

ORDINANCE NO. 2012-05-01

AN ORDINANCE OF ONEIDA COUNTY, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, AMENDING ONEIDA COUNTY DEVELOPMENT CODE TO INCLUDE CHAPTER 11 REGARDING ANIMAL FEEDING OPERATIONS; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES AND PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ONEIDA, STATE OF IDAHO:

ARTICLE 01: DECLARATION OF POLICY AND PURPOSE

The purpose of this ordinance is to amend the Oneida County Development Code to include Chapter 11, as outlined herein, as is consistent with the policies and purposes of the Oneida County Development Code.

ARTICLE 02: AMENDMENTS TO DEVELOPMENT CODE

The Oneida County Development Code shall be amended to include the following:

CHAPTER 11

ANIMAL FEEDING OPERATION

SECTION:

- 11-1 General, Scope and Applicability
- 11-2 Severability
- 11-3 State Statutes
- 11-4 Definitions
- 11-5 Location, Separation and Setbacks
- 11-6 Application Procedure – Existing Confined Animal Feeding Operation
- 11-7 Application Procedure – New Confined Animal Feeding Operation Siting Permit
- 11-8 Process of Application and Notice of Hearing
- 11-9 Enforcement and Termination
- 11-10 Permit Application Fees

11-1 GENERAL, SCOPE AND APPLICABILITY

- A. General:** The provisions of this ordinance are minimum standards. The owner/operator must be in compliance with and not be in violation of any local, State and/or Federal laws that are more restrictive standards.

When future ordinances, or state or federal law, impose additional standards on activities governed by this ordinance, this ordinance shall apply unless state law specifically supercedes this ordinance.

B. Scope and Applicability: Confined Animal Feeding Operations subject to the requirements of this ordinance shall apply to and include all new or expanding existing operations in Oneida County, which meet the definitions of a Confined Animal Feeding Operation as defined in this chapter.

- (1) Confined Animal Feeding Operation shall, prior to the commencement of any such confinement operation, secure an operating permit for such an operation from the Oneida County Planning & Zoning Commission, pursuant to the procedure set forth in this ordinance. Such permit shall be required for Confined Animal Feeding Operations, including those that are considered non-conforming uses of record upon expansion or increase of the size of operations.
- (2) Pastured Animals: Pastured animals are not considered to be a CAFO and therefore, do not need a permit, nor are they regulated as to the number of animals that an owner can have on his property. Pasture is defined as land where crops, vegetation, or forage growth are sustained in the normal growing season.
- (3) Building/Zoning Permit: Any owner and/or operator of a Confined Animal Feeding Operation shall obtain a permit prior to the construction of any permanent structures associated with a Confined Animal Feeding Operation as set forth in this chapter. Such permit shall be issued by the Administrator upon approval of a livestock confinement application by the Planning and Zoning Commission.

11-2 SEVERABILITY

If any provision in this chapter is held to be invalid by any court, the remainder shall continue in full force.

11-3 STATE STATUTES

This chapter is not intended to deprive the citizens of Oneida County or any CAFOs of any provisions of the Local Land Use Planning Act, Idaho Code §§ 67-6501-6538; the Right to Farm Act, Idaho Code §§ 22-4501-4504; or the Agriculture Odor Management Act, Idaho Code §§ 25-3801 to 3803.

11-4 DEFINITIONS

For the purpose of this Ordinance, certain terms, phrases, or words used herein shall be defined as follows:

A. **“Board”:** The Board of County Commissioners.

B. **“Commission”:** The Planning & Zoning Commission.

- C. **“Affected Persons”**: All landowners within one mile of proposed Confined Animal Feeding Operation and/or those who have registered with the Planning and Zoning Administrator to receive notifications.
- D. **“CAFO Siting Advisory Team”**: The Idaho State Department of Agriculture shall serve as the lead agency for a team comprised of representatives of the Idaho State Department of Agriculture (ISDA), Idaho Department of Environmental Quality (IDEQ), and Idaho Department of Water Resources (IDWR), Idaho Code § 67-6529 and an ex officio representative from Oneida County who review a site proposed as a CAFO, determine environmental risks and submit a suitability determination report to the county.
- E. **Confined Animal Feeding Operation**: also referred to as “CAFO” for the purpose in Oneida County shall mean a lot or facility where all of the following conditions are met:
- (1) Enterprise where animals have been, are or will be stabled or confined and fed or maintained for a total of ninety (90) consecutive days or more in any twelve-month period;
 - (2) Crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility;
 - (3) The lot or facility is designed to confine or actually does confine as many as or more than the number of animals specified in any of the following categories: seven hundred (700) mature dairy cows, whether milked or dry; one thousand (1,000) veal calves; one thousand (1,000) cattle other than mature dairy cows or veal calves; two thousand five hundred (2,500) swine each weighing (55) pounds or more; ten thousand (10,000) swine each weighing less than fifty-five (55) pounds; five hundred (500) horses; ten thousand (10,000) sheep or lambs; eighty-two thousand (82,000) chickens; Idaho Code § 67-6529; two hundred thousand (200,000) furbearers; or five hundred thousand (500,000) total pounds of any other species.
 - (4) CAFOs shall include barns, sheds, feed storage facilities, corrals, lagoons, parking, and waste storage areas.
 - (5) Two (2) or more CAFOs under common ownership are considered, for the purposes of this definition, to be a single confined animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.
- F. **“Environmental risk”**: That risk to the environment deemed posed by a proposed CAFO site, as determined and categorized by the CAFO site advisory team’s suitability determination report.
- G. **Existing Confined Animal Feeding Operation “CAFO”**: A CAFO that exists on the date that the Board gives final approval of this ordinance.
- H. **“Furbearers”**: Mink, fox, rabbits, beaver, otter or other similar domesticated animals.
- I. **NCRS**: Natural Resource Conservation Service.

- J. **Non-Conforming:** Any existing use that does not meet location, separation, and setback requirements of this ordinance.
- K. **Nutrient Management Plan:** A plan prepared by a state certified nutrient management planner in accordance with NRCS Standard 590 as required by the Idaho State Department of Agriculture.
- L. **“Suitability determination”:** Shall mean that document created and submitted by the CAFO site advisory team after review and analysis of a proposed CAFO site that identifies the environmental risk categories related to a proposed CAFO site, describes the factors that contribute to the environmental risks and sets forth any possible mitigation of risk.
- M. **Waste Management:** The process, area, and/or mechanism employed to process waste normally associated with confined animal feeding operations which may include waste products, (organic waste matter such as urine and/or feces); wastewater and feed residues.

11-5 LOCATION, SEPARATION AND SETBACKS

- A. **Existing Facilities** associated with a Confined Animal Feeding Operation which do not meet the location, separation and setback requirements of this chapter at the time of the adoption of this ordinance shall be exempt from said requirements, provided said facilities do not have a change of use, (such as a dairy operation to a beef operation). Replacement of existing structures or additions thereto shall be subject to public road right-of-way setbacks as provided in this title, but shall not be placed any closer to occupied residential uses.
- B. **Installation of Landscape Buffers** between potentially incompatible land uses and along public roads shall be encouraged. Approved buffering along stream corridors is required. Buffers between CAFOs and neighboring property are encouraged such as berms, foliage, windbreaks, walls, natural terrain, and other buffers. An applicant may include one or more of the foregoing buffers in support of a request for a variance from the setback requirement.
- C. **Public Right of Ways:** All new structures and facilities shall be subject to public road setback limitations, including confinement areas, loading, off-loading, and feed storage facilities as set forth in this title. Any structure confining animals in a CAFO, whether barn, corral, or other structure, must have external boundaries no less than one hundred feet (100') from the external boundary of any public right of way.
- D. **Proximity to Well:** No barn, corral or other structure in which livestock are confined in a CAFO, or any lagoon, or other structures containing liquid waste, and the outside edge of any composting yard for the waste generated from a CAFO shall be located

nearer than three hundred feet (300') from any well not located within the boundaries of the designated CAFO site.

E. Separation From Residences and Other Buildings: All Confined Animal Feeding Operation areas, sewage lagoons, separators, solid waste storage and composting facilities shall be located not less than 1000 feet from occupied residential uses, churches, schools or other buildings used for human occupancy, including manufactured homes, not associated with the Confined Animal Feeding Operation.

F. Residential /Feed Lot Encroachment:

- (1) Residential Subdivisions, Planned Unit Developments or Confined Animal Feeding Operations proposed after the effective date of this chapter shall be located no closer than one (1) mile to each other.
- (2) No residential use, including manufactured homes, (not associated with the Confined Animal Feeding Operation) shall be permitted upon any property where the location of such residential use would encroach upon the separations required of an approved Confined Animal Feeding Operation, which has a construction or operating permit.

G. Other Use Encroachment: No commercial uses, churches, schools or other buildings used for human occupancy shall be permitted upon any property where the location of such use would encroach upon the separations required of an approved Confined Animal Feeding Operation, which has a construction or operating permit.

H. Waste Lagoons:

- (1) Liquid waste treatment lagoons, separators, holding ponds, liquid and/or solid waste storage facilities shall be a minimum of fifty (50) feet away from the water's edge of any canal, lateral, ditch or berm adjacent to any natural waterway.
- (2) Liquid waste treatment lagoons, separators, holding ponds, liquid and/or solid waste storage facilities shall be not less than three hundred feet (300') from any public roads right of ways and property boundaries.
- (3) Liquid waste treatment lagoons, separators, holding ponds, liquid and/or solid waste storage facilities shall be not less than three hundred feet (300') from any domestic wells.

I. Corrals:

- (1) The closest edge of corrals shall be located at least three hundred (300) feet from any domestic well.

J. Runoff Containment:

For maintenance and control reasons, all runoff containment systems shall be maintained entirely on the property of the Confined Animal Feeding Operation.

- (1) For maintenance and control reasons, any part of a runoff containment systems shall be located at least thirty (30) feet from any public right-of-way or property line.
- (2) The closest inside edge of runoff containing wall or bank shall be located at least three hundred feet from any domestic well and one thousand (1000) feet from any public water system.

K. Feed Storage Areas:

- (1) All feed storage facilities shall have adequate access to public right-of-ways that do not obstruct vision or cause any other type of traffic hazard.
- (2) All permanent feed storage structures shall comply with setbacks and separation as established in this ordinance and the adopted building code.

L. Other Location and Separation Requirements: Location of waste lagoons, corrals, wells, septic systems and other livestock confinement related facilities and structures shall comply with all applicable requirements of the Department of Environmental Quality, the Department of Agriculture or other applicable State or Federal Agency.

M. Variances: Variances from the separation requirements of residential uses, other buildings, and property boundaries may be granted if consent thereto is obtained and recorded by the landowners of such property and the owner/operator of an affected Confined Animal Feeding Operation.

11-6 Application Procedure – Expanding existing Confined Animal Feeding Operation or becoming a CAFO

- A. Operations:** It is the goal of this ordinance to protect existing feeding operations and not place any onerous restrictions to their operation in place. It is also recognized that some conflicts may already exist with non-agricultural uses. This ordinance cannot be construed to relieve any existing CAFO from any requirements by other local, state or federal regulations, ordinances and laws.
- B. Expansion:** Existing CAFOs may expand to one hundred forty (140) percent of the number declared for their prior use permit. All expansion beyond these limits shall require a new permit and applicants must meet the conditions required for said permit. Owners of existing permits may apply for a permit for a new facility without bringing existing facilities up to code requirements.

11-7 Application Procedure – New Confined Animal Feeding Operation Siting Permit:

Owners of real property upon which a new CAFO will be established must file an application for such CAFO with the office of the Planning and Zoning administrator for

Oneida County, Idaho, upon a form approved by the Oneida County Planning and Zoning Commission. Submission of a siting permit gives approval for the administrator or designee to do onsite inspections. The application for new CAFO permit must be in writing and shall contain the following information:

- A. Complete names, addresses and telephone numbers of every owner of real property within the proposed CAFO. If applicant is not the owner of real property within the proposed site of operation, applicant shall also disclose complete names, addresses and telephone numbers of all applicants, and shall furthermore state and clarify their interest(s) in the proposal.
- B. The complete legal description of the real property contained within the CAFO. Also under separate label, the complete legal description of the real property proposed for the waste management area.
- C. A statement of the current and historical uses of the real property described in the application.
- D. A narrative description describing the proposed operation, including the species of animals that will be confined, the number of animals that will be confined and a description of the structures and other facilities that will be required to confine, feed and care for the animals and removal of the solid and liquid waste produced from proposed operation.
- E. A map including surface contours, soil depths and types, sizes and locations of drainage of the CAFO site. Proposed changes to the existing contours shall be shown on a separate contour map prepared by an engineer or land surveyor licensed in the State of Idaho.
- F. A vicinity map showing the following information within one half (1/2) mile of the exterior boundaries of the proposed operation:
 - (1) Location of all residences and buildings intended for human occupancy and distance to proposed operation.
 - (2) Location and use of all other buildings.
 - (3) Location of all public, domestic, or irrigation wells and distance to proposed operation.
 - (4) Location of monitoring and injection wells and seep tunnels of record.
 - (5) Irrigation canals, laterals, ditches and pipelines.
 - (6) Rivers, streams, springs, reservoirs and wetlands.
 - (7) Easements.
 - (8) Other CAFOs and distance to proposed operation.
 - (9) Public roads and highways and distance to proposed operation.

- G.** The site plan submitted with said application shall comply with and include the following:
- (1) Dimensions, size and location of any existing or proposed buildings or additions including setback measurements.
 - (2) Dimensions, size and location of all but not limited to feed storage areas, livestock confinement areas, waste storage areas and water wells.
 - (3) The CAFO's location and distance from canal, ditches, injection wells and sink holes.
 - (4) Traffic access and public roads or highways.
 - (5) The location and placement of area lighting fixtures.
 - (6) The site plan shall indicate planned expansion areas, future construction sites and all other proposed aspects of the CAFO as herein mentioned.
 - (7) The site plan shall be prepared a minimum size of eighteen (18) by twenty-four (24) inches and drawn to scale approved by the administrator.
- H.** Waste system design plan for solid or liquid waste approved by the appropriate agency of the State of Idaho.
- I.** Nutrient management plan.
- J.** Idaho Department of Water Resources application and subsequent licensure for water source and rights.
- K.** Pest and odor abatement plans.
- L.** As required by Idaho Code § 22-2471, "It shall be the duty and responsibility of all persons to control noxious weeds on land and property that they own."
- M.** Area lighting shall be located and/or shielded in such a manner so that the light source will be directed down and inside the property lines of the Confined Animal Operation. Area lighting shall also be located and/or shield in such a manner so that the light source will not blind, restrict, or otherwise interfere with the vision of operators of motor vehicles in public roadways.
- N.** The Confined Animal Feeding Operations shall be managed to prevent dust from creating a public road visibility hazard.
- O.** Written comment on and the approval of the State of Idaho Highway Department or Oneida County Road and Bridge Department of ingress and egress points of the site.
- P.** The site plan shall demonstrate compliance with the setbacks set forth in this chapter.
- Q.** Application fee as established by resolution of the Board.

11-8 Process of Application and Notice of Hearing:

- A. APPLICATION REVIEW:** The Administrator shall review the application for completeness within 15 business days.
- (1) Upon determining that the application is complete, the Administrator shall submit the application to the Board and request that a CAFO Site Advisory Team be requested for review.
 - (2) Upon determining that the application is not complete, the Administrator shall provide written notice of the deficiencies to the applicant. The Administrator may request additional information if deemed necessary to process the application. The application will not be considered complete until the deficiencies or additional information as identified by the Administrator are corrected. If the deficiencies are not corrected within 180 days, the application shall be deemed denied and no further action taken by the Administrator.
- B. HEARING AND NOTICE:** The Administrator shall submit the completed application and CAFO Advisory Team Determination to the Commission for one public hearing. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary to the proposed CAFO application shall be published in the official newspaper of the county. Fifteen (15) days prior notice shall also be provided by first class mail to all affected persons.
- C. CRITERIA FOR APPROVAL:** Prior to approval, the Commission must find that the new CAFO meets all requirements of this chapter including the following:
- (1) General Requirements:
 - a. The CAFO applicant must comply with and not be in violation of any federal, state or county law pertaining to CAFO's or the requirements of an affected irrigation company, local fire protection district, or Oneida County Road and Bridge Department which directly applies to the operation of a CAFO. Violations which occurred prior to the application may be considered relevant by the Commission as evidence of continued non-compliance.
 - b. The operator must not have begun construction of new facilities and improvements for, or commenced operations as a CAFO upon the land to be used as a CAFO, other than as previously authorized by prior permit.
 - (2) Waste Management:
 - a. If required by a State of Idaho agency having jurisdiction, a CAFO shall follow and be in compliance with a current nutrient management plan which has been approved by said agency.
 - b. The required setbacks for all waste management facilities shall be met.
 - c. That a CAFO shall have the lowest environmental risk rating by the CAFO Site Advisory Team. If a CAFO receives other than the lowest environment risk rating, the Board may consider during the approval process a letter from NRCS or comparable agency or firm showing whether and how the risk rating may be mitigated and applicant's ability to mitigate.

- d. **Design and Construction:** All new or modified liquid waste systems shall be designed by licensed professional engineers and constructed in accordance with standards and specifications either approved by the Idaho Department of Agriculture (ISDA) or in accordance with existing relevant Memorandums of Understanding with the Department of Environmental Quality. All persons shall submit plans and specifications for new or modified liquid waste systems to the director of ISDA for approval. A person shall not begin construction of a liquid waste system prior to approval of plans and specifications by ISDA. Idaho Code § 25-3805.
- (3) **Water Quality:** All CAFO applicants must demonstrate that:
 - a. The CAFO will be in compliance with the Clean Water Act and any relevant federal or state regulation implementing the Clear Water Act in Idaho.
 - b. There will not be discharge of pollutants into surface or ground water except as permitted by the appropriate state and/or federal agency with jurisdiction. A copy of any permit from any agency relative to discharge of pollutants must be filed by the applicant with the Commission.
 - c. The applicant owns adequate and suitable water rights to operate. This must be evidenced by a permit or license from the Idaho Department of Water Resources.
- (4) **ACTION BY THE COMMISSION:** The Oneida County Planning and Zoning Commission shall render a decision on a CAFO application pursuant to this ordinance prior to being submitted to the Board for final approval.
- (5) **ISSUANCE OF PERMIT:** The Administrator shall issue a siting permit within fifteen (15) working days of approval of an application by the Board, and shall cause a notice of the issuance such permit to be placed on file in the office of the County Administrator of Oneida County within five (5) working days of issuance.

11-9 ENFORCEMENT AND TERMINATION

A. GENERAL PROCEDURE:

- (1) Whenever it has been determined that a violation of this chapter has occurred or is about to occur, Oneida County shall take action in accordance with the provisions of this chapter.
- (2) Complaints made by two or more individuals, having standing under state law and not residing at the same residence, shall be in writing and contain the nature of the complaint(s), name and address of the Confined Animal Feeding Operation, time(s) and date(s) of occurrence, and name address and phone number of the complainant.
- (3) Complaints properly submitted for odor problems will be forwarded to the appropriate state agency for enforcement of state regulation for odor control.
- (4) Upon receiving a complaint the Administrator shall have the alleged complaint investigated.
- (5) Upon investigation of the alleged complaint the Administrator shall determine if a violation exists. If no violation exists the Administrator will notify the complainant within twenty (20) working days. If there is a violation the Administrator will take action in accordance with the provisions of this ordinance.

- (6) Upon determination that a violation exists the Administrator shall notify the owner/operator within ten (10) working days. Notice shall be effective when served by a peace officer.
- (7) The owner/operator shall respond to the administrator within ten (10) working days.
 - a. If the violation can be corrected within twenty-eight (28) working days or less the response shall contain a description of the corrective action(s) and estimated time necessary for completion.
 - b. If the violation is such that it will require additional time to correct, the owner/operator 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(s) and a time schedule for completion.
- (8) The Administrator shall review the proposed compliance schedule and determine if the time requested is reasonable. The owner/operator shall be required to schedule and attend a meeting with the Administrator within ten (10) working days of submittal of the proposed compliance schedule.
- (9) In the event that a compliance schedule cannot be agreed upon, the Administrator shall 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 thirty (30) working days.
- (10) Upon acceptance of the compliance schedule the Administrator shall contact the complainant with the decision and provide a copy of the schedule.
- (11) Failure of the owner/operator to meet the requirements of this section or abide by the proposed compliance schedule shall result in final enforcement action.
- (12) Any dispute that has to do with compliance issues need to be resolved by state, federal or county agency under whose jurisdiction it falls.

B. FINAL ENFORCEMENT AND/OR REVOCATION:

- (1) The Administrator may revoke a CAFO operating Permit if an owner/operator fails to comply with the conditions of such permit or the compliance schedule after thirty (30) days written notice of such non-compliance. Notice of such termination shall be served upon the owner/operator by a peace officer, which shall advise said owner/operator of the effective date of such termination and of his right to appeal such decision pursuant to Chapter 3 of this Development Code.
- (2) In the event the violation threatens the public health, safety and general welfare of the citizens of Oneida County, the Oneida County Board of County Commissioners may take any actions it deems necessary to abate such violation.

C. PENALTY FOR VIOLATION OF CAFO OPERATING PERMIT: Any owner/operator of a Confined Animal Feeding Operation who violates the conditions of the operating permit granted said operation shall be in violation of this Ordinance and subject to civil and criminal penalties as set forth in Chapter 3 of the Oneida County Development Code.

D. VOLUNTARY TERMINATION: An owner/operator of a Confined Animal Feeding Operation may voluntarily terminate a Confined Animal Feeding Operation permit by delivering to the Administrator a written termination notice.

E. TERMINATION NOTICES: The Administrator within five (5) days of its effective date shall record notice of the termination of a Confined Animal Feeding Operation permit in the office of the County Recorder of Oneida County, Idaho.

11-10 PERMIT APPLICATION FEES

The Board of County Commissioners shall establish a schedule of fees for CAFO operating permits.

ARTICLE 03: SEVERABILITY

This ordinance is hereby declared to be severable. Should any portion of this ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purpose(s) of the ordinance before the declaration of partial invalidity.

ARTICLE 04: REPEAL OF CONFLICTING PROVISIONS

All provisions of current County ordinances which conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

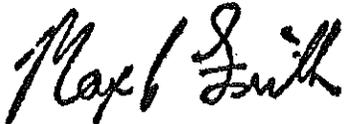
ARTICLE 05: EFFECTIVE DATE

This ordinance shall be effective upon its passage and publication as provided by law.

PASSED, ADOPTED, APPROVED AND ENACTED by the Board of County Commissioners as an ordinance of the County of Oneida on the 18th day of

May, 2012.

COUNTY OF ONEIDA:



MAX C. FIRTH, Chairman
Oneida County Board of Commissioners

Cecil C. Sweeten

CECIL C. SWEETEN, Member
Oneida County Board of Commissioners

Dale F. Tubbs

DALE F. TUBBS, Member
Oneida County Board of Commissioners

ATTEST:

Matthew Lon Colton

MATTHEW LON COLTON,
Oneida County Clerk