

AN ORDINANCE ESTABLISHING HEALTH REGULATIONS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS; PROVIDING STANDARDS FOR THE PERMITTING OF CONCENTRATED ANIMAL FEEDING OPERATIONS; PROVIDING DEFINITIONS; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR SEVERABILITY.

WHEREAS, § 192.300, RSMo, provides that the County Commission and the County Health Center Boards may make and promulgate Ordinances as will tend to enhance the public health and prevent the entrance of infectious, contagious, communicable or dangerous diseases into such county; and

WHEREAS, § 192.300, RSMo. provides that the County Commission and the County Health Center Boards may establish reasonable fees to pay for any costs incurred in carrying out such Ordinances and that any such fees generated shall be deposited in the county treasury and shall be used to support the public health activities for which they were generated; and

WHEREAS, § 192.300 RSMo, provides that any person, firm, corporation or association which violates any such Ordinance adopted, promulgated and published by the County Commission and the County Health Center Boards is guilty of a misdemeanor and shall be prosecuted, tried and fined as otherwise provided by law; and

WHEREAS, the County Commission or County Health Board has full power and authority to initiate the prosecution of any action under §192.300, RSMo; and

WHEREAS, H.B. No. 1207, 1288, 1408 & 1409 of the Missouri 88th General Assembly, § 640.710.5, RSMo, recognizes that local controls may be used to regulate concentrated animal feeding operations; and

WHEREAS, health standards and criteria for concentrated animal feeding operations consistent with state law have been prepared based upon state law and professional studies presented to and considered by the Andrew County Health Center Board of Trustees; and

WHEREAS, the adoption and enforcement of said standards is hereby found to be necessary in order to enhance the public health and prevent the entrance of infectious, contagious, communicable or dangerous diseases into Andrew County;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE ANDREW COUNTY HEALTH CENTER OF ANDREW COUNTY, MISSOURI AS FOLLOWS:

1. DEFINITIONS

Unless the context clearly indicates to the contrary, words used in the present tense include the future tense and words used in the plural include the singular. For the purposes of this Ordinance, the following words, terms and phrases shall have the following meanings unless otherwise indicated:

- 1.1. ANIMAL UNIT (“AU”): A unit of measurement to compare various animal types at a concentrated animal feeding operation. One animal unit equals the following: 1:0 beef feeder or slaughter animal; 0.5 horse; 0.7 dairy cow; 2.5 swine weighing over 55 pounds; 10 swine under 55 pounds; 10 sheep; 30 laying hens; 55 turkeys; 100 broiler chickens or an equivalent animal unit. The total animal units at each operating location shall be determined by adding the animal units for each animal type.
- 1.2. ANIMAL WASTE: Any animal excrement, animal carcass, feed waste, animal water waste, or any other waste associated with animals.
- 1.3. ANIMAL WASTE WATER: Any animal excreta, any liquid which comes into contact with any manure, litter, bedding or other raw material or intermediate or final material or product used in or resulting from the production of animals or products directly or indirectly used in the operation of a CAFO, or any spillage or overflow from animal watering systems, or any liquid used in washing, cleaning or flushing pens, barns, or manure pits, or any liquid used in washing or spraying to clean animals, or any liquid used for dust control on the premises of a CAFO.
- 1.4. APPLICATION: The injection, knifing, spraying, or placing in any other manner of animal waste or animal waste water into the land.
- 1.5. CONCENTRATED ANIMAL FEEDING OPERATION (“CAFO”) is an animal feeding operation that meets both of the following criteria:
 - 1.5.1 A ground cover of vegetation is not sustained or is not reasonably expected to be sustained over at least fifty percent (50%) of the animal confinement area; and
 - 1.5.2 At any time has 300 or more AU.
- 1.6. LEASE means a written contract for the exclusive use of real property, which contract specifically grants unto the lessee the right to apply animal waste and animal waste water to the leased premises.
- 1.7. Occupied Dwelling means any residence, or any church, school or business which has been in use at any time during the 12 month period immediately prior to the date upon which a permit is issued by the Department of Natural Resources for the construction of a CAFO.
- 1.8. OWNER: Anyone who owns, either individually and/or with any other persons, any of the following interests in the real property upon which a CAFO is situated:
 - 1.8.1. Fee simple title,
 - 1.8.2. A leasehold interest,
 - 1.8.3. Any interest in an entity which holds fee simple title; or
 - 1.8.4. Any interest in any entity which has a leasehold interest.

- 1.9. PERMIT means written authorization issued by the Andrew County Health Department to construct, modify or operate a CAFO.
- 1.10 PERSON: Includes natural persons and also includes corporations, partnerships, associations and any other business or charitable entities.
- 1.11 POPULATED AREA: An area having at least 10 occupied dwellings , excluding CAFO owned occupied dwellings, within one square mile.
- 1.12SETBACK: The distance for the CAFO facility to the nearest occupied dwelling not on CAFO property, as measured in a straight line from the occupied dwelling to the nearest CAFO confinement building, confinement lot, other confinement area, or waste handling facility.
- 1.13 WET HANDLING WASTEWATER is waste water containing waste or contaminated by waste contact, including process-generated and contained rainfall runoff.
- 1.14 DRY HANDLING WASTE is manure (feces and urine), litter, bedding, or feed waste from animal feeding operations.
- 1.15 LAND means any land owned or leased by the CAFO to qualify for the capacity of “1 acre Per 4 AU” formula for Wet Handling or “1 acre per 8 AU” formula for Dry Handling.

2 CLASSIFICATION OF CONCENTRATED ANIMAL FEEDING OPERATIONS

- 2.1 A Class IA CAFO is one that has a capacity of 2,001 or more AU.
- 2.2 A Class IB CAFO is one that has a capacity of 1,651to 2,000 AU.
- 2.3 A Class IC CAFO is one that has a capacity of 1,000 to1,650 AU.
- 2.4 A Class ID CAFO is one that has a capacity of 500 to 999 AU.

3. PERMIT REQUIREMENTS FOR ALL CAFO’S

- 3.1 All CAFO’s must obtain a permit from the Andrew County Health Department to operate in this count. To apply for a permit the CAFO must submit to the Andrew County Health Department all of the Application materials submitted to the Department of Natural Resources plus an application Fee of \$50.00. If the CAFO is issued a permit by the Department of Natural Resources and if the proposed CAFO meets the setback requirements of this Ordinance, then the Andrew County Health Department shall also issue a permit. If the proposed CAFO is small enough that it will not be subject to Department of Natural Resources regulation, then to apply for a Andrew County permit the proposed CAFO shall submit a plan to the Andrew County Health Department Administrator showing the location of the proposed facility, the number of proposed AU’s, the proposed method and location of disposing method and location of disposing of animal waste and the name and address of the owner of the proposed CAFO plus the name and address

of the owner of the land on which the CAFO will be located, if different from the owner of the CAFO.

- 3.2 It will violation of this ordinance and unlawful for any person to operate a farming facility which comes within the definition of a CAFO without first getting a permit from the Andrew County Health Department.
- 3.3 It will be a violation of this ordinance and unlawful for any person to operate a farming facility with a number of AU in excess of the number specified in the permit issued by the Andrew County Health Department.
- 3.4 It will be a violation of this ordinance and unlawful for any person to apply animal waste or animal waste water in a manner inconsistent with the requirements of this ordinance.
- 3.5 Violations of Section 3.2, 3.3, and/or 3.4 of this Ordinance will be punishable by imprisonment in the County jail for a term of up to one (1) year or by fine of up to one thousand (\$1,000.00) or by combination of imprisonment and a fine.

IV. RULES APPLICABLE TO ALL CAFO'S

- 4.1 All CAFOs constructed after August 1, 2010 must own or lease one acre of land for each 4 AU of capacity for wet handling systems or must own or lease one acre for each 8 AU of capacity for a dry waste handling system as specified in the permit issued by the Andrew County Health Department. For purposes of this ordinance, a CAFO is deemed to be constructed upon the date the Department of Natural Resources issues a construction permit for the facility, or the date upon which a permit is obtained from the Andrew County Health Department for such facility.
- 4.2 Animal waste and animal wastewater will not be applied on land with a maximum natural slope greater than 10%. The maximum natural slope will be determined in accordance with the procedures used by the Soil Conservation Services. The nutrient application levels for the CAFO shall comply with Department of Natural Resources standards.
- 4.3 Animal wastewater will not be applied within a quarter mile of an occupied dwelling which existed prior to the date construction began on the CAFO. Animal waste water injected or knifed into the soil will not be applied within 500 feet of an occupied dwelling which existed prior to the date construction began on the CAFO. Dry animal waste will not be applied within 500 feet of an occupied dwelling which existed prior to the date construction began on the CAFO. This rule will not apply to dwellings owned by the CAFO. The owner of an occupied dwelling may agree to a variance from the rule. To secure variance, the CAFO must have the written permission of the owner of the occupied dwelling, and such written permission must be renewed annually. The CAFO must then file the written permission with the Andrew County Health Department. Only after the CAFO secured the annual written permission for variance and filed the written permission with the Andrew County Health Department may the CAFO apply dry animal waste or animal waste water in variance to this rule
- 4.4 Animal waste and animal waste water will not be applied within 1000 feet of any sink hole or well or spring or other water supply 500 feet from any stream (including intermittent streams) or strip pits. This rule will not apply to waste

lagoons on the CAFO property, but will apply to all other wells, water supplies, streams, ponds, strip pits, lakes, spring and sink holes on the CAFO property.

- 4.5 The application of animal waste and/or animal waste water will not be applied any closer than 1 mile from any conservation area or youth/church camp.

V. RULES APPLICABLE TO CLASS 1B, 1C, AND 1D CAFO'S

- 5.1 No CAFO will be located within 1 mile of any Class 1A CAFO. No class 1B CAFO or 1C or 1D within $\frac{3}{4}$ of a mile of any Class 1B CAFO. No Class 1C or no Class 1D will be located within $\frac{1}{2}$ mile of any Class 1C CAFO. No Class 1D will be located within $\frac{1}{4}$ mile of any Class 1D CAFO. This distance will be measured from the nearest point of one CAFO's confinement and waste containment system to the nearest point to another CAFO's confinement and waste containment system.
- 5.2 No Class 1D CAFO will be located within 1,000 feet of an occupied dwelling. No Class 1C CAFO will be located within $\frac{1}{4}$ mile of an occupied dwelling. No Class 1B CAFO will be located within $\frac{1}{2}$ mile of an occupied dwelling. This rule will not apply to occupied dwellings owned by the CAFO or to dwellings not in existence at the time the CAFO is first issued a permit by the Department of Natural Resources or the Andrew County Health Department if CAFO is not permitted by DNR
- 5.3 No Class 1B, 1C, or 1D will be located within 5 miles of any city limits or population area of 100 or more or closer than 1 mile from any conservation area or youth/church camp.

VI. RULES APPLICABLE TO CLASS 1A CAFOS

- 6.1 No Class 1A CAFO will be located within 2 miles of any other Class CAFO. The distance will be measured from the nearest point of one CAFO's confinement and waste containment system to the nearest point of another CAFO's confinement and waste containment system.
- 6.2 No Class 1A CAFO will be located within 3 miles of an occupied dwelling. This setback requirement will increase by $\frac{1}{4}$ mile for each 500 AU of authorized capacity in excess of 2,000 AU. This rule will not apply to occupied dwellings owned by the CAFO or to the dwellings not in existence at the time the CAFO is first issued a permit by the DNR or the Andrew County Health Department if CAFO is not permitted by DNR.
- 6.3 No Class 1A CAFO will be within 5 miles of city limits. This setback will increase $\frac{1}{4}$ mile for each 500 AU authorized capacity in excess of 2,000 AU.

VII. VARIANCE TO SETBACKS RULE

- 7.1 A CAFO may secure a variance from the requirement that CAFOs not be located within certain distance of occupied dwellings by getting the written consent of the owners of all occupied dwellings within the setback area. This written consent must be filed with the Andrew County Health Department and can't be rescinded.

VIII. APPLICATION OF AN ORDINANCE

- 8.1 GRANDFATHER CLAUSE EXEMPTION

CAFOs in existence on August 1, 2010, are exempt from the terms and conditions of this ordinance so long as the CAFO continues to operate: 1) upon the same real property, 2) within the same classification. If a CAFO in existence on August 1, 2010, increases its number of AU so that the classification changes, then the CAFO must meet all requirements of this ordinance.

- 8.2 The purpose of this section is to provide what is normally referred to as “grandfather clause” protection for existing CAFOs. However, if the CAFO changes its operation in any of the ways mentioned above, then this “grandfather clause” protection does not apply.

A person who owns or operates a CAFO on August 1, 2010, may own or operate another CAFO without losing this “grandfather clause” protection for the CAF which existed on August 1, 2010, so long as the newer CAFO (1) is a spate and distinct operation, (2) the real property upon which the new CAFO is situated within the guidelines of this Andrew County Health Department Ordinance.

- 8.3 **TRANSFER OF OWNERSHIP OF CAFO WITH “GRANDFATHER CLAUSE” EXEMPTION**

If ownership of all of the real property upon which a CAFO that existed on August 1, 2010 is transferred to another person or entity, then this exemption continues to exist for the CAFO so long as the CAFO does not lose the exemption for any of the reasons stated above in Paragraph 8.1.

If ownership of any portion of a CAFO that existed on August 1, 2010 is transferred to another person or entity, then the “grandfather clause” exemption offered by this section remains with the original owner unless the original owner transfers part of or all of the “grandfather clause” exemption to the new owner.

In order to transfer all of the exemption, the original owner must so state in a written document executed at the time of the transfer of the real property. A copy of this written document must be filled with the Andrew County Health Department within 60 days of the transfer of the real property.

In order to transfer any part of the exemption less than the entire exemption, the original owner must state in a written document the number of Aus of exemption being transferred to the new owner. This written document must be executed at the time of the transfer of the real property, and a copy of the written document must be filed with the Andrew County Health Department within 60 days of the transfer of the real property.

There is no limitation on the number of times a “grandfather clause” exemption or any part thereof, may be transferred.

- 8.4 **TRANSFER OF “GRANDFATHER CLAUSE” EXEMPTION DUE TO DEATH OF OWNER**

If real property upon which a CAFO exempt from the provisions of this ordinance by virtue of this “grandfather clause” is transferred to a person because the original owner dies, then the exemption applies to the new owner. An original owner may by will transfer the “grandfather clause” exemption with a tract of real property less than the entire tract upon which operated the CAFO.

IV. ADMINISTRATIVE FEES – For Andrew County Health Department Inspection

- 9.1 1A \$200.00

1B \$150.00

1C \$100.00

All other fees will be responsibility of owner such as but not limited to : geologic inspections, hydrologic inspections, groundwater monitoring, soil evaluation or other unique costs.

Required Liability Insurance and proof of.

Disposal of Dead Animals-The proper disposal of Dead Animals shall be completed within 24 hours from the time of occurrence.

This Ordinance was adopted by the Andrew County Health Department Board of Trustees and will become effective on November 23, 2010.

Rebecca Rotterman, Board Chairperson

Christine Lance Board Member

Adrienne Clark Board Member

Billie Sue Wall Board Member