

(E) Special Exceptions and Districts Where They May Be Permitted. The following uses shall require approval as special exceptions. They shall be subject to the specific conditions imposed and approved by the Board of Zoning Appeals:

| <u>NO.</u> | <u>SPECIAL EXCEPTION</u> | <u>DISTRICT(S) IN WHICH USE MAY BE PERMITTED</u> | <u>PAGE NO.</u> |
|------------|---|--|-----------------|
| (67) | <u>Concentrated Feeding Operation (CFO)</u> | A-1 and A-2 | |

(F) Other Requirements for Special Exceptions. Following are specific requirements for special exceptions: (The special exceptions are referred to by name and number indicated in Subsection (E) herein.)

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| (67) | <p><u>Concentrated Feeding Operation (CFO)</u></p> <p>I. TITLE, PURPOSE AND INTENT</p> <p>(A) <u>Title.</u> This Ordinance shall amend the Fayette County, Indiana Connerville, Indiana Area Zoning Code and be known, cited and referred to as the Fayette County Confined Feeding Operation Siting Ordinance.</p> <p>(B) <u>Purpose.</u> The purposes of this Ordinance are to:</p> <ol style="list-style-type: none"> (1) To assure that any development of CFOs in Fayette County will preserve public health and safety; (2) Balance property rights of the operators of CFOs with neighboring property owners; (3) Preserve property values of all rural land uses; (4) To facilitate economic opportunities for local residents; (5) Diversify the agricultural economy of Fayette County. <p>(C) <u>Intent.</u> It is the intent of the Fayette County Confined Feeding Operations Siting Ordinance to provide a regulatory scheme for the construction and operation of confined feeding / concentrated animal feeding operations in Fayette County; subject to reasonable restrictions these regulations will preserve health and safety of the public and balance the property rights of all property owners.</p> <p>II. DEFINITIONS</p> <p>A. <u>Separation Criteria Definitions</u></p> <ol style="list-style-type: none"> 1. Separation distance: Separation distance is the measured distance from a livestock structure to a residential structure; from a livestock structure to the property line of a public use area such as a park, campground, or nature preserve; or from a livestock structure to the property line of a church, or a school (does not include home schooling). 2. Additional separation distance: The additional distance that is greater than the minimum required separation distance between a livestock structure and a residential structure, a public use area, a church or a school. 3. Section density: The number of residential structures within the limits of a ½ mile radius drawn around the center point of a proposed livestock structure. 4. Livestock structure: For the purposes of this code a livestock is a structure that contains livestock and/or animal manure storage including deep pits and lagoons. 5. Public use: Any portion of land owned by the United States, the state, a political subdivision, or a private entity with facilities that attract the public to use the area for significant periods of time. Facilities include picnic grounds, campgrounds, lodges, shelter houses, playground equipment, lakes, and swimming beaches. It does not include highways, road rights-of-way, parking areas, recreational trails or other areas where the public passes through the area. 6. Non-farm home/residence: Any dwelling unit that is not located on the parcel where the proposed livestock operation is located. 7. Farm home/residence: Any house occupied by the applicant that is either on the parcel where the proposed livestock operation is located, or lies within the “section density” area. <p>B. <u>Odor Management Definitions</u></p> <ol style="list-style-type: none"> 1. Manure application: This refers to the method utilized by the applicant to apply manure as a |
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fertilizer.

- a. Liquid manure injection:
- b. Liquid manure 24 hour incorporation:
- c. Dry manure 24 hour incorporation:

2. **Odor abatement:** There are two tiers of odor abatement practices based on effectiveness with the Tier One practices more effective. The intent of odor abatement practices is to encourage the use of multiple abatement practices.

a. **Tier One Odor Abatement Practices**

- i. Driveway sprinkling – this shall be of a substance determined by producer/owner and might include emulsified oil, water, or some type of dust stay material similar to that used by the county highway department. The frequency will be on an as needed base
- ii. Filtration (bio-filters or biomass filters installed on appropriate exhaust fans)
- iii. Anaerobic digester
- iv. Permeable cover or impermeable cover for manure storage and lagoon
- v. Liquid manure storage structure is covered
- vi. Composting
- vii. Aeration

b. **Tier Two Odor Abatement Practices**

- i. Shelterbelt- Trees and shrubs must have an initial minimum height of three (3') feet to have desired effect on odors prior to startup of operation. Minimum of two rows of trees and shrubs, of both fast and slow-growing species that are well suited for the site
- ii. Windbreak walls
- iii. Diet formulation
- iv. Manure additives
- v. Solids separation

C. Site and Facility Design and Operational History Definitions

- 1. **Truck turnaround:** This is to create a driveway large enough to maneuver semis and other traffic adequately. This is in place so the public right-of-way is not jeopardized.
- 2. **Backup route:** The backup route is provided in case part of the primary access route becomes impassable for any reason. Identifies the state highway and county highways used and identifies all bridges and fords that may become impassable due to flooding.
- 3. **Primary route:** The primary route is the route that will be used to access to site for deliveries and pickups. Identifies the state highway and county highways used and identifies all bridges and fords that may become impassable due to flooding.
- 4. **Certified watering systems:** An industry proven technique that will reduce the amount of water used in the CFO operation.
- 5. **Applicant's environmental operating history:** These points are subtracted from an applicant with a history of environmental violations over the preceding five years.
 - a. **Interest:** Interest means ownership of a confinement feeding operation as a sole proprietor or a 10 percent or more ownership interest held by a person in a confinement feeding operation as a joint tenant; tenant in common, shareholder, partner, member, beneficiary or other equity interest holder. Ownership interest is an interest when it is held either directly, indirectly through a spouse or dependent child, or both.
 - b. **Violation:** An environmental violation is an order from the Indiana Department of Environmental Management or final court ruling against the construction permit applicant for environmental violations related to an animal feeding operation that resulted in a discharge.
- 6. **Existing land use:** This refers to how the land for the proposed operation is currently being used. The purpose is to protect farm land by encouraging the use of less productive land for siting a CFO.
- 7. **Closure Plan:** A closure plan is a plan for closing down a CFO that ceases operation and includes removing manure from manure storage structure and disposing of the manure in a manner consistent with Indiana and Federal regulations.

D. Other Criteria Definitions

1. **Operator Occupied Dwelling.** If the nearest dwelling to the proposed site is owned and occupied by the operator the proposal will earn twenty points.
2. **Demonstrated community support:** The purpose is to demonstrate the level of community support that exists in the vicinity of the applicant's proposed site.
3. **Neighbor notification:** The purpose is to promote communications and relations between the applicant and neighboring property owners. This is in addition to and before any state or local notification requirements. This is to be done through personal visits and shall use a standard form adopted by the Area Plan Commission. Signing this form will not be construed as supporting the applicant's proposed CFO.

E. Related Definitions

- (1) **Confined Feeding Operation (CFO):** Any confinement of at least 300 cattle, 600 swine or sheep or 30,000 fowl for at least 45 consecutive days where ground cover or vegetation is not sustained over at least 50 percent of the confinement area. Excludes livestock sales yards.
- (2) **Best Management Practice (BMP).** An agricultural practice that has been determined to be an effective, practical means of preventing or reducing point and nonpoint pollution.
- (3) **Setback:** The distance from a property line, curb, road, public sidewalk, private or public right-of-way, or any other legally established reference line within which no building or structure may be erected.
- (4) **Notice of Agriculture Activity.** A notice signed and recorded as part of the permanent property record in the Fayette County Recorders Office by property owners constructing new dwelling units in agricultural areas and future owners of same dwelling unit that the property owner understands the dwelling is located in an agriculture zoning district, that agriculture is the primary use in the zoning district and that the property owner is aware of the Indiana Right to Farm Law and the limitations the law places on nuisance law suits.
- (5) **Notice of Water Availability.** A notice signed and recorded as part of the permanent property record in the Fayette County Recorders Office by property owners constructing any structure requiring potable water that the availability of ground water varies greatly throughout Fayette County and that there is no guarantee that groundwater will be found in sufficient quantities to support the proposed development.
- (6) **Applicant/operator.** For the purposes of this ordinance the applicant/operator is the owner/developer/land owner/lease holder of a CFO and/or the property on which the CFO is located. It does not include the individual or entity for which an applicant/operator is raising animals under contract.

III. APPLICABILITY

The provisions of these Confined Feeding Operations Siting regulations are applicable to those districts which allow CFOs, governing the siting of CFOs.

IV. PROHIBITION

No person or entity shall construct, operate, or locate within Fayette County a CFO without having fully complied with the provisions of the Confined Feeding Operations Siting Regulations.

V. CONFLICT WITH OTHER REGULATIONS

Nothing in the Confined Feeding Operations Siting Regulations is intended to preempt other applicable state and federal laws or regulations. Nor are they intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute or provision of law. In the event that any provision of these regulations imposes restrictions different from any other ordinance, rule, regulation, statute, or provision of law, the provision that is more restrictive or that imposes higher standards shall govern.

VI. DISTRICT REGULATIONS

- (A) Location. Confined Feeding Operations will be permitted, or not permitted, in various zoning districts as prescribed in this section.

- (1) In the A-1 Zoning District any proposed CFOs that scores a minimum of 90% of possible points on the CFOs Evaluation Form are allowed as a permitted use.
- (2) In the A-1 Zoning District any proposed CFOs that scores between 55% and 90% of possible points on the CFOs Evaluation Form may only be permitted as a Special Exception.
- (3) In the A-1 Zoning District any proposed CFOs that score less than 55% of possible points on the CFOs Evaluation Form are not permitted.
- (4) In the A-2 Zoning District any proposed CFOs that score a minimum of 55% of possible points on the CFOs Evaluation Form may only be permitted as a Special Exception.
- (5) In the A-2 Zoning District any proposed CFOs that scores less than less than 55% of possible points on the CFOs Evaluation Form is not permitted.
- (6) CFOs are not permitted in all other zoning districts.

VII. DEVELOPMENT STANDARDS

A. CFO Development Standards

- (1) Minimum Separation distances:
 - (a) CFO to residential separation distance = 1,620 feet
 - (b) CFO to Public Use Area separation distance = 1 mile
 - (c) CFO to church or school separation distance = 1 mile
 - (d) CFO separation distance from City of Connersville and Town of Glenwood corporate boundaries = 1 mile
 - (e) Residential separation distances are measured from the nearest point of any CFO related structure to the nearest point of the dwelling unit.
 - (f) Public Use Area, Church and School separation distances are measured from the CAFO structure to the property line of the public use area, church or school.
 - (g) Hamlets of Bentonville, Fairview, Falmouth, Harrisburg, Orange, Columbia, Nulltown, Alpine, Everton, Alquina, Lyonsville, Springersville and Waterloo = 1 mile
 - (h) Recorded rural subdivisions = 1 mile
 - (i) Any of the 52 county cemeteries = ¼ mile
- (2) Minimum Lot Size: 10 acres
- (3) Minimum Road Frontage (lot width): 500 feet
- (4) Minimum Setbacks from any structure (includes lagoons)
 - (a) Front: 100 feet
 - (b) Side: 100 feet
 - (c) Rear: 100 feet

B. Residential and Additional Development Standards

- (1) **Reciprocal Separation Distance:** A single family dwelling or subdivision permitted under the zoning code and subdivision ordinance shall not locate within ¼ mile of an existing livestock or poultry facility, except for a dwelling related to the farm operation.
- (2) A CFO or CAFO may not locate within ¼ mile feet of an existing residence or platted subdivision, except for a dwelling which the legal residence of the owner of the CFO.
- (3) All applicants, developers, landowners who develop any residential use within a zoning district that allows CFOs, as either a permitted use, or as a special exception shall be required to enter into an agricultural clause with an accompanying deed restriction to bind successive owners prior to the issuance of any permits by Area Plan Commission staff.
- (4) Residential subdivisions of property within ¼ mile of an agricultural zone must address the following as part of the Primary Approval: 1) Off-site surface drainage impacts; 2) Subsurface tiling systems impacts; and 3) Security of agriculture zoned property from residential uses.
- (5) A CFO shall have all required Indiana Department of Environmental Management approvals and be in compliance with IDEM regulations prior to the issuance of any Improvement Location Permits.

VIII. SUBMISSION REQUIREMENTS AND APPROVAL PROCESS

- ### **A. The following items must be submitted with the completed application.**

- (1) Area map showing distance to corporate boundaries of the City of Connersville.
- (2) Transportation plan showing primary and secondary access routes including name of highways used, road surface and distance traveled along each highway.
- (3) Site Development Plan. Development Plan shall be drawn to scale and submitted with application. The site plan must include the following items:
 - (1) Location of all existing and proposed structures
 - (2) Distance of all existing and proposed structures to property line.
 - (3) Location and dimensions of all drives, parking and loading areas
 - (4) Construction and post construction erosion control plans
 - (5) Landscape plans including existing and proposed vegetative screening including the width of any vegetative buffer and description of plant materials (functional height, functional width, and tree, shrub, deciduous or evergreen) width used to provide four season screening.
 - (6) Any Best Management Practices external to the structure
- (4) Map showing all properties within one mile of exterior wall of all proposed CFO structures
 - (a) All dwellings ½ mile or closer to proposed CFO structures,
 - (b) All churches, schools and public use areas within one mile of proposed CFO/CFO structures
- (5) List of all Tier 1 and Tier 2 Best Management Practices identified in the CFO Evaluation Form to be used.
- (6) Air and Water Pollution Control. Proof that all applications required under current federal and state regulations have been submitted. No Improvement Location Permit and Building Permits will be issued without all required federal and state permits being issued.
- (7) Confined Feeding Operation - Health Approval Required. Approval by the Water Pollution Control, Department of Environmental Management, is required for confined feeding operations in accordance with I.C. 13-1-5.7.
- (8) Waste Handling and Disposal shall be in compliance with NRCS Standard Nutrient Management 590.
- (9) Copy of the Confined Feeding Operation application package submitted to the Indiana Department of Environmental Management.
- (10) Groundwater study from a water resource specialist (such as a hydrologist, or geologist) certifying that the water usage at the proposed Confined Feeding Operation will not lessen the water supply or water quality for those then residing in that area..

B. Area Plan Commission Review Process

The following procedures shall govern the application submission, review and issuance of all permits for any CFO under this ordinance.

- (1) **Applications.** All applications for any permit associated with the development of a CFO shall be submitted to the Director on an application form provided by the Fayette County Area Plan Commission.
- (2) **Fees.** Each application for a the development of a CFO must be accompanied by the applicable fees as adopted under this code and the complete submission requirements as specified under Paragraph (A) of Section VIII.
- (3) **Completeness.** Within ten business days of receiving an application for the development of a CFO the Director or designated staff member shall review the application for completeness. If the application is incomplete Area Plan Commission staff shall send notice to the applicant detailing the specific ways in which the application is incomplete or deficient. If the application is found complete the application shall be processed with a score issued using the scoring criteria form included in Section IX of these CFO siting regulations.
- (4) **CFO Evaluation and action.** Once application is made to the Fayette Area Plan Commission staff will assess the completed application using the following scoring criteria to:
 - (a) Approve the application for a CFO in the A-1 zoning district if the application scores at least 329 points (70 percent of potential points). Area Plan Commission staff shall send notice to the applicant that the permit is approved and shall issue all required Improvement Location and Building Permits
 - (b) Schedule the application for public hearings for a Special Exception if the application scores between 258 points (55 percent of potential points) and 329 points in the A-1 zoning district. Area Plan Commission staff shall send notice, which shall include a copy of the evaluation, informing the applicant that the proposed CFO may only be approved as a Special Exception and that the applicant has 15 days to request that a petition for a CFO be placed on the agendas of the next available APC and BZA meetings.
 - (c) Schedule the application for public hearings for a Special Exception if the application scores at least 258 points in the A-2 zoning district. Area Plan Commission staff shall send notice, which shall include a copy of the evaluation, informing the applicant that the proposed CFO that the proposed CFO qualifies to be heard as a Special Exception and shall be placed on the agendas of the next available APC and BZA meetings.

- (d) If a proposed CFO located in the A-1 or A-2 zoning districts fails to score 258 points on Area Plan Commission staff shall send notice, which shall include a copy of the evaluation, detailing how the proposed CFO fails to meet the minimum requirements to qualify for a special exception hearing and shall also inform the applicant of the right to appeal the to provide written appeal of the decision to the Fayette County Board of Zoning Appeals within thirty days of the receipt of the notification letter. The appeal letter must provide in detail how the decision to deny the application is in violation of the conditions of the Fayette County Area Zoning Code.
 - (5) **Public Notice.** The petitioner is responsible for ensuring that the public notice and notification of abutting property owners meets the requirements of the Indiana Code and of the rules of the Fayette County Area Plan Commission and Board of Zoning Appeals, including the costs of the public notice and notification of abutting property owners.
- C. Improvement Location Permit and Certificate of Occupancy Requirements
- (1) Verification that water and sewer service is available from Connersville Utilities or Everton Water if water and sewer are to be supplied by either public utility and that public water and sewer will be used by the resident.
 - (2) A Notice of Water Availability must be recorded as part of the permanent property records by the property owner with the Fayette County Recorder prior to issuing an Improvement Location Permit for any use requiring potable water in any part of Fayette County, Indiana not served by a public water supply.
 - (3) Well must be located at least 15 feet from a property line. At the final inspection the well must be functioning without topping off from an offsite water supply in order to be issued a Certificate of Occupancy.
 - (4) A Notice of Agriculture Activity must be recorded as part of the permanent property records by the property owner with the Fayette County Recorder prior to issuing an improvement Location Permit for any property located outside of the corporate limits of the City of Connersville.

IX. CFO POINT BASED PERMIT SYSTEM

The purpose of this point based system for siting Confined Feeding Operation is to provide an objective means for determining the appropriateness of a location based on specific criteria to minimize the potential for nuisance issues between a CFO and neighboring residential and other nonagricultural uses such as churches, schools and public recreation areas.

(A) Scoring criteria used with this point system include:

- (1) **Separation criteria** include *separation distances* between the proposed CFO and residential dwellings, churches, schools and public recreation areas and *residential unit density*. These criteria are adopted to reduce the potential nuisance element of Animal Feeding Operations when in close proximity to residential and other public and private nonagricultural uses and areas with larger numbers of nonfarm residences. Points for additional separation distance are issued because additional separation distance can play a role in reducing the potential for nuisance problems between CFO operators and nearby residential; school, church and public use areas.
- (2) **Odor management** involves the use of odor reduction best management practices to reduce the nuisance effects of odors associated with CFO operations.
- (3) **Site and facility design and operational history** takes into consideration how the facility is designed to minimize potential effects to the county highway system, ground water supply, the wise use of agricultural land, take into consideration the environmental operations record of the petitioner and ensure that a closure plan is in place to help insure the CFO is properly closed and cleaned once the CFO is no longer operating.

(B) CFO Evaluation Form

| SCORING CRITERIA | | Potential Score |
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| SEPARATION CRITERIA | | |
| 1. Additional separation distance to nearest existing residence or subdivision over the minimum separation distance. (<i>Dwellings owned by the petitioner are not included.</i>) | 0 ft. to 250 ft. 251 ft. to 500 ft. 501 ft. to 750 ft. | 25 45 65 |

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| | | 751 ft. to 1000 ft. Greater than 1000 ft. | 85 100 | | |
| 2. Additional separation distance to public use area over the minimum separation distance | | 0 ft. to 250 ft. 251 ft. to 500 ft. 501 ft. to 750 ft. 751 ft. to 1000 ft. Greater than 1000 ft. | 5 10 15 20 25 | | |
| 3. Additional separation distance to nearest school or church over the minimum separation distance | | 0 ft. to 250 ft. 251 ft. to 500 ft. 501 ft. to 750 ft. 751 ft. to 1000 ft. 1001 ft. to 1 mile Greater than 1 mile | 5 10 15 20 25 30 | | |
| 4. Section density: residential unit density within a ½ mile radius of the proposed site. (<i>Dwellings owned by the petitioner are not included.</i>) | | | 0 50 1-5 30 6-10 25 11-17 20 18-23 15 24-38 10 39-49 5 50+ 0 | | |
| ODOR MANAGEMENT | | | | | |
| 5. Odor Abatement | | | | | |
| 5a. Tier 1 odor abatement measures (>25% effectiveness) | | | Tier 1 5 points per abatement measure with a maximum of 40 points | | |
| <ul style="list-style-type: none"> • Sprinkling of all gravel drives • Filtration (bio-filters or biomass filters installed on appropriate exhaust fans) • Anaerobic digester • Permeable cover or impermeable cover for manure storage and lagoon • Liquid manure storage structure is covered • Composting • Surface lagoon is aerated • Other industry approved technology as approved by the BZA | | | | | |
| 5b. Tier 2 odor abatement measures (up to 25% effectiveness) | | | Tier 2 5 points per abatement measure with a maximum of 30 points | | |
| <ul style="list-style-type: none"> • Utilization of a shelterbelt around confinement structure (<i>Use NRCS shelterbelt standards</i>) • Windbreak walls (<i>Use NRCS standards and identify standards that consider the effect of topography</i>) • Diet formulation • Manure additives • Solids separation • Other industry approved technology as approved by the BZA | | | | | |
| 6. Adoption and implementation of one of the following manure application practices to reduce odor dispersion. | | <ul style="list-style-type: none"> • Liquid manure injected • Liquid manure incorporated within 24 hours of application • Dry manure land applied and incorporated within 24 hours | 30 20 30 | | |
| SITE AND FACILITY DESIGN, OPERATIONAL HISTORY | | | | | |
| 7. Truck turnaround area designed so that semi-trailers do not have to back onto the road from the facility or from the road into the facility. | Truck turnaround | | 25 | | |
| 8. Provide the primary and backup route used to access the site for deliveries and pickups. | | | 10 | | |
| 9. Certified watering systems that reduce water use. | Wet/dry feeders or other feeding and watering systems that significantly reduce water use. | | 25 | | |
| 10. Applicant's animal feeding operation environmental violation history for the last five years at all facilities in which the application has an | <ul style="list-style-type: none"> • Applicant/operator holds an interest in a livestock facility has had 1 violation in past five years that resulted in a discharge. • Applicant/operator holds an interest in a livestock facility has had more than 1 violation | | -20 -20+(-10 x total number of violations) | | |

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| interest. | in past five years that resulted in a discharge. | | | |
| 11. Exiting land use | | | | |
| | Tilled | 10 | | |
| | Wooded | 20 | | |
| | Pastured | 35 | | |
| 12. CFO application contains a financial or other contractual guarantee that will ensure that in the event of a business failure of the CFO stored manure will be readily and easily removed from the storage structure and disposed of in a manner consistent with current Indiana and federal rules regulating the use and disposal of manure. | | 10 | | |
| OTHER CRITERIA | | | | |
| 13. The nearest residence to the proposed site is occupied by the operator. | | 20 | | |
| 14. Demonstrated community support: Letters of support from a majority of property owners within a two mile radius and a local official, or a state legislator that represents the district in which the site is located, | | 20 | | |
| Or | | | | |
| Direct verifiable neighbor notification using a form provided by the Fayette County Area Plan Commission office. | ¼ mile | 5 | | |
| | ½ mile | 15 | | |
| | 1 mile | 30 | | |
| MAXIMUM NUMBER OF POINTS POSSIBLE | | 460 | | |
| | | Total Points | | |
| | | Minimum Score to qualify for a Special Exception in A1 and A2 - 55% = 253 | | |
| | | Minimum Score for permitted use in A1 Zoning District - 90% = 414 | | |
| <p>Separation Criteria = 44 % of total maximum points Odor Management = 22 % Site and Facility Design, Operational History = 23 % Other Criteria = 11 %</p> <p>Failures to comply with the conditions included within this application are violations of the Area Zoning Code are subject to the enforcement provisions of the zoning code.</p> | | | | |