

**GEM COUNTY, ID
CONFINED ANIMAL FEEDING OPERATIONS (CAFO) ORDINANCE**

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CHAPTER 1

PURPOSE

The purpose of this ordinance is to provide regulations and standards for the creation of confined animal feeding operations in Gem County, as required by the State of Idaho in Idaho Code 67-6529(2). The regulations contained herein are designed to protect and promote the public health, safety and community welfare of the County and to encourage and promote managed development of new and existing confined animal feeding operations.

CHAPTER 2

DEFINITIONS

ADMINISTRATOR. The Administrator of the Gem County Development Services Department, his or her designee, or another official expressly appointed by the Gem County Board to administer the Gem County Zoning Ordinance.

AFFECTED PERSON. As used herein, an affected person shall mean one having a legal ownership interest in real property within a one-mile radius of the CAFO, which may be adversely affected by the issuance or denial of a permit.

APPLICANT. An owner of land or an authorized representative who files an application for a permit, variance or appeal in accordance with this ordinance.

BOARD. The Board of County Commissioners of Gem County, Idaho.

BUILDING INSPECTOR. The official appointed by the Gem County Board to administer Gem County Building Codes.

CAFO SITING PERMIT. Permit required before a CAFO can be created.

CODE ENFORCEMENT OFFICER. The official designated by Gem County to enforce the Gem County Zoning and Nuisance Ordinances.

CONFINED ANIMAL FEEDING OPERATION (CAFO). The use of a contiguous area, lot, facility or parcel of land, upon which there are confined or stabled livestock, swine, poultry or other animals defined as follows:

- a. 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-month period on the same facility; and
- b. Crops, vegetation, forage growth or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility; and
- c. The minimum number of animals at the facility to be defined as a CAFO shall be:
 - (1) 700 mature dairy cows, whether milked or dry;
 - (2) 1,000 veal calves;

- (3) 1,000 beef cattle. 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 CAFO uses a liquid manure handling system;
- (10) 125,000 chickens (other than laying hens), if the CAFO uses a liquid manure handling system;
- (11) 82,000 laying hens, if the CAFO uses a system other than a liquid manure handling system;
- (12) 30,000 ducks, if the CAFO uses a system other than a liquid manure handling system;
- (13) 5,000 ducks, if the CAFO uses a liquid manure handling system.

All acreage within the contiguous confined animal feeding operation is subject to the setback limitations as defined in this ordinance.

CORRAL. A confined area typically used actively for sorting, loading, unloading and similar activities associated with an operation.

EXPANSION PERMIT. A permit obtained by a registered CAFO to expand Animal Numbers.

LAGOON. A facility (e.g. pond sealed with a liner) constructed and designed to minimum state and federal standards that is used to store animal waste.

LAND APPLICATION AREA. Parcels of land owned or controlled by the confined animal feeding operation used for land application of waste (liquid or solid) as authorized under an Idaho State Department of Agriculture approved nutrient management plan.

LIQUID WASTE. A liquid substance containing any of the following separately or in any combination: wastewater, waste, other waste products or effluent.

MAJOR CHANGES/MODIFICATIONS. Any change involving an increase in animal numbers (per the approved Nutrient Management Plan), structural design, waste management, storm runoff containment, lagoon design, corrals and building location, and landscaping improvements if applicable.

NON-CONFORMING CAFO. A CAFO which lawfully existed prior to the enactment of this ordinance and which is not registered and is operated after the effective date of this ordinance. Non-conforming CAFO's may not be expanded or materially improved except as provided for in this ordinance.

PASTURE. Land where crops, vegetation, or forage growth are sustained in the normal growing season.

PERMITTEE (or REGISTRANT). One who holds a siting permit or who succeeds to a permitted CAFO.

RESIDENCE. Includes dwelling, church, school, or other building used for human occupancy and includes subdivisions and planned unit developments.

STORMWATER CONTAINMENT. The containment area that intercepts and holds precipitation run-off off from a corral or other confined animal enclosures. Sizing shall be based on the correct sizing the Idaho State Department of Agriculture has approved for this facility.

WASTE. A by-product normally associated with a confined animal feeding operation, which may include manure, sludge, sediment, mud, silt, dung, urine or feces, waste products, wastewater, feed residues, and effluent.

WASTE TREATMENT SYSTEM. The process, area, or mechanism employed for the retention, storage and treatment of liquid or solid wastes.

WASTEWATER. Water that has been used for washing, flushing, or in a manufacturing process, which may also contain waste products.

CHAPTER 3

EXISTING CONFINED ANIMAL FEEDING OPERATIONS

A. GENERAL

1. This ordinance does not relieve any non-registered confined animal feeding operation from any obligation or penalty for non-compliance with this ordinance.
2. A confined animal feeding operation, which has previously received a special use permit from the County, need not re-apply under this ordinance.

Any CAFO existing as of the effective date of this ordinance, June 9, 2010, which has not previously received a special use permit from the County, shall have one (1) year after the effective date of this ordinance to register with the Administrator. The owner must provide proof that the operation has been active at some time in the last five (5) years and is in compliance with the requirement of all appropriate State or Federal Agencies. If the County has animal unit equivalency on file prior to the effective date of this ordinance, that number shall be transferred to an animal number. If the CAFO is under the jurisdiction of the Idaho State Department of Agriculture, it will have to provide a letter of compliance as to the conformity to ISDA regulations applicable to this type of CAFO (including compliance with their Nutrient Management Plan). CAFOs not registering during the allotted time will be listed as a non-conforming CAFO but will have the right to operate under the previous conditions.

3. Any existing CAFO as of the effective date of this ordinance which has not registered after the allotted time allowed and has not previously received a special use permit will not be recognized as a CAFO and will have no right which could be transferred to subsequent owners.
4. All existing CAFOs in Gem County as of the effective date of this ordinance shall be granted a CAFO siting permit if requested, unless it is determined that

they are not in compliance with State and Federal regulations at the time of the request. Issuance of a siting permit accepts the facilities in an "as is" condition in regards to setbacks.

5. Pastured Animal Exemption: Pastured animals are not considered to be a confined animal operation and, therefore, they do not need a permit, nor are they regulated as to the number of animals that an owner can have on their property. (See the definition of "Pasture" in Chapter 2.)

B. EXPANSION OF EXISTING OR NON-CONFORMING CAFOs

A non-registered CAFO shall not make improvements, increase the CAFO acreage, or increase animal number capacity (beyond that allowed in the Nutrient Management Plan) prior to going through the new CAFO application process if they have failed to register during the time allotted.

Existing CAFOs that have chosen to register for a CAFO siting permit shall be able to expand to the animal number able to be controlled under the Nutrient Management Plan specifically designed and approved for it or any amendment made thereafter to remain compliant with State and Federal regulations.

Included in the application for an Animal Number or Non-Conforming Expansion Permit:

1. The name, address, and telephone number of the applicant.
2. Legal address and description of the existing CAFO.
3. Total acreage owned by the CAFO and zoning district.
4. Written notification from the governing agencies as to compliance with state and federal regulations.
5. The existing animal number of the CAFO and type of animals.
6. Proposed animal number (able to be reached within 10 years).
7. Detailed site plan showing the following information which occurs within a one (1) mile radius (minimum size of 18" X 24" and minimum scale of 1" = 100 feet):
 - Building locations (existing and proposed)
 - Public water supply wells
 - Irrigation wells
 - Existing monitoring or injection wells
 - Irrigation canals and laterals
 - Rivers, streams, springs, reservoirs and wetlands
 - Any proposed improvements, including but not limited to wells, corrals, roads, etc.
 - Traffic access
 - Location of residences not owned by the CAFO
 - Outdoor lighting plan
 - Setbacks of proposed improvements
 - Approximate time frame to complete construction or stages construction will be completed.
 - Natural drainages on the property
8. All Idaho State Department of Agriculture, Department of Environmental Quality, Idaho Department of Water Resources, Environmental Protection Agency and Southwest District Health public records for the operator, operator facility(s) and owners or owners of leased land for the existing CAFO including but not limited to:
 - Violations and fines

- Water rights for wells and irrigation
- Water test including nitrates, phosphorous and coliform.

Any fees necessary to furnish the above-mentioned records shall be paid by the applicant.

9. The applicant shall submit with the application a fee in the amount set by resolution of the Board.

Expansion Permit Application Process and Decision

1. All applications for expansion of existing or non-conforming CAFOs shall be filed with the Administrator and a public hearing held before the Board.
2. Landscaping, architectural and/or screening improvements may be made conditions of the approval.
3. If the existing CAFO is in violation or non-compliance with any state or federal regulation at the time of the application, as evidenced by a written statement from an authorized representative of said state or federal agency, it may be used as grounds for denial of the Expansion Permit.
4. The Board shall approve or deny the application within thirty (30) days of closing the public hearing. Written notification from the County shall be mailed to the applicant.
5. Any major modifications made after the Board's decision will require the applicant to re-submit the application with the necessary changes made.
6. All decisions made by the Board may be appealed in accordance with the process described in Gem County Code Title 11, Chapter 13-1.A.

*All existing registered CAFOs applying for an Animal Number Expansion permit will adhere to the setbacks stated in this ordinance for new CAFOs for any new improvements made. However, waivers can be approved by the Board if the existing facility cannot realistically accommodate these setbacks. The Administrator may seek the advice of any regulating state or federal agency as to their opinion on the matter and if compliance would still be possible with the proposed waiver. Any application including a waiver shall include an additional fee set by the Board to cover the additional time and costs incurred.

CHAPTER 4

AREAS ALLOWING CONFINED ANIMAL FEEDING OPERATIONS

CAFOs are permitted one mile outside the designated County Residential Area, as defined on the Future Land Use Map of the Gem Community Comprehensive Plan.

CHAPTER 5

AREAS PROHIBITING NEW CONFINED ANIMAL FEEDING OPERATIONS

No new CAFOs shall be permitted in the following zones or areas:

1. Any Residential zone
2. Any Commercial, Industrial, or Mixed Use zone
3. Historic sites, as defined by State and/or Federal regulation
4. Wetlands, as defined by State and/or Federal regulation
5. 100 year flood zone (Except existing CAFOs applying for Animal Number Expansion Permits)
6. Within one (1) mile of the County Residential Future Land Use Map Area as defined in the Gem County Comprehensive Plan.

CHAPTER 6

OUTDOOR LIGHTING

All outdoor lighting systems and/or fixtures shall be installed in such a way that the light will be contained within the CAFO property boundaries.

CHAPTER 7

CAFO SITING PERMITS

This application is for new CAFOs or those not in existence or registered within one (1) year of the effective date of this ordinance.

A CAFO siting permit and required building permits are required prior to commencing any construction of the new CAFO facility, its waste treatment system, or any improvement made to the site to aid in the construction of the new facility.

Application for a siting permit shall contain the following information:

1. A site plan containing the items listed in Chapter 3, Section B.7.
2. A valid water right or a copy of an application to appropriate water or an application to change the point of diversion, place, or nature of use of an existing water right that has been filed with the Idaho Department of Water Resources, which, if approved, will provide an adequate supply for the operation; and
3. A fee in the amount set by resolution of the Board.

Upon receiving the application requirements set forth, the application will then be sent to the CAFO Site Advisory Team for their review and report.

MEMBERS OF THE CAFO SITE ADVISORY TEAM

1. A representative from the Idaho State Department of Agriculture;
2. A representative from the Idaho Department of Water Resources;
3. A representative from the Idaho Department of Environmental Quality; and
4. County employee, as appointed by the Board.
5. A representative from the type of animal industry being proposed, as appointed by the Board.

Within approximately thirty (30) working days from receiving the application, the CAFO Site Advisory Team will complete their report at which time the application may then proceed to the next stage of the application process.

*By law, the CAFO Site Advisory Team will review any application if it meets the definition of a CAFO, per Chapter 2 of this ordinance. However, if time allows they will also look at applications for lesser animal numbers at the request of the Board, per IDAPA 02.04.18.

Vacancy of Use: If the CAFO is vacant for one (1) year or longer, the permittee or registrant of the CAFO Siting permit shall notify the County no later than thirty days of the one (1) year timeframe. The County may, by written request, require that the owner declare their intentions with respect to the continued non-use of the CAFO. If the permittee elects to continue non-use, they shall be required to follow the process outlined in Idaho Code 67-6538. Failure to do so will render the CAFO in violation and subject to the revocation of their CAFO Siting permit. A CAFO will lose its permit if the operation is vacant for ten (10) years.

CHAPTER 8

APPLICATION PROCESS, NOTICE OF HEARING AND PUBLIC HEARING PROCEDURE

All new CAFOs as defined by this ordinance shall apply for and receive a siting permit prior to commencing construction or operation (see Chapter 7).

- A. The Administrator shall review the application for completeness. (See application requirements in Chapter 9.)
- B. The Administrator shall set the matter for public hearing before the Zoning Commission, who shall make a recommendation to approve or deny the application to the Board. After receipt of the recommendation, the Board shall hold a second public hearing on the application, following the same hearing procedures as the Zoning Commission.
- C. Notice of time, place and purpose of the public hearing shall be published in a newspaper of general circulation in the County at least (15) days prior to such hearing. The property shall be physically posted with a public hearing sign. The applicant shall provide the Administrator with the names and addresses of all landowners within one (1) mile of the affected site. The Administrator shall then send a notice of the public hearing by first class mail to all property owner(s) within one (1) mile of the proposed location. Proof of service shall be made public record.
- D. All applicants for Comprehensive Plan amendments, subdivision permits or rezone applications located within one (1) mile of an existing or proposed CAFO shall send notice of the public hearing to the CAFO owner/operator by first class mail. Proof of service shall be made a part of the public record.
- E. Public hearing procedure:
 1. The hearing shall be conducted in accordance with the provisions of Gem County Code Title 11, Chapter 7 and per the hearing procedures

- used by the Zoning Commission and Board. The hearing shall be recorded.
2. At the completion of the hearing, the Administrator shall produce a written, reasoned statement as described by Idaho Code 67-6535 and a final order granting or denying the permit.
 3. Such decision shall be filed at the County Clerk's Office and Development Services Department. It will be available to the applicant and the public within sixty (60) working days after the close of the hearing.

CHAPTER 9

APPLICATION CRITERIA FOR NEW CAFO PERMIT

Prior to approval of a siting permit for a new CAFO application, the applicant shall meet the following application requirements:

- A. General Requirements:
 1. The name, address, and telephone number of the applicant.
 2. Legal address and description of the CAFO including latitude and longitude coordinates.
 3. Total acreage of land covered in the CAFO application.
 4. Zoning district.
 5. Maximum number of proposed animals on site.
 6. Detailed site plan showing the boundaries of the real property comprising the CAFO, including any real property within one mile of any external boundary of the CAFO. The plan, which must be drawn to a scale of not less than eight inches (8") to the mile, must show the following:
 - Building locations (existing and proposed)
 - Public water supply wells
 - Irrigation wells
 - Existing monitoring or injection wells
 - Irrigation canals and laterals
 - Rivers, streams, springs, reservoirs and wetlands
 - Any proposed improvements, including but not limited to wells, corrals, roads, etc.
 - Traffic access
 - Location of residences not owned by the CAFO
 - Outdoor lighting plan
 - Setbacks of proposed improvements
 - Approximate time frame to complete construction or stages construction will be completed.
 - Natural drainages on the property

7. The applicant's plan must be in compliance with and not be in violation of any federal, state or local law or ordinance.
 8. The applicant must not have begun construction of new improvements for a CAFO at the proposed location. If it is determined that the construction has commenced, penalties will be imposed in accordance with the provisions of Chapter 15 of this Title.
 9. Applicant's plan must meet the setback and lighting requirements of this ordinance. Waivers may be requested if submitted with the application and made a part of the public hearing.
 10. A copy of the CAFO Site Advisory Team's final report and recommendations shall be submitted with the CAFO application.
- B. NEW CAFO Minimum Setbacks and Other Design Standards
1. The closest edge of lagoons, stormwater containment, or waste treatment systems shall be located at least five hundred (500) feet from any exterior property line or one-thousand (1,000) feet away from any residence, whichever is greater.
 2. The closest inside edge of the retaining wall of any storm runoff containment or corral shall be located at least one hundred (100) feet from a domestic well.
 3. The closest inside edge of the retaining wall of any lagoon, storm runoff containment or corral shall be located at least one thousand (1,000) feet from a public drinking water supply.
 4. The closest edge of corrals and feed storage areas shall set back a minimum of fifty (50) feet from public road rights of way, including prescriptive right-of-way easements.
 5. The closest edge of corrals shall be located at least five hundred (500) feet away from any residence not belonging to the permittee of the animal feed operation.
 6. The closest edge of silage, haylage, potatoes or any other feed product resulting from the ensilage process which is stored in the open air shall be located at least five hundred (500) feet from any existing residence not belonging to the permittee of the CAFO and/or county/city impact area and/or residential zone.
 7. No new CAFO shall be located within one thousand three hundred and twenty (1,320) feet of the ordinary high watermark of any perennial tributary of the Payette River or the exterior boundary of a Zone 'A' designation on the adopted FEMA Flood Insurance Rate Maps, whichever is greater. This setback is measured from the closest edge of any structure, lagoon, storm runoff containment, corral, feed storage, or waste treatment system.
 8. If, during the course of the public hearing before either the Zoning Commission or Board, it is determined that additional buffering of the CAFO is needed to protect neighboring properties, screening may be made conditions of approval.

CHAPTER 10

REQUIRED FINDINGS FOR APPROVAL

Prior to approval of a new CAFO application, the Zoning Commission and Board must find that the proposed CAFO meets all requirements of this ordinance (except where a waiver has been otherwise approved), including the following findings:

- A. The application complies with all recommendations of the Site Advisory Team; and
- B. The CAFO applicant must comply with and not be in violation of any federal, state or county law or with the requirements of an affected canal/ditch company, local fire district or road authority which directly applies to the location or operation of a CAFO; and
- C. If required by a State of Idaho agency having jurisdiction, the CAFO shall follow and be in compliance with a Nutrient Management Plan approved by said agency; and
- D. The CAFO owns adequate potable water rights to operate. This must be evidenced by a permit or license from Idaho Department of Water Resources, or that the CAFO is in the process of obtaining the permit or license from the State of Idaho, in which case issuance of the siting permit will be contingent upon obtaining the appropriate permit or license.

CHAPTER 11

APPEALS

- A. Appeals of a decision of the Board shall be directed to the District Court.
- B. The Court will evaluate appeals for standing. Only affected persons may file an appeal.
- C. Appeals must be filed within twenty (20) working days after issuance of the written decision.

CHAPTER 12

TRANSFER OF A SITING PERMIT

Siting permits may be transferred provided that:

- A. The new permittee shall file a transfer statement form with the Administrator within thirty (30) days from the date of purchase, lease or transfer. The transfer statement form shall include the date of transfer, names and mailing addresses of both the transferor and transferee.
- B. The previous permittee shall provide a signed statement, stating that the CAFO is in compliance with all terms of the original permit and all local, state and federal rules and regulations.

CHAPTER 13

CONSTRUCTION

A building permit shall be required before construction shall commence on any new or expanding facility, where applicable. (See Gem County Code 11-14 for building permit and certificate of occupancy regulations.)

- A. Construction
 - 1. Construction of the CAFO must be commenced within two (2) years of the issuance of the permit and completed within five (5) years, or it shall expire, unless other phasing and/or timeframes were approved in the original application.
 - 2. All human habitable structures require compliance with the International Building Code, per Gem County Code 9-1-1.

- B. Change Orders
 - 1. If the permittee desires to make major changes to the proposed facilities authorized under the permit, the permittee shall present a written change order request to the Development Services Department. The request shall clearly specify any of the proposed changes being requested; including an explanation and justification for such changes along with such other documentation as will be necessary for a decision. If the proposed change involves the relocation of major improvements such as but not limited to the waste treatment system, free-stall barns and corrals, the permittee will have to adhere to the setbacks found herein.
 - 2. The Administrator shall then make a decision and provide written notification to the permittee of the decision.
 - 3. Any appeals of the decision shall go through the available means for appeal as stated in Gem County Code 11-13-1.

CHAPTER 14

NUTRIENT MANAGEMENT PLANS

All CAFOs required to have a Nutrient Management Plan per the Idaho Department of Agriculture shall follow and be in compliance with the approved Nutrient Management Plan. Nutrient Management Plans prepared utilizing the “Idaho One Plan” are to be kept confidential or as required by the Idaho State Department of Agriculture.

CHAPTER 15

ENFORCEMENT

The Administrator or authorized agent shall have the authority to enforce the provisions of this ordinance. All department, officials and employees of Gem County vested with the authority to issue permits shall conform to the provisions of this ordinance.

- A. General Procedure
 1. Whenever the Administrator shall determine that a violation of this ordinance has occurred, the Administrator shall take action in accordance with the provisions of this ordinance or any applicable section of the Gem County Code.
 2. Complaints made by individuals in relation to the provisions of this ordinance shall be in writing and contain the nature of the complaint(s), the name and address of the CAFO, time(s) and date(s) of the occurrence, the name, address and phone number of the complainant. The complainant must reside within a one (1) mile radius of the CAFO site.
 3. Upon receipt of a written complaint, the Administrator will determine if a violation exists. If a violation does not exist the Administrator will notify the complainant within twenty (20) working days of no violation existing. If a violation does exist, the Administrator will notify the complainant and permittee in writing within twenty (20) working days and enforcement action will take place according to the provisions of this ordinance.
 4. The permittee/operator shall be notified by either hand delivery or first class mail. Three (3) days after date of mailing or the date of hand delivery, the notice shall become effective.
 5. If a violation does exist, the permittee/operator shall respond in writing to the Administrator within ten (10) working days.
 - a. If the violation can be corrected in twenty (20) working days or less the response will contain a description of the corrective action(s) and estimated time necessary to complete it.
 - b. If the violation is such that it will require additional time to correct the permittee will submit in writing within ten (10) working days of the above described notice a proposed compliance schedule for review and approval by the Administrator. The compliance schedule will explain in detail what actions will be taken to correct the violation and a time schedule for completion.
 6. The Administrator will review the proposed compliance schedule and determine if the time requested is reasonable. The permittee shall be required to schedule and attend a meeting with the Administrator within twenty (20) working days of submittal of the proposed compliance schedule.
 7. In the event that a compliance schedule is not agreed upon the Administrator will then send the proposal to the Board for their review. The Board will review the proposal and recommendations of the Administrator and render a decision within twenty (20) working days.
 8. Failure to meet the requirements shall result in enforcement action.

B. Enforcement Action

1. Violations of any of the provisions of this ordinance or failure to comply with any of its requirements may be dealt with in the following manner; a civil forfeiture set by resolution by the Board per day per violation, each day such violation continues shall be considered a separate offense. If the violation continues for more than one hundred and eighty (180) days, without following an agreed-upon improvement plan, the county may revoke the siting permit.

C. General Provisions

1. A copy of the CAFO Ordinance shall be given to all new applicants and any existing CAFOs who choose to register.
2. This ordinance shall be in full force and effect immediately upon passage and publication as required by law.
3. Any ordinances or resolutions, which are in conflict with this ordinance, are hereby repealed, but only in so far as the conflict exists.
4. If any portion of this ordinance should be found to be unconstitutional or unenforceable for any reason, the remainder of the ordinance shall remain in effect.