

# LINCOLN COUNTY C.A.F.O ORDINANCE 1212-08-2

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## ***LINCOLN COUNTY C.A.F.O. ORDINANCE***

**AN ORDINANCE DEFINING AND ESTABLISHING CONFINED ANIMAL FEEDING OPERATIONS; PROVIDING FOR TITLE, INTERPRETATION AND ENACTMENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR EXISTING CONFINED ANIMAL FEEDING OPERATIONS; PROVIDING FOR ZONES IN WHICH CAFO'S ARE ALLOWED; PROVIDING FOR SITING PERMITS, AND THE CONTENTS OF APPLICATIONS THEREOF; PROVIDING FOR NOTICE AND HEARING ON SITING PERMITS AND ISSUANCE OF SITING CERTIFICATE; PROVIDING FOR APPEAL; PROVIDING FOR ENFORCEMENT; PROVIDING FOR EFFECTIVE DATE.**

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LINCOLN COUNTY, IDAHO AS FOLLOWS.

This Ordinance is adopted pursuant to authority granted by Title 67, Chapter 65 of the Idaho Code, and Article 12 Section 2 of the Idaho Constitution, as amended or subsequently codified.

### **1. TITLE, INTERPRETATION AND ENACTMENT**

**1.1 Purpose:** This ordinance and regulations have been made in accordance with the comprehensive Plan for Lincoln County and the Lincoln County Zoning Ordinance; which Plan and Ordinance are designed to protect and promote the health, safety, and general welfare of the residents.

#### **1.2 Definitions**

1. ADMINISTRATOR: An official, having knowledge in the principles and practices of zoning, who is appointed by the Commission to administer Lincoln County's zoning ordinance.
2. AFFECTED PERSON: A resident of Lincoln County, a person or legal entity owning real property within Lincoln County.
3. ANIMAL UNITS: Using the table below multiply the number of animals, by the animal equivalency factor, to determine animal units.

ANIMAL TYPES		ANIMAL EQUIVALENCY FACTOR
DAIRY CATTLE	Milking and dry cows	1.40
	Heifers ( 1 year and older )	0.80
	Calves ( 6 months to 1 year )	0.60
	calves (3 months to 6 months)	0.40
	Calves ( under 3 months )	0.20
BEEF CATTLE	Bulls ( each )	1.40
	Steers/Cows ( over 1000 lbs. )	0.80
	Steers/Cows ( 600 to 1000 lbs. )	0.60
	Calves ( less than 600 lbs. )	0.40
SWINE		
	Pigs ( 55 lbs. - market )	0.50
	Pigs ( up to 55 lbs. )	0.25
	Sows (each)	1.00
	Boars (each)	1.00
SHEEP	Each	0.15
HORSES	Each	1.25
FISH	500 lbs.	1.00
CHICKENS	Layers ( each )	0.03
	Broilers (each)	0.03
For species not specifically identified	1000 lbs of live body weight= 1.0 AU	

4. ANIMAL: One Animal Unit.
5. APPLICANT: A person or legal entity seeking approval or permits pursuant to this ordinance who has an ownership interest in the real property being considered
6. BOARD: The Board of County Commissioners.
7. C.A.F.O.: Confined/Concentrated Animal Feeding Operation. An area of confinement or parcel of land described in the site plan upon which there are confined or fed livestock, fish or birds in enclosures or ponds for 180 consecutive days in any 12 month period, in any combination of 100 ~~AU~~ Animals or possess a milk shipping permit, or a state approved waste containment system.
8. COMMISSION: Planning and Zoning Commission appointed by the Board.
9. MCL: Maximum Contaminant Level in the Idaho Department of Health and Welfare's water quality standards, and Wastewater Treatment Requirements.
10. WASTE: Waste is the presence of:
  1. Liquid Waste water and other material in liquid form which is generated as a by-product of a C.A.F.O.
  2. Solid Waste material in solid form, which is generated as a by-product of a C.A.F.O.
11. WASTE CONTAINMENT SYSTEMS: The process, area or mechanism employed for the retention, and storage of waste.
12. SITING PERMIT: Conditional Use Permit for C.A.F.O.
13. REGISTRANT NOTICE: Information supplied to the Administrator to determine Existence, and extent of C.A.F.O. existing as of the effective date of this Ordinance.
14. REGISTRANT: Person or entity operating a C.A.F.O. as of effective date of this ordinance.
15. BUFFER ZONE: Buffer zones are established to provide for a buffer between CAFO's And Non CAFO activities.
16. Lincoln County Approved C.A.F.O: Any animal feeding operation meeting the definition of a C.A.F.O. in section 1.2.7 but more than 100 animals, and holding a valid registration permit.
17. SITE PLAN- Refer to 2.2.7

### **1.3 Existing C.A.F.O.**

1. Any C.A.F.O. existing as of the effective date of this ordinance, which has not previously Registered with the Administrator, shall not be recognized as an existing C.A.F.O. and have any Grandfathered Rights, pursuant to section 1.4, and will not be transferable to a subsequent owner or operator for purpose of this ordinance. You must now file for a new siting permit and conform to the requirements of this ordinance.

### **1.4 Use for Designed Purpose Protected.**

1. No rights or authority granted pursuant to state Law this chapter shall be construed to empower Lincoln County to enact any ordinance or resolution which deprives an owner of the right to use improvements on private property for their designed purpose based solely on the nonuse of the improvements for their designed purpose for a period of ten (10) years or less. Where an owner or his authorized agent permits or allows an approved or unlawful intervening use of the owner's property, the provisions of this section are not applicable.
2. If the nonuse continues for a period of one year or longer, the Lincoln county may, by written request, require that the owner declare his intention with respect to the continued nonuse of the improvements in writing within twenty-eight (28) days of receipt of the request. If the owner elects to continue the nonuse, owner shall notify Lincoln county In writing of his intention and shall post the property with notice of his intent to continue the nonuse of the improvements. He shall also publish notice of his intent to continue the nonuse in a newspaper of general circulation in the County where the property is located. If the property complies with the requirements of this subsection, his right to use such improvements in the future for their designated purpose shall continue, notwithstanding any change in the zoning of the property.

3. The property owner may voluntarily elect to withdraw the use by filing with the clerk of Lincoln County, an affidavit of withdrawn use. If the property is redesigned for a different use, the property owner shall be deemed to have abandoned any grandfather right to the prior use of the property.

**1.5 Zones in which C.A.F.O.'s are allowed**

1. New C.A.F.O.'s will only be allowed in agriculture A-40 or larger zoned areas, within the C.A.F.O. use zone as designated on the Lincoln County Land Use Map. Smaller zone may not expand more than the original C.A.F.O. registration.
2. New zones less than A-40 Must be in accordance with the Buffer Zone in distance to a C.A.F.O.

**2. SITING PERMIT REQUIRED**

**2.1 Purpose:** prior to commencing construction of a new C.A.F.O. siting permit or registration notice, An applicant shall obtain a siting permit pursuant to this ordinance. New construction and/or, Repairs to existing improvements, which do not result in a change to the location or capacity will Not require a siting permit. All such changes shall conform to the requirements of this ordinance.

**2.2 Contents of an Application for a Siting Permit**

Each application for a siting permit shall contain the following:

1. Name, address and telephone number of applicant and/or representative.
2. Legal description of the C.A.F.O.
3. Existing use.
4. Proposed use including description of operation, number of livestock, and acreage involved.
5. Zoning district .
6. Two vicinity maps of a minimum size of eleven (11) inches by seventeen (17) inches with a radius of one (1) mile from the C.A.F.O. showing the following
  1. Land use.
  2. Zoning designation.
  3. Surface water courses.
  4. Wells that are not abandoned.
  5. Buildings and Structures.
7. A site plan, minimum size of twenty-four (24) by thirty-six (36) inches drawn to scale showing the following.
  1. Topography at intervals of twenty (20) feet contour elevation.
  2. Dimensions, size and location of existing improvements on the C.A.F.O.
  3. Dimensions, size and location of proposed improvements.
  4. Feed storage area within the C.A.F.O.
  5. Containment areas.
  6. Waste storage areas.
  7. Springs and surface water courses.
  8. Traffic access.
  9. Public thoroughfares.
  10. A description of actual area of confinement including corrals, feed storage areas, support buildings, waste storage areas, and housing, not to include farmable or irrigatable land for the purpose of determining set backs and zoning.

8. A written description of the waste management system, including collection, storage, handling and disposal thereof. A state approved nutrient management plan shall be included with C.A.F.O. greater than 1000 AU's or has a State of Idaho Milk Shipping Permit. An implementation schedule will be included. All C.A.F.O.'s greater than 1000 AU's will fall under the jurisdiction of the Department of Agriculture and shall follow and be in compliance with any nutrient management plan approved by the Idaho Department of agriculture. C.A.F.O.'s less than 1000AU's must provide a written waste management plan but Are exempt from the State approved nutrient management plan.
9. A written odor abatement plan that includes provisions to prevent odor, dust or insects from creating a nuisance or health hazard. A schedule for implementing this plan will be included.
10. A landscape plan including hedges and trees. Implementation schedule must be included.
11. Application for appropriate water permit or license from the State of Idaho.

**2.3. Fees:** A fee in an amount based on the following formula.

1. All siting permits: One thousand (\$1000.00) dollars for the first five-hundred (500). AU, and then one (\$1.00) dollar per AU thereafter.
2. Applications accompanied by a variance request shall include an additional two-hundred fifty (\$250.00) dollar fee.

**2.4. Process of notice and application Hearing**

1. The Administrator shall review the application and its completeness. Upon determining that the same is complete the Administrator shall submit the same to the Commission for public hearing. At least Fifteen (15) days prior to the hearing, notice of the time and place, and a summary of the proposed C.A.F.O. shall be published in the county's official News Paper. Notice may also be made available to other news papers, radio and television stations serving Lincoln County. Fifteen(15) days prior to the hearing , notice shall also be provided by first class mail to neighboring property owners within a mile from C.A.F.O. facility.

**2.5. Transfer of Siting permit.**

1. Only by purchase or sale of property where registered C.A.F.O. is located can be transferred.
2. **Combining:** Combining Registered C.A.F.O. Permits must apply for a new siting permit, thus forfeiting the permit for the land vacated or and abandoned.

**3. CRITERIA FOR APPROVAL**

**3.1. Requirements:** Prior to approval of a siting permit for a C.A.F.O., the commission must find that the proposed C.A.F.O. meets the following requirements:

**3.2. General requirements**

1. The proposed location for a new C.A.F.O must be in an a-40 or larger zone.
2. New C.A.F.O.'s must not be located closer than the Buffer zone allows from commercial, A-5 or smaller zones. Expanding C.A.F.O. (existing C.A.F.O.) located closer than the Buffer zone allows from an existing commercial, A-5 or smaller zone may not expand more than the original C.A.F.O. registration .
3. C.A.F.O. must comply with and not be in violation of any federal, state or local law.
4. The operator must not have begun new construction, including land alterations, for a C.A.F.O. upon land to be used as a C.A.F.O..
5. There will be no discharge of pollutants into air, surface or ground water in excess of federal, state or local laws and ordinances.
6. Proposed C.A.F.O. sites shall have an environmental compliance certification from the Appropriate state agency or written verification from the appropriate state agency that the C.A.F.O. is in compliance with the state agency's environmental requirements, if any.

7. Siting Advisory Team information: Information shall be submitted in accordance with IDAPA 02.04. 18- Rules Governing C.A.F.O. Site Advisory Team, as it now exists or as it may hereafter be amended.

**3.3. Construction restrictions:**

1. BUFFER ZONE: Buffer zones are established to provide for a buffer between C.A.F.O.'s and non C.A.F.O. activities. For example a 750 AU C.A.F.O. is provided a ½ mile buffer zone, the C.A.F.O. must own ¼ mile of the land surrounding the perimeter of the C.A.F.O.

Permitted AU's	Distance from perimeter	Land ownership requirement Surrounding C.A.F.O.perimeter
1000 or more	1 mile	1/2 mile
251-999	1/2 mile	1/4 mile
100 -250	1/4 mile	1/8 mile
99 animals or less	No restrictions	No requirement

1. C.A.F.O. Buffer Zone protection is so that no rezone for the purposes of residential Development Shall be approved within distances detailed In the table above of an existing permitted C.A.F.O., as measured from the perimeter of the site plan as identified in the C.A.F.O. Application.
2. No rezone or conditional use permits for the purposes of C.A.F.O. development will be Allowed if not in accordance with the Buffer Zone of an existing subdivision as measured from the perimeter of the Outer boundary of the subdivision as plated and recorded.
2. Corrals and animal housing facilities with 100 to 250 AU's shall be located at least 1/4 mile from residences not belonging to the owner of the CAFO and 251 AU's to 999 AU's shall be located 1/2 mile from residences not belonging to the owner of the C.A.F.O., and 1000AU's or more AU's shall be at least 1 mile from residences not belonging to the owner of the C.A.F.O.
3. Feed bunks or any feeding system shall have a fifty (50) foot setback from public right of ways.
4. Open air storage of silage, haylage, potatoes and wet storage or any other feed products resulting from the ensilage process shall be located ½ mile from any existing residence not belonging to the C.A.F.O. owner.
5. All other feed storage areas shall have a seventy-five (75) foot setback from public right of Ways Must be in accordance with the buffer zone to residences not belonging to the owner of the C.A.F.O.
6. For new C.A.F.O.'s the waste containment system must be in accordance with the buffer zone from a residence not belonging to the owner of the C.A.F.O.. Expanding C.A.F.O.'s (existing C.A.F.O.) must not alter a waste containment system so that it is nearer to a residence not belonging to the owner of the C.A.F.O. than the original waste Containment unless the altered system is in accordance with the Buffer zone from a residence not belonging to the owner of the C.A.F.O.. All new or altered waste containment systems must be at least seventy-five (75) feet from public right of ways, three hundred (300) feet from wells and seventy-five (75) feet from property lines. New residences not belonging to the owner of the C.A.F.O. must be in accordance with the Buffer Zone from such existing waste containment systems.

7. Lights on the C.A.F.O. will be placed and shielded to prevent light source from becoming a nuisance or hazard outside the property lines of the C.A.F.O.
8. Variance: A variance can be sought to the setbacks contained in this ordinance by making a written request for a variance at the time of the filing of the application for the siting permit. a variance is a modification of the requirements of the ordinance as to the setbacks for any C.A.F.O..A variance shall not be considered a right or special privilege but shall be granted to An applicant only upon showing of undue hardship because of the characteristics of the site and that the variance is not in conflict with the public interest. Prior to granting the variance the opportunity to be heard shall be provided to affected persons. The procedure considering a variance shall follow the provisions as set out in the Lincoln County Zoning Ordinance for variances.

**3.4. Requirements for community Protection**

1. The commission shall review the particular facts and circumstance of each proposed C.A.F.O. and finds adequate evidence that the proposed C.A.F.O.:
  1. Will preserve private property rights. It is recognized that land owners may do with their property as they wish but only to the extent that this use does not diminish or interfere with the use, pleasure or economic benefit of their neighbors property. Neighbor’s property doesn’t necessarily mean adjacent property but may extend to further distances within our county.
  2. Will not be hazardous or unduly disturbing to existing or neighboring uses, And will be harmonious with the existing or intended essential character of the general vicinity. Criteria for determination may include but not be limited to:
    1. Testimony from affected persons establishing the essential and intended character of the general vicinity, and the potential of the Proposed C.A.F.O. disturbing neighboring uses.
    2. Testimony from affected persons.
    3. Testimony from documented sources.
    4. Comprehensive Plan.
    5. Local, State and Federal rules and regulations.
  3. Will be adequately serviced by existing or planned public facilities. Criteria for determination may include but not be limited to:
    1. Testimony from service district or entities.
    2. Documented evidence
    3. Testimony from affected persons.
    4. Will not result in destruction, loss or damage of a natural scenic or Historic feature, Evidence of such feature may include but not be limited to:
      1. Documented evidence.
      2. Evidence from a knowledgeable source.
2. Stock Piling of manure needs to have a five hundred(500) feet setback from a residence.

**4. OCCUPANCY CERTIFICATE REQUIRED**

Prior to the use of an expanded facility/s or an existing C.A.F.O. occupation, or new C.A.F.O., An Occupancy Certificate is required. This includes any livestock, fish or birds over 100 animals.

**4.1 Process for Occupancy Certificate**

1. After completion of construction of the facilities authorized by the permit, and completion of approved changes or non-compliance corrections, and submission of proof the applicant possesses the appropriate water permit or license, the Administrator shall issue an Occupancy Certificate to the permit owner. The certificate shall certify that all facilities have been inspected and conform to the terms of the permit, with approved changes, and the permit owner is fully authorized to occupy and operate the C.A.F.O. facilities.

## **5. APPEAL**

- 5.1** Any applicant or affected person aggrieved by a decision of the commission shall have a right to appeal to the Board . Appeals shall be governed and processed in accordance with the provision of the Lincoln County Zoning Ordinance.
- 5.2** An appeal to the Board of Commissioners on a decision by the Planning and Zoning Commission stops any construction on the proposed C.A.F.O.

## **6. COMPLAINTS AND ENFORCEMENT**

- 6.1** Violation of any of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor as defined by Idaho Code §18-113, and is punishable by up to six (6) months in jail and up to a one-thousand dollar (\$1000.00) fine, or both. Each day such violation continues, shall be considered a separate offense.
- 6.2** In the event any affected person alleges that the C.A.F.O. no longer meets the criteria set forth herein and in the occupancy certificate, the affected person may initiate a contested case before the Commission as governed by Chapter 52, Title 67, Idaho code, Idaho's Administrative Procedure Act. The Commission shall conduct a hearing in accordance with the provisions of Chapter 52, Title 67, Idaho Code. Following the hearing, the Commission May:
  1. Find in favor of the C.A.F.O.
  2. Find in favor of the complainant, and
    - a. Revoke the Occupancy Certificate;
    - b. Suspend the Occupancy Certificate for a definite period;
    - c. Modify the Occupancy Certificate; or
    - d. Provide conditions upon the Occupancy Certificate.
- 6.3** Further, the Board may at any time take immediate action to protect the public in accordance with the process set forth in Idaho's Administrative Procedure Act, specifically Idaho Code 67-5247.
- 6.4** Lincoln County reserves the rights of visitation and inspection to ascertain compliance with the conditions set forth in this C.A.F.O. Ordinance as well as any and all stipulations applicable there to and to determine actual animal units.
- 6.5** All CAFO's under jurisdiction of the Idaho Department of Agriculture shall follow and be in compliance with any nutrient management program adopted by the Idaho Department of Agriculture.



THE EFFECTIVE DATE of this ordinance shall be January \_15th\_,2009.  
Dated this 12<sup>th</sup> day of January 2008.

Lincoln County Commissioners

***Signatures on File***

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Jerry Nance, Chairman

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Lawrence Calkins, Member

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Jay Loesche, Member

Attest:

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Liz Kime, Lincoln County Clerk