

Montgomery County Board of Commissioners

Ordinance 2020-1

An Ordinance Adopting Text Amendment to Zoning Ordinance for Siting of Confined Feeding Operations

Whereas, on December 20, 2019, the Montgomery County Plan Commission approved a favorable recommendation for a text amendment to the Montgomery County Zoning Ordinance which would regulate the siting of confined feeding operations; and

Whereas, the Plan Commission certified its recommendation to the Montgomery County Board of Commissioners (the "Board"), and the Board published notice that it would consider the proposed text amendment on January 27, 2020; and

Whereas, the proposed text amendment would add a new article, Article 10, to the Zoning Ordinance, and this Article regulates the siting of confined feeding operations in the unincorporated areas of Montgomery County; and

Whereas, because this text amendment received a favorable recommendation from the Plan Commission, the Board must either adopt, reject, or amend the proposed text amendment to the Zoning Ordinance; and

Whereas, the Commissioners, having considered the recommendation of the Plan Commission, public comments and written correspondence from citizens regarding the proposed text amendment to the Zoning Ordinance now find as follows:

1. The proposed text amendment to the Zoning Ordinance is consistent with the Comprehensive Plan in that it regulates siting of confined feeding operations but generally allows such operations in the Agricultural District;

2. The proposed text amendment to the Zoning Ordinance pays reasonable regard to current conditions and the character of current structures and uses in each district by allowing traditional livestock feeding operations to develop and providing protections for neighboring residential and other uses and districts;

3. The proposed text amendment to the Zoning Ordinance pays reasonable regard to the most desirable use for which land in each district is adapted by allowing livestock feeding operations in agricultural districts;

4. The proposed text amendment to the Zoning Ordinance promotes the conservation of property values throughout the unincorporated areas of the County by establishing general regulations regarding the siting of confined feeding operations while protecting neighboring residential and other uses, thereby promote orderly development, enhancing development standards, and mitigating conflicting uses; and

5. The proposed Zoning Ordinance promotes responsible development and growth by regulating siting of confined feeding operations in order to mitigate conflicting uses, allow for appropriate vehicular access and internal traffic flow, provide protections for natural assets, streams and rivers, legal drains and ditches, public parks and schools, and other public amenities.

Whereas, the Commissioners also find that the proposed text amendment to the Zoning Ordinance, namely Article 10, should be adopted and incorporated into the County Zoning Ordinance; and

Whereas, the Auditor will record this ordinance and the text amendment to the Zoning Ordinance in the Office of the Recorder.

IT IS, THEREFORE ORDAINED that the proposed text amendment to the Zoning Ordinance, namely Article 10, attached to this ordinance, is hereby adopted and is hereby incorporated into the Zoning Ordinance.

IT IS FURTHER ORDAINED that the Auditor will record this ordinance and the text amendment to the Zoning Ordinance in the Office of the Recorder of Montgomery County.

IT IS FURTHER ORDAINED that the text amendment to the Zoning Ordinance will become effective on February 1, 2020.

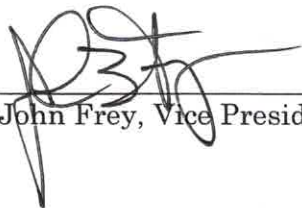
IT IS FURTHER ORDAINED that any other provision of the County Code which is not specifically amended by this ordinance shall remain in full force and effect.

Adopted this 27th day of January, 2020.

Montgomery County Board of Commissioners:




James D. Fulwider, President



John Frey, Vice President

Dan Guard, Member

Attest:


Jennifer Andel, Auditor

This ordinance was prepared by Daniel L. Taylor, Attorney-at-Law, Taylor, Chadd, Minnette, Schneider & Clutter, P.C., 105 North Washington Street, Crawfordsville, Indiana 47933. Telephone 765-361-9680.

I affirm under penalties for perjury that I have taken reasonable care to redact each social security number in this document, unless required by law.

Daniel L. Taylor

ARTICLE 10 – CONFINED FEEDING OPERATIONS

10.01 DEFINITIONS: The following definitions apply to this article and to the Zoning Ordinance:

(A) Animal Unit: The term “animal unit” is a unit of measurement calculated by multiplying the number of animals contained in a Confined Feeding Operation (CFO) or Concentrated Animal Feeding Operation (CAFO) site by the animal unit factor corresponding to the species, gender, age, etc. of the animals on the site. Animal units are used to determine separation distances for CFO/CAFO sites.

(B) Animal Unit Factor: See Table in Section 10.03(G)(3) of this article.

(C) Clean Record: The term “clean record” means a record with the Indiana Department of Environmental Management (IDEM) that is without any violations during the previous five (5) year period.

(D) CFO/CAFO Applicant: The terms “CFO Applicant” and “CAFO Applicant” refer to a person or persons, legal entity or legal entities who apply to the Montgomery County Zoning Administrator for approval of CFO/CAFO site(s).

(E) Confined Feeding Operation: The term “Confined Feeding Operation” means:

(1) any confined feeding of at least:

- (a) 300 cattle;
- (b) 600 swine or sheep;
- (c) 30,000 fowl; or
- (d) 500 horses.

(2) any Animal Feeding Operation (AFO), as defined in 327 IAC 19-2-3,

- (a) electing to be subject to Indiana Code 13-18-10; or
- (b) that is causing a violation of
 - (i) water pollution control laws;
 - (ii) any rules of the Environmental Rules Board established under Indiana Code 13-13-8; or
 - (iii) the provisions of Indiana Code 13-18-10.

For purposes of this definition, “confined feeding” means the confined feeding of animals for food, fur, or pleasure purposes in lots, pens, ponds, sheds, or buildings where animals are confined, fed, and maintained for at least 45 days during any 12 month period and where ground cover or vegetation is not sustained over at least 50% of the animal confinement area. The term confined feeding does not include (1) a livestock market where animals are assembled from at least 2 sources to be publicly auctioned or privately sold on a commission basis and that is under state or federal inspection or (2) a

livestock sale barn or auction market where animals are kept for not more than 10 days. A confined feeding operation is also referred to as a CFO. (Authority 327 IAC 19-2-7).

(F) Concentrated Animal Feeding Operation: The term "Concentrated Animal Feeding Operation" is defined in 40 Code of Federal Regulations §122.23 and is also referred to as a CAFO.

(G) Existing CFO/CAFO: The terms "existing CFO" and "existing CAFO" mean a completed CFO/CAFO site permitted by the Indiana Department of Environmental Management as of the effective date of this Article.

(H) Homestead: For purposes of CFO/CAFO site evaluation, at least ten percent (10%) of a residence held as joint tenant, tenant in common, tenant by the entirety, shareholder, partner, member, beneficiary or other legally recognized equity interest holder. Ownership by a person's spouse, child and/or parents may also qualify as a homestead.

(I) IDEM: The term "IDEM" means the Indiana Department of Environmental Management.

(J) Manure: The term "manure" means any animal feces or urine, any biological material such as bedding which has been in contact with animal manure or urine, and any storm water, groundwater, or process water that has been commingled with animal feces or urine.

(K) Manure Application: The term "manure application" means the method of applying manure by injection or land application. Surface application on an established crop refers to a green established crop.

(L) Odor Abatement: For the purposes of the CFO/CAFO site evaluation, the term "odor abatement" means the methods of odor control. Acceptable methods of odor abatement are listed in Table 10-1.

(M) Public Use Area: The term "public use area" means land owned by the United States of America, the State of Indiana, or a political subdivision of the State of Indiana with facilities that attract the public to congregate and remain in the area for significant periods of time.

(N) Shelter Belt. The term "shelter belt" means facilities and structures designed to control impacts of CFOs/CAFOs, as provided in and in accordance with the Natural Resources Conservation Service (NRCS) Conservation Practice Standard for Windbreak/Shelterbelt Establishment Code 380.

(O) Truck Turnaround. For purposes of CFO/CAFO site evaluation, the term "truck turnaround" means a cul-de-sac or T-shaped turnaround area provided so as to prevent semi-trailers from backing off of or onto a road. The truck turnaround area must be adequate for a semi-trailer to turn around on the site and must be covered in an all-weather surface.

(P) Use of Attachment with Application. For purposes of CFO/CAFO site evaluation, the term "use of attachment with application" means an attachment used in the process of manure application to cover exposed area of the equipment and control of spray manure.

(Q) Water Conservation: The term "water conservation" means the methods that significantly reduce the amount of water used in the CFO/CAFO, such as wet/dry feeders or other feeding and watering systems.

(R) Violations, IDEM or EPA: The term "violation, IDEM or EPA" means an enforcement action resulting in an Agreed Order or a Commissioner's Order within the preceding five (5) years from the Indiana Department of Environmental Management, a Consent Agreement or Final Order within the preceding five (5) years from the United States Environmental Protection Agency, or a finding from a court of law that a person or persons, or a legal entity or legal entities, has caused a substantial endangerment to human health or the environment. A legal entity shall be deemed to have incurred a violation if an owner, member, shareholder, or interest holder of at least ten percent (10%) of the entity has incurred a violation personally.

10.02 PURPOSE AND APPLICABILITY

(A) Purpose. The purpose of this article is to incorporate into the Montgomery County Zoning Ordinance a system for evaluating sites for CFO/CAFO facilities. It is acknowledged that agriculture is an essential component of the Montgomery County economy and the progress of the agriculture industry must be recognized and planned for in the Montgomery County Zoning Ordinance.

(B) Applicability. The standards and regulations contained in this article apply to the location and planning of CFO and CAFO sites in Montgomery County. Certain provisions do not apply to existing CFOs and CAFOs. However, the standards and regulations apply to any new CFOs and CAFOs, as well as the expansion of existing CFOs and CAFOs.

(C) Other Regulation Authority. It is acknowledged that CFOs and CAFOs are permitted and regulated by the Indiana Department of Environmental Management and regulated further by the Office of the Indiana State Chemist, the Indiana State Board of Animal Health and other federal and state agencies. The purpose of this article is to determine, under Montgomery County's zoning authority, the appropriate location for CFOs and CAFOs. Nothing in this article should be read to conflict with existing federal or state regulation of CFOs and CAFOs or to regulate these facilities or their operation.

10.03 SITING REQUIREMENTS

(A) Approval Required. No person or entity will start construction of or operate a new CFO/CAFO or expand an existing CFO/CAFO without first obtaining approval from the Montgomery County Zoning Administrator as required by this article.

(B) Permitted Zoning Districts. A CFO or CAFO may be located only on a parcel of land in an Agriculture zoning district.

(C) Lot Size. A CFO or CAFO may be located only on a parcel not less than the acreage required to meet State and Local agency ordinances and restrictions, regardless of the amount of space or acreage to be allotted for the barns or operating facilities.

(D) Minimum Front Yard Set Back: The minimum front yard setback is two hundred fifty (250) feet from the centerline of any road to the nearest foundation of the CFO/CAFO. If a CFO/CAFO abuts more than one road, then the front yard setback will apply to each property line with road frontage.

(E) Minimum Side Yard Set Back: The minimum side yard setback is two hundred fifty (250) feet from the side property lines to the nearest foundation of the CFO/CAFO.

(F) Minimum Rear Yard Set Back: The minimum rear yard setback is two hundred fifty (250) feet from the rear property line to the nearest foundation of the CFO/CAFO.

(G) Minimum Road Frontage: The minimum road frontage is one hundred fifty (150) feet.

(H) Permitted Entrances: A CFO/CAFO site may have no more than one (1) entrance to a county road, and the applicant must obtain a driveway permit from the Montgomery County Highway Department prior to construction of the entrance. A CFO/CAFO site may have up to two (2) entrances to a State Highway or State Road, and the applicant must obtain a driveway permit from the Indiana Department of Transportation prior to construction of the entrance (s).

(I) Required Minimum Separation Distances:

(1) Residential Structure not located on the proposed site: the applicable separation distances are:

(a) Foundation to Foundation: at least 2,640 feet, as measured from the foundation of the CFO structure to foundation of the residential structure. This Residential separation distance allowed to be reduced to 1,320 feet with use of not more than four odor mitigation tactics in (10.1); and

(b) Property line to Property Line: Separation distance, from the property line of the CFO parcel to property line of the residential structure parcel is at least, 1,320 feet. This Separation distance can be reduced to 660 feet with use of not more than four odor mitigation tactics in table 10.1

(c) Calculation of Separation Reduction: The Separation Distance Reduction provided for in this subsection is calculated by multiplying each mitigation tactic used by 0.125 and then multiplying that product times the default separation distance. The maximum reduction is 50% of the applicable separation distance.

Separation Distance Reduction -Table 10.1

1.Deep pit	Minimum 14 month storage pit pumped once per year.
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2. Berm and Vegetation screens	Combination of berm and vegetation screen around perimeter of site.
3. Dietary program	Diet changed every 21 days to minimize nutrient excretion into pit.
4. Power washing	Animal barns washed and cleaned every 6 months to minimize dust particles that carry odor.
5. Slatted floors	Animals stay clean and reduces manure build up that creates odor.
6. Pit additives	Chemicals or Biologicals that reduce omission of odor by reducing pH levels.
7. Solid-liquid Separation	Separating urea from solid fecal matter mechanically or with sedimentation basin.
8. Air Treatment	Trapping air vented and treating prior to discharge to atmosphere.
9. Anaerobic Digester	Process by which microorganisms break down biodegradable material in the absence of oxygen.

- (2) School or educational institution – 5280 feet;
- (3) Church or religious institution – 2640 feet;
- (4) Open legal drain, stream or river (without a 20-foot filter strip) – 500 feet;
- (5) Open legal drain, stream or river (with a 20-foot filter strip) – 300 feet;
- (6) Municipality – 5280 feet;
- (7) Residential Subdivision – 2640 feet;
- (8) Public Use Area – 5280 feet;
- (9) Water Well (other than one used to service CFO/CAFO) – 500 feet;
- (10) High Employment Centers (100+ full-time equivalent employees) – 2640 feet;
- (11) Business or commercial use (not otherwise specified above) – 2640 feet;
- (12) Nucor Road – 3960 feet.

(J) Separation Distance Calculation Standards

- (1) The minimum distance from residential property does not apply to a residence owned by the CFO/CAFO operator;

(2) The minimum distances contained in (1) for neighboring residential homes will be increased based upon the number of head of livestock. This calculation is made by multiplying the number of head of livestock by the animal unit factor to determine the animal unit value. This animal unit value is then multiplied by a factor of 0.5 to create the adjusted separation distance from neighboring residential homes. The minimum separation distance will be 2640 feet even if the adjusted separation distance is less. The adjusted separation distance calculation is only used to increase the minimum separation distance.

(3) For purposes of calculating adjusted separation distances, the following animal unit factors will be used:

Animal Type	Animal Unit Factor
A. Dairy Cattle	
1. Mature Cow or Bull	1.4
2. Heifer	0.7
3. Calf	0.2
B. Beef Cattle	
1. Slaughtered Steer or Stock Cow	1.1
2. Feeder Cattle or Heifer	0.7
3. Cow and Calf Pair	1.3
4. Calf	0.2
C. Swine	
1. Boars or Sows, including litters	0.45
2. Finishers or gilts	0.4
3. Nursery pigs	0.07
D. Horse	1.0
E. Sheep and Lambs	0.1
F. Chickens	
1. Laying Hen or Broiler (liquid manure system)	0.011
2. Laying Hen or Broiler (dry manure system)	0.005

G. Turkeys		
1. Over 5 pounds (finishers)		0.018
2. Under 5 pounds (starters)		0.005
H. Ducks		0.01
I. Other animals not listed above		Avg. weight of animal in pounds divided by 1,100 lbs.

K. Truck Turnaround: A cul-de-sac or T-shaped turnaround area provided so as to prevent semi-trailers from backing off of or onto a road. The truck turnaround area must be adequate for a semi-trailer to turn around on the site and must be covered in an all-weather surface.

L. Clean Record: The proposed owner of the CFO is without any violations during the previous five (5) year period from (IDEM) Indiana Department of Environmental Management.

M. Neighboring Property Owner Waiver: A landowner, other than the CFO applicant, may waive the applicable separation distance by executing a written, irrevocable waiver which is in recordable form and in a form acceptable to the Montgomery County Zoning Administrator. This waiver must be submitted with the application, must create a covenant which runs with the land in perpetuity, and must be recorded in the Office of the Montgomery County Recorder.

N. Separation distances apply to CFO only. The separation distances provided for in this Article apply only to the siting of CFO facilities and do not in any manner restrict the rights of a landowner, other than the land on which the CFO is located, to use, develop and enjoy the landowner's real estate. These distances cannot be used by the applicant or any other person or entity against any other party or as a basis to restrict or limit the use, development or enjoyment of such real estate.

10.04 PROCEDURE

(A) Applications. All applications for siting approval must be submitted to the Montgomery County Zoning Administrator.

(B) Determination of Completeness: The Zoning Administrator will determine within ten (10) days of receipt of the application whether the application contains all information necessary for consideration. If the Administrator finds that the application is not complete, the Administrator will notify the applicant in writing of the information needed to make the application complete. The applicant must then provide the necessary information to the Administrator within 30 days. If the

applicant does not provide the information within 30 days, the Administrator will consider the application to be withdrawn. When the Administrator determines an application is complete, the Administrator will process the application and make a decision on the application within 30 days of the determination that the application is complete.

(C) Application Fee: The applicant will tender with the application the fee in the amount of \$500.00. This is a nonrefundable fee.

(D) Determination of Siting: The Zoning Administrator will determine whether the proposed site meets the siting standards and regulations of this Article and the requirements of the Zoning Ordinance. If the proposed site does not meet the siting standards, the Administrator will reject the application and notify the applicant in writing.

(E) Manure Application. All manure application methods must comply with the requirements of IDEM, the Office of the Indiana State Chemist, the Natural Resources Conservation Service, and any other federal or state regulatory body or agency with jurisdiction.

10.05 INSPECTIONS AFTER ISSUANCE OF CERTIFICATE APPROVING SITE

The Zoning Administrator has the right to inspect the CFO/CAFO after issuance of a certificate of approval, and all applicants consent to the Administrator's entry upon the site for the purpose of inspection.

10.06 VIOLATIONS AND REMEDIES

In the event that after the issuance of a certificate of approval, the Zoning Administrator determines that the CFO/CAFO is in violation of this article, the Administrator may impose a fine for the violation and seek enforcement of this article as provided for by Section 5.04 of the Zoning Ordinance.

10.07 APPEALS

Any person may appeal an order, requirement, decision or determination of the Zoning Administrator in the administration of this article to the Board of Zoning Appeals. All such appeals must be in writing and filed with the secretary of the Board of Zoning Appeals within thirty (30) days of the decision of the Zoning Administrator.