applicant shall reappear on a yearly basis thereafter to show cause why the New or Expanding CAFO has not been completed. If the CAFO is not a working CAFO within five (5) years of the permit being issued, the Commission may revoke the permit. Once revoked, the applicant may reapply. Current statutes, regulations, and ordinances shall govern re-application in effect at the date of re-application.

**Section 7-12-10: CAFO Operation Permit Required:**

Prior to the use of a New CAFO, the new portion of an Expanding CAFO, or making material changes in any CAFO, a CAFO Operation Permit shall be required.

**Section 7-12-11: Process for CAFO Operation Permit and Modifications:**

- A. After approval of the CAFO Siting Permit, the permit holder shall notify the Director in writing when construction starts. Additionally, if construction of an animal waste management system commences after the initial commencement of construction notice, the CAFO Siting Permit holder shall provide the Director with separate written notice of the date of the animal waste management system construction commencement.
- B. After approval of a CAFO Siting Permit, if the permit holder desires to make changes to the proposal authorized under the CAFO Siting Permit that may violate the terms or conditions of the permit as the application was presented to the Commission, the permit holder shall present a written change request to the Director.
  - 1. The change request shall be on a form provided by the Director and will contain



information the Director deems appropriate; and.

2. The request shall clearly specify the proposed change(s) and shall provide an explanation or justification for the proposed change(s); and
  3. The Director shall place the request on the Commission's next available meeting agenda and provide notice as required by this Title.
- C. If the Commission determines the proposed change is minimal and does not violate the terms and conditions of the CAFO Siting Permit, the Commission may approve the change request in writing and the permit holder may proceed with construction.
- D. If the Director determines that the CAFO Siting Permit holder desires to make changes to the proposal that may violate the terms and conditions of the CAFO Siting Permit, or result in material change to the project, the Director shall place the written change request on the Commission's next available meeting agenda and provide notice as required by this Ordinance. In considering the change request, the Commission shall apply the same criteria to the proposed change as was applied in the decision to grant the original CAFO Siting Permit application and may conduct all hearing with the required notice.
1. Commission, after notice and hearing as required for an original application, and if necessary after submission of additional information, shall apply the same criteria as for granting an original application.
  2. If the change request is granted by the Commission, an amended CAFO Siting Permit shall be issued within ten (10) calendar days the Commission approval.
- E. If the change request is denied by the Commission the CAFO Siting Permit holder may appeal the denial to the Board. The appeals shall be governed and processed in accordance with the provisions of this Ordinance.
- F. Inspection of the construction progress of the CAFO facility authorized by the CAFO permit shall occur as governed by the adopted building code. For those sections for which a building code inspection is not required, inspection may be made at the Building Official's discretion. In addition, inspections may be done when requested by the CAFO Permit holder. The inspections shall be performed by the Building Official or the Idaho State Department of Agriculture and reported to the Commission.
- G. After completion of the construction of the New or Expanding CAFO authorized by the CAFO Siting Permit, completion of any approved change requests or non-compliance corrections, and receipt of proof by the Director that all required permits have been obtained and management plans approved where all responsible regulatory agencies requires approval of those plans, the Director shall

issue a CAFO Operation Permit to the CAFO Siting Permit holder. The Applicant shall provide copies of all permits and management plans of the Facility to the Director. The CAFO Operation Permit shall certify that the New or Expanding CAFO has been inspected and conforms to the terms of the CAFO Siting Permit, with approved changes, and the CAFO Siting Permit holder is fully authorized to operate the New or Expanded CAFO.

- H. For all CAFO facilities managing liquid waste continued proof of liability insurance shall be submitted to the County annually.
- I. If the Director denies issuance of a CAFO Operation Permit, such denial shall be in writing setting forth the reasons for the denial and may be appealed to the Commission in accordance with the Ordinance.

**Section 7-12-12: Appeal:**

Any affected person may file an appeal of any decision in accordance with the Ordinance. See Title 7 Chapter 3 for requirements and procedures.

**Section 7-12-13: Enforcement:**

- A. Violations of any of the provisions of this Chapter or failure to comply with any of its requirements shall constitute a misdemeanor as defined by IDAHO STATUTE § 18-113, and is punishable by up to six (6) months in jail and up to a one thousand (\$1,000) dollar fine, or both. Each calendar day a violation continues shall be considered a separate offense.
- B. If the Director receives a signed written complaint of alleged non-compliance with the terms of a CAFO Siting or Operation Permit, or possible non-compliance by any government inspector, official or employee or any affected person, the Director shall immediately give notice of the complaint to the CAFO Siting Permit holder and shall determine the validity of the alleged non-compliance within ten (10) business days of giving such notice to the CAFO Siting Permit holder. The holder may submit rebuttal evidence to the Director concerning the alleged non-compliance within ten (10) calendar days of receiving a copy of the complaint.
- C. Written notice of the Director's decision shall be given to the permit holder and the complaining party. The CAFO Siting Permit holder may correct any non-compliance or appeal the Director's decision to the Commission within fifteen (15) calendar days of the date of the Director's determination. If no appeal is filed, the correction(s) shall be completed within thirty (30) days of the date of the Director's written determination unless the Director has granted a written extension. If a longer period of time is needed to make the correction(s), the Applicant can request a longer extension from the Commission. The complaining party may also

appeal the Director's decision to the Commission within fifteen (15) calendar days of the date of the Director's determination.

- D. If the Permit holder does not comply with the Director's decision, the Director shall forward the complaint to the Commission for further consideration. The Commission shall proceed with a public hearing as set forth below. If the Permit holder does not correct the violation as directed by the Director or the Commission, the Commission may revoke, suspend, or modify the CAFO Siting and/or Operation Permit, and/or request the Board to direct the Elmore County Prosecutor to initiate a misdemeanor prosecution or an action in district court requesting injunctive relief.
- E. If the complaint of non-compliance is based on an alleged violation of State or Federal laws, rules or regulations, the Director or Commission shall forward the complaint to the applicable enforcement agency and defer to the determination of that agency. In such situations, time limits in this Ordinance shall be tolled until a response is received from the relevant agency.
- F. If either the Permit holder or complaining party appeals the Director's decision to the Commission, the Commission shall hold a public hearing on the complaint noticed in compliance with this Ordinance. The public hearing shall be advertised and conducted according to the requirements of this Ordinance and Idaho Statute § 67-6509; provided however, notice shall also be provided by certified mail to property owners within a minimum of two (2) miles of the CAFO Facility Area. The Director shall also physically post notices at the external boundaries of the CAFO Facility Area at least thirty (30) days prior to the hearing. If the Commission does not decide to revoke the CAFO Siting Permit, no findings of fact and conclusions of law shall be made. If the Commission decides to revoke, suspend, or modify the CAFO Siting and/or Operation Permit, findings of fact and conclusions of law shall issue.
- G. The Permit holder or complaining party may appeal the decision of the Commission to the Board provided the appeal is submitted within fifteen (15) calendar days from the Commission's action. The Board shall follow the same procedures as outlined for the Commission. A finding of fact and conclusions of law shall be provided to the Commission, Permit holder and complaining party if the Board does not uphold the Commission's decision.
- H. The Commission may also at any time take immediate action to protect the public from immediate danger in accordance with the process set forth in Idaho's Administrative Procedure Act, specifically Idaho Statute § 67-5247.