

Ordinance No. 22-07

An Ordinance Amending Title 10, Health and Safety, of the St. Joseph County Code, by adding Chapter 10.44 Entitled, “Concentrated Animal Feeding Operations”.

Whereas, the St. Joseph County Council, Board of Commissioners, and Board of Health recognize that the agricultural industry is a vital element of our economy and culture and, like living in any environment, living in a farming community contains some risks to public health.

Whereas, St. Joseph County Council, Board of Commissioners, and Board of Health find that, if not appropriately controlled, concentrated animal feeding operations (CAFOs) may seriously degrade the human environment and present an unacceptable threat to the health of persons living near CAFOs.

Whereas, St. Joseph County Council, Board of Commissioners, and Board of Health find that when threats to public health become significant it is necessary to establish appropriate safeguards to protect human health and the environment of our citizens.

Department 055 Health

Statement of Purpose and Intent

The purpose and intent of this Ordinance is to protect public health, safety, welfare, and property in St. Joseph County by amending Title 10, Health and Safety, of the St. Joseph County Code, by adding Chapter 10.44 entitled, “Concentrated Animal Feeding Operations”.

This is an Ordinance pertaining to the location, design, construction, and operation of concentrated animal feeding operations in St. Joseph County.

NOW, THEREFORE, IT IS ORDAINED BY THE ST. JOSEPH COUNTY COUNCIL THAT:

Section 1, Title 10 of the St. Joseph County Code is revised to add Chapter 10.44 Entitled, “Concentrated Animal Feeding Operations”, as attached hereto.

Section 2, This ordinance shall be in full force and effect from and after its enactment and approval by the St. Joseph County Council.

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1. Purpose

The purpose of this Ordinance is to protect public health while promoting the economic vitality of St. Joseph County by establishing requirements for the location, design, construction, and operation of concentrated animal feeding operations (CAFOs) in St. Joseph County.

2. Conflicting Ordinances

The provisions of this Ordinance shall be deemed as additional requirements to the minimum legal requirements of other governmental entities. In case of conflicting requirements, the most restrictive shall apply.

3. Incorporation by Reference

All rules, regulations, and requirements of the Indiana Department of Environmental Management (IDEM) related to CAFOs, including 327 IAC 5, 327 IAC 15, and 327 IAC 16, as each may be amended from time to time, are hereby incorporated by reference.

4. Reporting Requirement Substitution

In the case where a report requiring information of the same character must be filed to meet a Federal or State requirement, the report may be copied and submitted to the Health Department in lieu of otherwise applicable reporting requirements under this Ordinance. Any information required by this Ordinance which is not included in the Federal or State report, must be submitted additionally.

5. Definitions

Except as defined below, the terms of IC 13 and 327 IAC 5, 15, and 16, as each may be amended from time to time, shall have the same definition whenever used in this Ordinance. For purposes of this Ordinance, the terms below shall be defined as follows:

- A. Adjacent Property:** Any property which is not owned in whole or in part by the owner of the property on which a CAFO is located but which shares a boundary with a property on which a CAFO is located or a property that shares a boundary with a property on which manure from a CAFO is applied. Adjacent properties do not include public roads.
- B. Animal Unit:** A unit of measurement used to determine the total number of single animals or combination of animal types and sizes which are fed, maintained, or stabled at a concentrated animal feeding operation. See definition of concentrated animal feeding operation.
- C. ASTM:** An acronym for American Society for Testing Materials.
- D. au:** An abbreviation for animal units.
- E. Board of Health:** The St. Joseph County Board of Health.
- F. CAFO:** An acronym for concentrated animal feeding operation.
- G. CFO:** An acronym for confined feeding operations.
- H. Church:** Any tax exempt building or portion thereof used to conduct religious services on a regular basis.

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- I. Concentrated Animal Feeding Operation:** Any property or contiguous properties and all structures and animals contained thereon that are owned in whole or in part by the same person(s) which confines 1000 animal units for at least 45 days in a 12 month period where there is insufficient growing vegetation in the confinement area during the normal growing season to sustain the animals. Each of the number, types, and sizes of animals listed in 1 through 13 below is defined to be 1000 animal units. Any combination of the animal numbers, types, and sizes shown below which equals or exceeds 1000 animal units shall constitute a CAFO.
1. 700 mature dairy cows whether milked or dry,
 2. 1,000 beef cattle or heifers,
 3. 2,500 swine weighing more than 55 pounds,
 4. 10,000 swine weighing less than 55 pounds,
 5. 30,000 ducks (other than properties that use liquid manure systems),
 6. 5,000 ducks (properties using liquid manure systems),
 7. 30,000 chickens (properties using liquid manure handling systems),
 8. 125,000 chickens except layers (other than properties using liquid manure handling systems),
 9. 82,000 laying hens (other than properties using liquid manure handling systems),
 10. 1,000 veal calves,
 11. 500 horses,
 12. 10,000 sheep or lambs, or
 13. 55,000 turkeys.
- J. Confined Feeding Operation:** A facility for the feeding of livestock, poultry, and/or small animals for commercial purposes, usually in lots, pens, sheds, or buildings where food is supplied primarily by means other than grazing, foraging, or other natural means.
- K. County:** St. Joseph County, Indiana.
- L. Daycare Facilities:** Has the same meaning as child care facility as defined in Article 8.12 of Chapter 8, Planning and Zoning of the St. Joseph County Zoning Ordinance.
- M. Existing CAFO:** A CAFO is considered to exist for purposes of this ordinance if the CAFO's confinement structure(s) or manure storage structure(s) have been constructed as of the effective date of this ordinance or IDEM has issued a draft or final CAFO permit for the CAFO as of the effective date of this ordinance.
- N. FEMA:** Acronym for the Federal Emergency Management Agency.
- O. Flood Plain:** The channel proper and the areas adjoining any wetland, lake, or watercourse, which have been, or hereafter may be covered by the regulatory flood. The flood plain includes both the floodway and the floodway fringe districts. The regulatory flood is a flood having a one percent probability of being equaled or exceeded in any given year, as calculated by a method and procedure which is acceptable to and approved by the Indiana Natural Resources Commission or the Federal Emergency Management Agency.
- P. Flood Prone Area:** Any area that frequently floods after heavy precipitation events including any area that floods, on average, at least once every two years.
- Q. Frozen Ground:** Ground or soil that by the loss of heat has become hardened into ice or into a solid body causing a significantly reduced infiltration rate or when liquid freezes when applied to the surface.
- R. Health Department:** The Health Department of St. Joseph County, Indiana.

- S. Health Officer:** The Health Officer of the St. Joseph County Health Department or their duly authorized representative.
- T. IAC:** An acronym for the Indiana Administrative Code.
- U. IC:** An acronym for the Indiana Code.
- V. IDEM:** An acronym for the Indiana Department of Environmental Management.
- W. Manure:** Any animal feces or urine and any biological material such as bedding which has been in contact with animal feces or urine and any storm water, groundwater, or process water that has been commingled with animal feces or urine.
- X. Marl Soils:** An earthy unconsolidated deposit consisting chiefly of calcium carbonate mixed with clay in approximately equal proportions (35 to 65 percent of each) formed primarily under freshwater lacustrine conditions.
- Y. Medical Facility:** Any facility that, for a fee, treats ill, injured, or disabled patients or has residents that need daily assistance to perform normal living activities and who routinely stay at the facility for 24 hours a day for 14 days or more such as hospitals, long-term care facilities, and other similar facilities.
- Z. Muck Soils:** Unconsolidated soil material consisting primarily of highly decomposed organic material (usually between 20 percent and 50 percent) in which the original plant parts are not recognizable and exhibiting the highest bulk density and the lowest water content at saturation of all organic soil material.
- AA. Municipality:** Any incorporated area of St. Joseph County.
- BB. Non-potable Well:** Any well not intended or used for drinking water or culinary purposes except wells for fire suppression and environmental monitoring as defined in County Code 24.20.
- CC. Off Site Well:** Any non-public potable water supply well as defined in County Code 24.20 which is not on the property that contains a CAFO.
- DD. Permit Stipulations:** Permit-specific requirements issued by the Health Department to address unique issues raised by the specific site or situation.
- EE. Person:** Any of the following or their authorized representative. Any individual, trust, firm, joint stock company, Federal agency, corporation (including a government corporation), limited liability company, partnership, co-partnership, company, estate, municipal corporation, non-profit organization, church, City, School City, Town, School Town, School District, School Corporation, County, State Agency, association, State, municipality, commission, political subdivision of the State, any interstate entity or any other legal entity or their legal representative.
- FF. Process Water:** Any water that comes in contact with animals, pens, barns, manure, litter, feed, bedding, or milk, eggs or other commercial products and any spillage or release of such water.
- GG. Property Owner:** Any person or their authorized representative who owns a property or facility in whole or in part subject to the requirements of this Ordinance.
- HH. Public Tile:** Any drain tile that is required to be maintained by the County Drainage Board.
- II. Residence:** A place that is listed on the County tax roles where at least one person routinely performs their primary residential activities such as eating, sleeping, and recreating.
- JJ. RZD:** An acronym for residential zoning district.

- KK. Residential Zoning District:** An area designated under the St. Joseph County Zoning Ordinance as R, R2, or a Planned Unit Development.
- LL. Saturated Soil:** Soil with a water content equal to the porosity or soil from which water will flow from the soil profile into an unlined auger hole.
- MM. Sensitive Receptor:** A facility or location which poses an increased need for protection from a threat(s) to public health such as schools and medical facilities.
- NN. School:** Any publicly or privately owned building or group of buildings where more than twenty five (25) students are provided academic, technical, or vocational instruction an average of at least 130 days per year.
- OO. Waters of the State:** Water as defined in IC 13-11-2-265.
- PP. Vector:** An insect or organism that is a carrier of disease and spreads infection by conveying pathogens from one host to another.

6. Applicability

This Ordinance applies to the location, design, construction, and operation of concentrated animal feeding operations in St. Joseph County. Certain provisions of this ordinance do not apply to CAFOs that exist (see definition in Section 5.M) as of the effective date of this Ordinance as defined in the Ordinance.

7. Agricultural Advisory Board

a. Establishment of Board

An Agricultural Advisory Board (Board) shall be established and the members shall be appointed automatically and by the St. Joseph County Council, Board of Commissioners, and Board of Health as listed below.

i. Appointed Automatically

- St. Joseph County Cooperative Extension Service, Agricultural Extension Educator
- St. Joseph County Surveyor.
- St. Joseph County Building Commissioner.
- St. Joseph County Health Department, Environmental Health Manager.
- St. Joseph County Engineer

ii. Appointed by the County Council

- One member who owns or operates a CAFO in St. Joseph County.
- One member who owns or operates a farm in St. Joseph County which is not a CAFO and/or who is employed in the agricultural industry in St. Joseph County.
- One rural resident of St. Joseph County who is not actively involved in farming and does not obtain income from farming.

iii. Appointed by the County Commissioners

- One member who owns or operates a CAFO in St. Joseph County.
- One member who owns or operates a farm in St. Joseph County which is not a CAFO and/or who is employed in the agricultural industry in St. Joseph County.
- One rural resident of St. Joseph County who is not actively involved in farming and does not obtain income from farming.

iv. Appointed by the Board of Health

- One biologist.
- One health scientist or earth scientist.

- b. Residency
All members of the Board, except those appointed automatically, shall be residents of St. Joseph County.
- c. Responsibilities: The responsibilities of the Board shall be to:
 - i. Act as advisor and provide recommendations to St. Joseph County on any matter concerning public health, the environment, land use, or farm operations that may impact the farming community in St. Joseph County.
 - ii. Review and provide recommendations on any proposed ordinance(s) regarding CAFOs and any standards and requirements proposed by the Board of Health concerning CAFOs.
 - iii. Review this Ordinance as often as deemed necessary and at least every four years, and recommend changes to the ordinance, as deemed appropriate.
 - iv. The Health Department shall provide administrative and secretarial services to the Board.
- d. Terms of Appointments
 - i. The terms of all appointments shall be for three years for those members that are not automatically appointed.
 - ii. Members may be reappointed to consecutive terms.
- e. Bylaws:
 - i. The Board shall adopt bylaws governing the meetings and business of the Board as deemed appropriate.
 - ii. The Board shall elect a Chairman and Vice-Chairman.
 - iii. The Board shall meet at least four times per year.
 - iv. More than 50 percent of the members shall be present to constitute a quorum.
 - v. Each Board member may appoint a person to act in their absence by providing a written proxy to the Chairman or Vice-Chairman.
- f. Disclaimer
This Ordinance shall not create a liability for any member of the Board for any damage that may result from any advice or recommendations made pursuant to service to the Board. The Ordinance shall not create a liability for St. Joseph County or any of its divisions or employees for any damage that may result from the using or not using the advice or recommendations of the Board.

8. Permitting

- a. General requirements
 - i. No person shall start construction of or operate a CAFO without first obtaining a CAFO Operating Permit (permit) from the Health Department, subject to the exception described in Section 8.a.iii.
 - ii. An applicant for a CAFO permit shall submit a permit application to the Health Department at the same time the applicant submits a permit application for the CAFO to Indiana Department of Environmental Management (IDEM), subject to the exception described in Section 8.a.iii.
 - iii. Any CAFO that exists (see definition of existing CAFO in Section 5.M) as of the effective date of this Ordinance shall have one hundred twenty (120) days from the effective date of this Ordinance to submit a complete permit application to the Health Department.
 - iv. If a person receives an exemption from IDEM for any provision of 327 IAC 5, 15, or 16 which effects any provision of this Ordinance, the applicant shall also apply for and obtain a variance from the Health Department or the exemption may not be implemented.
 - v. Permits shall expire five years after the date of issuance or on the date that the IDEM CAFO approval expires, which ever occurs first.
 - vi. A permit renewal application shall be submitted no later than 180 days prior to the expiration of an existing permit.

- vii. Any proposed changes to the information contained in an application for which a permit has been issued shall be provided to the Health Department for approval prior to making the change. Such changes shall include but shall not be limited to changes in:
 - 1. The maximum number, sizes and types of animals at the site,
 - 2. The manure application procedures,
 - 3. Sites where manure is to be applied or otherwise used or disposed, and
 - 4. Structural changes or additions to manure storage, animal confinement, or feed storage facilities.
 - b. Permit application
 - i. The permit application shall:
 - 1. Be submitted on forms prescribed by the Health Department,
 - 2. Contain a complete list of all persons who own more than 5 (five) percent of the land and/or structures of the CAFO,
 - 3. Include drawings made to scale which shall show the applicable setbacks and separation distances, and
 - 4. Contain the following information:
 - a. A completed application form,
 - b. A waste management plan consisting of:
 - i. A list of all waste products, except manure, that will be generated at the CAFO,
 - ii. Estimates of how much of each waste will be generated annually,
 - iii. A description of how each waste will be stored, and
 - iv. A description of how each waste will be disposed.
 - c. A farmstead plan as defined in 327 IAC 15-15-17,
 - d. A storm water pollution prevention plan as defined in 327 IAC 15-15-18,
 - e. An emergency spill response plan as defined in 327 IAC 15-15-16,
 - f. A manure management plan as defined in 327 IAC 16-7-11,
 - g. A soil conservation practice plan as defined in 327 IAC 15-15-11, and
 - h. Any other reasonable and necessary information required by the Health Department to process the application.
 - ii. A fee shall be required for a permit and shall be:
 - 1. Prescribed by the County Commissioners in an amount consistent with other fees of a similar nature charged by St. Joseph County,
 - 2. Paid at the time the permit application is submitted, and
 - 3. Non-refundable.
 - iii. Obtaining a permit from the Health Department does not release any person from obtaining any other required permit or approval.
 - c. Application approval
 - i. Within forty five (45) days of receipt of a completed permit application the St. Joseph County Building Commissioner, St. Joseph County Surveyor, and St. Joseph County Engineer shall review the application and provide the Health Department with any requirements that are reasonable and necessary to protect public safety and welfare including, but not necessarily limited to, measures to:
 - 1. Ensure the safety of all structures,
 - 2. Ensure the proper operation of existing public drain tiles and ditches and ensure the proper drainage of land,
 - 3. Protect the integrity of public roads and bridges, or
 - 4. Protect public safety on roads and bridges.
- The Health Department shall incorporate these requirements into the permit as project specific stipulations and the applicant shall comply with these stipulations.

- ii. The Health Department shall review the application and all plans submitted pursuant to Section 8.b.i.4 for compliance with this Ordinance and shall:
 - 1. Request any other information deemed reasonable and necessary to process the application,
 - 2. Notify all residents, businesses, and other facilities where people live or work within one mile of the proposed facility and provide them with a summary of the application and information on how they may comment on the application,
 - 3. Require changes in the application necessary to comply with this Ordinance,
 - 4. Establish site specific permit stipulations as necessary to address specific environmental and health issues. Include these stipulations along with those established pursuant to Section 8.c.i as requirements in the permit.
 - 5. Approve the application upon a determination that the application meets all requirements of this Ordinance but no sooner than the issuance of a permit for the same CAFO by IDEM.
- iii. An applicant's history of compliance with federal, state, and county laws shall be considered when evaluating an application. If an applicant has a history of violating environmental protection or public health laws, the Health Department may place additional requirements on the applicant as deemed necessary and appropriate by the Health Department to ensure compliance with this ordinance.
- iv. The Health Department shall not issue a permit to any person that:
 - 1. Has an unresolved violation with the EPA, IDEM, the Health Department or any other environmental regulatory agency concerning a CAFO,
 - 2. Has intentionally misrepresented or concealed any material fact in any application for a County permit applicable to the proposed CAFO, or
 - 3. Has knowingly and repeatedly violated any county, state, or federal environmental protection laws concerning a CAFO.

9. Setbacks From Residences, Residential Zoning Districts, and Municipalities

a. General requirements

- i. No CAFO shall be constructed or allowed to operate, except as provided in Section 9.a.iii, closer to a residence, residential zoning district (RZD), or municipality than the reduced setbacks shown in Section 9.b.
- ii. No CAFO shall be required pursuant to this Ordinance to be constructed or operate farther from a residence, RZD, or municipality than the standard setbacks shown in Section 9.b.
- iii. All structures at CAFOs which exist as of the effective date of this Ordinance shall be exempt from the setbacks listed in Section 9.b, however, all additions or expansions of existing facilities shall be subject to the setbacks established in Section 9.b.
- iv. Regardless of the setback of any CAFO, it shall be a violation of this Ordinance for any CAFO to operate in a manner that becomes a threat to public health and the Health Department shall exercise its authority under IC 16-20 and other State statutes to protect public health.
- v. All setbacks shall be measured as the straight line distance from the nearest point of any structure at the CAFO that contains animals or manure to the:
 - 1. Nearest point on the outside wall of any residence for residential setbacks,
 - 2. The nearest boundary of any RZD for a RZD setback, and
 - 3. The nearest boundary of any municipality for a municipality setback.
- vi. Only residences, RZD boundaries, and municipality boundaries in existence as of the date the CAFO application is submitted to the Health Department shall be used to establish setbacks.

- vii. Neither the Health Department nor the Board of Health shall issue a variance to reduce the setbacks to less than the reduced setbacks except under a variance issued pursuant to Section 9.c.ii or 9.d.iii.
- b. Reduced and standard setback distances
 - i. The following table lists the reduced and standard residential, RZD, and municipality setbacks for CAFOs.

RESIDENTIAL, RZD, AND MUNICIPALITY SETBACKS

Number of animal units (au) ¹	Residential ²		RZD ²		Municipality ²	
	Reduced	Standard	Reduced	Standard	Reduced	Standard
1000 au but less than 2000 au	800	1000	1600	2000	3200	4000
2000 au but less than 3000 au	1100	1380	2200	2760	4400	5520
3000 au but less than 4000 au	1400	1750	2800	3500	5600	7000
4000 au but less than 5000 au	1700	2130	3400	4260	6800	8500
5000 au but less than 6000 au	2000	2500	4000	5000	8000	10000
6000 au but less than 7000 au	2300	2880	4600	5760	9200	10560
7000 au but less than 8000 au	2600	3250	5200	6500	10400	10560
8000 au but less than 9000au	2900	3480	5800	6960	10560	10560
9000 au but less than 10000 au	3200	3840	6400	7680	10560	10560

¹For each 1000 animal units above 10000 animal units the following shall be used to calculate the setbacks:

- The reduced residential setback shall increase by 300 feet up to a maximum of 5280 feet,
- The standard residential setback shall be 125% of the reduced residential setback up to a maximum of 5280 feet,
- The reduced RZD setback shall be twice the reduced residential setback up to a maximum of 10560 feet,
- The standard RZD setback shall be twice the standard residential setback up to a maximum of 10560 feet,
- The reduced municipality setback shall be four times the reduced residential setback up to a maximum of 10560 feet, and
- The standard municipal setback shall be four times the standard residential setback up to a maximum of 10580 feet.

²All setbacks are shown in feet.

- c. Reduced setbacks
 - i. Reduced setbacks apply only to those CAFOs that meet the following requirements:
 1. The operation shall have no lagoons or other open air structures that contain manure or liquids that have contacted manure.
 2. All manure storage shall be contained in structures that prevent precipitation and surface runoff from contacting the manure and shall be entirely covered by a low permeability cover that reduces the release of off-gases.
 3. All feed storage shall be contained within structures that prevent precipitation and surface runoff from contacting the feed and shall be entirely covered by a low permeability cover except for a working face which may remain open.
 4. All unauthorized releases of manure and liquids that have contacted manure or feed, including any spillage, shall be immediately cleaned up so that releases to the ground do not become a source of air emissions or soil or water contamination.

5. Any manure that is applied to land within the residential setback which is also within 1000 feet of a residence shall be incorporated into the soil within 24 hours of application. The Health Department may approve a variance from this requirement for very low strength liquid manure.
- ii. The Health Department may approve a variance for a reduction to the reduced residential setback only if the applicant obtains a waiver(s) voluntarily signed by all owners of a residence(s) that would otherwise be within the setback and only if the site of the proposed CAFO was a CFO as of the effective date of this ordinance or denial of the variance would create an undue hardship on the applicant.
 1. The Health Department reserves the right not to approve a variance based on a waiver if, in their opinion, the waiver would involve an unacceptable risk to public health.
 2. Any variance issued pursuant to Section 9.c.ii shall be disclosed by the property owner to prospective buyers if the property which is the subject of the waiver is to be sold.
- iii. Any operation that receives approval for a reduced setback but does not implement and maintain the items listed in Section 9.c.i.1 through 5 shall be subject to the enforcement provisions of the ordinance and shall reduce the number of animals at the operation as determined by the Health Department.
- d. Standard setbacks
 - i. Standard setbacks shall apply to those CAFOs that do not meet or maintain the requirements for the reduced setbacks.
 - ii. Standard setbacks may be reduced subject to approval by the Health Department up to twenty (20) percent by the methods described below:
 1. The setbacks may be reduced by incorporating measures to reduce the exposure of nearby residents to air emissions to the satisfaction of the Health Department. The burden of proof for establishing the effectiveness of a technology to reduce emissions shall be on the applicant. In order to receive full consideration for a proposed technology by the Health Department, the technology must meet the following requirements:
 - a. It must have been in use at numerous locations for a sufficient length of time to allow a sound judgment to be made of its long-term effectiveness.
 - b. Its effectiveness must have been independently assessed by experts from a government agency, university, or other similar organization.
 - c. Verifiable documentation must be provided to the Health Department.
 - iii. The Health Department may approve a variance for a reduction to the standard residential setback if the applicant obtains a waiver(s) voluntarily signed by the owner(s) of a residence that would otherwise be within the setback and only if the proposed CAFO was a CFO as of the effective date of this ordinance or denial of the variance would create an undue hardship on the applicant.
 1. The Health Department reserves the right not to approve a variance based on a waiver if, in their opinion, the waiver would involve an unacceptable risk to public health.
 2. Any variance issued pursuant to Section 9.d.iii shall be disclosed to prospective buyers by the property owner if the property which is the subject of the waiver is to be sold.
 - iv. The Health Department may approve a variance for a reduction to the standard setbacks based on the prevailing wind direction, speed, and frequency.
 - v. The Health Department shall determine the amount of reduction warranted by the methods described in Section 9.d.ii, iii and iv.
 - vi. If a reduction in a residential setback is approved by the Health Department based on reductions in air emissions, it shall apply to the RZD and municipality setbacks established based on the residential setback.

- vii. If a person fails to implement any of the items on which the reduction is based, the Health Department shall order a reduction in the number of animals at the site consistent with the enforcement provisions of the ordinance and the permittee shall comply with the order.
- e. Setback protection
 - i. When an applicant applies for a permit from the Health Department, the applicant may register for the maximum setback for which the site qualifies.
 - ii. No person who constructs a residence or any other facility within the setback previously established in a permit issued pursuant to this ordinance shall have the right to challenge the setback established under this ordinance.
- f. Loss of an approved setback
 - i. Any person that receives a permit from the Health Department for a new CAFO shall make a good faith effort to complete construction of the facilities within twelve (12) months after receiving a permit. The Health Department may extend this period for an additional six (6) months if the permittee is delayed by act of god or other verifiable reason not within their control.
 - ii. If a permittee does not make a good faith effort to complete construction of the facility, their permit shall be cancelled and an application for that property may not be submitted for a period of two years.
- g. Default Setbacks
 If the separation distances listed in Section 9.b are for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, that holding shall not affect the validity of the remaining portions of this Ordinance and the remaining portions shall be and remain in full force and effect, and the separation distances shall be as follows:

DEFAULT SETBACKS

Number of Animal Units (au) ¹	Residential Separation Distance (feet)	RZD Separation Distance (feet)	Municipality Separation Distance (feet)
1000 au but less than 2000 au	1320	2640	5280
2000 au but less than 3000 au	1590	3180	6360
3000 au but less than 4000 au	1860	3720	7440
4000 au but less than 5000 au	2130	4260	8520
5000 au but less than 6000 au	2400	4800	9600
6000 au but less than 7000 au	2670	5340	10560
7000 au but less than 8000 au	2940	5880	10560
8000 au but less than 9000 au	3210	6420	10560
9000 au but less than 10000 au	3480	6960	10560

¹For each 1000 animal units above 10000 animal units the following shall be used to calculate the setback:

- The residential setback shall increase by 270 feet up to a maximum of 5280 feet,
- The RZD setback shall be twice the residential setback up to a maximum of 10560 feet, and
- The municipality setback shall be twice the RZD setback up to a maximum of 10560 feet.

10. Separation Distances Between CAFOs.

- a. A proposed CAFO may be located within two (2) miles of any existing CAFO(s) only if the following separation distances are met, as applicable.

- i. If there is one and only one CAFO within two (2) miles of a proposed CAFO, when the residential setback of the proposed CAFO is multiplied by two (2) it shall not intersect with the residential setback of the existing CAFO.
 - ii. If there is more than one (1) CAFO within two (2) miles of the proposed CAFO, when the residential setback of the proposed CAFO is multiplied by five (5) it shall not intersect with the residential setback of an existing CAFO.
 - iii. The requirements of 10.a.i and ii notwithstanding, no CAFO shall be required to be more than two miles from any other CAFO.
 - iv. The separation distances between CAFOs do not alter the residential, RZD, or municipality setbacks.
- b. Reduction in separation distance between CAFOs
- i. The Health Department may approve a reduction in the separation distance between CAFOs when there is more than one (1) CAFO within two (2) miles of the proposed CAFO if the conditions described in Section 10.b.i.1 through 3 are met.
 - 1. The separation distance may be reduced by incorporating measures to reduce the exposure of nearby residents to air emissions to the satisfaction of the Health Department. The burden of proof for establishing the effectiveness of a technology to reduce emissions shall be on the applicant. In order to receive full consideration for a proposed technology by the Health Department, the technology must meet the following requirements.
 - a. It must have been in use at numerous locations for a sufficient length of time to allow a sound judgment to be made of its long-term effectiveness.
 - b. Its effectiveness must have been independently assessed by experts from a government agency, university, or other similar organization.
 - c. Verifiable documentation must be provided to the Health Department.
 - 2. The separation distance may be reduced if, in the opinion of the Health Department, the geographic relationship of the CAFOs is unlikely to result in unacceptable exposure to any resident from any airborne contaminant.
 - 3. Neither the Health Department nor Board of Health may reduce the separation distance pursuant to Section 10.b.i to less than the following:
 - a. When the residential setback of the proposed CAFO is multiplied by three it shall not intersect with the residential setback of any existing CAFO.
 - ii. The Health Department shall determine the amount of reduction warranted under Sections 10.b.i. subject to the limitations described in Section 10.b.i.3.
 - iii. If a CAFO owner fails to implement any of the items on which the reduction is based, the Health Department shall order a reduction in the number or animals at the site consistent with the enforcement provisions of the ordinance and the permittee shall comply with the order.

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11. Separation Distances Between CAFOs and Sensitive Receptors

- a. No CAFO structure or area which stores manure or confines animals, except as provided in Section 11.b, shall be located within the distance shown in the following table.

SENSITIVE RECEPTOR SEPARATION DISTANCES

<u>Sensitive Receptor</u>	<u>Minimum Separation Distance</u>
Public road right of way	100 feet from road right of way
Property line of the CAFO	100 feet from the property line
Churches	One half of the residential setback
Daycares	Equal to the Residential Zoning District setback
Medical Facilities	Equal to the Residential Zoning District setback
Schools	Equal to the Residential Zoning District setback

- b. All CAFOs structures that exist as of the effective date of this Ordinance shall be exempt from the separation distances in Section 11.a, however, additions or expansions to manure storage or animal confinement areas or facilities shall be subject to the separation distances listed in 11.a.
- c. All setbacks shall be measured as the straight line distance from any structure on the CAFO that stores manure or contains animals to the nearest point on the outside wall of the structure or the nearest property line or road right of way, as appropriate.

12. Separation Distances Between CAFOs and Water Features

- a. No CAFO waste lagoon or solid manure storage structure, except as provided in Section 12.c, shall be located within the distance shown in the following table.

WATER FEATURE SEPARATION DISTANCES

<u>Water feature</u>	<u>Separation Distance</u>	
	<u>Waste Lagoon</u>	<u>Solid Waste Storage Structure</u>
Public water supply well	1500 feet	300 feet
Water well on the CAFO	100 feet	100 feet
Off site well	300 feet	100 feet
Non-potable well	500 feet	100 feet
Waters of the State	500 feet	100 feet
Drainage inlets	500 feet	100 feet
Sediment basins	500 feet	100 feet
Sinkholes	500 feet	100 feet
Public Tiles	75 feet from all CAFO structures.	
Flood plains	300 feet from all CAFO structures plus two feet of freeboard	

- b. No CAFO shall be constructed within a wellhead protection area that is based on the five year time of groundwater travel to the wellhead and which has been designated or approved by IDEM or the Health Officer.
- c. All CAFO waste lagoons and solid manure storage structures that exist as of the effective date of this Ordinance shall be exempt from the separation distances in Section 12.a and b, however, additions to or expansion of these structures shall be subject to all separation distances in Section 12.a and b.

- d. Waste lagoon, solid waste storage structure, public water supply, waters of the state, drainage inlets, sediment basins, and sinkholes shall have the same meaning as the meaning established by the Indiana Water Pollution Control Board.
- e. The separation distances shall be measured as the straight line distance from any structure on the CAFO that contains animals or manure to the nearest point of the water feature.
- f. The Health Department may reduce the setback from a public water supply well to 1000 feet if the lagoon is not located in an area with high permeability soils.
- g. The Health Department may approve a reduction in the setbacks from lagoons for non-potable wells, waters of the State, drainage inlets, sediment basins, and sinkholes to three hundred (300) feet if:
 - i. A filter strip at least thirty five (35) feet wide is installed and maintained near the water feature,
 - ii. A berm is constructed near the lagoon to protect the water feature, or
 - iii. The surface water feature is at least two (2) feet higher in elevation than the up slope toe of the lagoon and the floor of the solid waste storage structure, as applicable.

13. Design Requirements

- a. General Requirements:
 - i. All CAFO structures that exist (see definition in Section 5.M) as of the effective date of this Ordinance shall be exempt from the requirements of Section 13.b and 13.c except all existing facilities shall comply with Section 13.b.ii, within three hundred sixty five (365) days of the effective date of this Ordinance.
 - ii. All applicable county permits must be obtained prior to initiating construction of any facility or structure.
- b. Manure Storage Facilities
 - i. All structures for the storage of manure shall be designed and constructed to prevent the release of contaminants to the environment.
 - ii. All structures for the storage of solid manure shall be designed and constructed to prevent precipitation from contacting the manure and to prevent the release of liquids to the environment from material within the structure.
 - iii. All structures for the storage of store solid manure shall be designed and constructed to be two feet in elevation above the surrounding terrain or the applicant shall submit engineering data showing that the facilities would not be flooded by a twenty four (24) hour one hundred (100) year precipitation event to the satisfaction of the Health Department.
 - iv. All lagoons that contain manure or liquid that comes in contact with manure shall have a high density polyethylene (HDPE) liner equal to or greater than a design thickness as specified by using ASTM Standard D 5199 for measurement of a smooth HDPE liner or an equivalent alternative which shall be subject to the approval of the Health Department. The installation of the liner, including the welding of all seams, shall be performed according to the recommendations of the manufacturer.
 - v. If a lagoon is constructed in high permeability soils or where the seasonal water table is within four feet of the bottom of the lagoon, groundwater monitoring wells shall be installed and sampled according to the requirements of the Health Department.
- c. Animal Confinement and Silage Storage Structures
 - i. All structures designed to confine animals or store silage shall be designed and constructed to:
 - 1. Prevent the release of contaminants to the environment and

2. Be two feet in elevation above the surrounding terrain or the applicant shall submit engineering data showing that the facilities would not be flooded by a twenty four (24) hour one hundred (100) year precipitation event to the satisfaction of the Health Department.
- ii. If a confinement structure exhaust fan(s) distribute exhaust in the direction of one or more nearby resident(s) the Health Department may order that wind breaks or other reasonable and necessary measures be implemented to reduce the exposure of the residents.

14. Operational Requirements

a. General Requirements

- i. All operational requirements contained in Section 14 shall be applicable to all CAFO operations. If compliance with any portion of Section 14 as of the effective date of this Ordinance would constitute an undue hardship to an owner of an existing CAFO, the Health Department may grant a waiver for up to three hundred sixty five (365) days for the owner to come into compliance.
- ii. No person shall institute, permit, or maintain a practice or condition while storing or applying manure or confining animals that may transmit, generate, or promote disease.
- iii. All manure must be contained in an approved containment structure until removed for land application or other disposition approved by the Health Department.
- iv. No substance shall be added to manure except vegetative material and process water without approval of the Health Department.
- v. Silage which has spoiled and is not to be feed to the confined animals shall be disposed of in accordance with the approved waste disposal plan.
- vi. A CAFO owner and/or operator must immediately contact the Health Department and implement their approved emergency response plan upon a determination that a release to the environment may contaminate surface water, groundwater, or an adjacent property.
- vii. If the Health Department determines there is evidence that any soil, surface water, or groundwater has been or is being contaminated by the operation of a CAFO, the Health Department may order the owner to conduct any monitoring or other data collection deemed reasonable and necessary to characterize the source, nature, and extent of the contamination.
- viii. If the Health Department determines that soils, surface water, or groundwater has been or is being contaminated by CAFO operations, the Health Department may order any reasonable and necessary corrective action to protect public health and the environment.
- ix. There shall be no discharge or release of manure, litter, or process water pollutants to waters of the state unless allowed by an existing National Pollution Discharge Elimination System Permit.
- x. All manure shall be stored, managed, and land applied according to the requirements of 327 IAC 15 and the additional requirements of this Ordinance.

b. Record Keeping and Reporting

- i. All record keeping and reporting requirements of 327 IAC 15 and 16 as each may be amended from time to time shall also be a requirement of this Ordinance and shall be submitted, upon request, to the Health Department.
- ii. The owner of each CAFO shall submit a copy of the annual operating report prepared pursuant to 327 IAC 15 to the Health Department by February 15 of each year.
- iii. All analysis of manure for phosphorous and nitrogen required by IDEM shall also be a requirement of this Ordinance and shall be submitted to the Health Department within 30 days of performing the analysis.

- iv. Accurate records shall be maintained by the operator of the location where nutrient samples are taken such that the Health Department may duplicate the samples. The Health Department may require the operator use a global positioning system for documenting nutrient sample locations if other methods are determined to be inadequate to duplicate the samples.
- v. All environmental monitoring data required to be submitted to any other government agency shall also be submitted to the Health Department at the same time.
- c. Site Maintenance
 - i. All spills or releases of manure and any material that has come into contact with manure, other than approved land application, on or off the CAFO property to the soil or surface water shall be immediately cleaned up.
 - ii. All open air manure storage structures shall be maintained to prevent damage to the structural integrity of the storage structure. Maintenance shall, at a minimum, include the following requirements:
 - 1. Woody vegetation shall be removed from any earthen lagoon,
 - 2. Burrowing animals shall be removed from any earthen lagoon, and
 - 3. Vegetation around lagoons shall be mowed and/or trimmed to prevent a breeding ground for vectors.
 - iii. Vectors and rodents shall be controlled so they do not become a public health nuisance to neighbors.
- d. Manure Application
 - i. Manure shall not be applied to land in excess of agronomic rate and all other requirements of 327 IAC 16-10 and this Ordinance.
 - ii. All manure application requirements of this Ordinance shall apply to any manure derived from a CAFO within or outside of St. Joseph County and applied to land within St. Joseph County.
 - iii. Manure may not be applied to land in a manner that allows manure or its decomposition or degradation products to become a public health nuisance off the property of the CAFO.
 - iv. Manure may not be applied to land in a manner that allows manure or its decomposition or degradation products to contaminate the surface water or groundwater.
 - v. All setbacks for the application of manure required by 327 IAC 16 shall also be required by this ordinance.
 - vi. The Health Department may order that setbacks for the application of manure be increased or any other reasonable and necessary measure to protect public health if manure is applied in a manner that releases manure to an adjacent property or becomes a public health nuisance.
 - vii. If a person has received a variance pursuant to Sections 9.c.ii or 9.d.iii, any manure that is applied to land within the residential setback which is also within one thousand (1000) feet of a residence shall be incorporated into the soil within twenty four (24) hours of application. The Health Department may grant a variance from this requirement for very low strength liquid manure.
 - viii. The Health Department may order that setbacks be increased or that spraying of manure be discontinued upon a determination that the spraying of manure has become a public health nuisance.
 - ix. There shall be no application of manure to muck or marl soils where the seasonal water table is at or near the surface.

- x. There shall be no application of manure to frozen ground except during emergency situations and only when approved in advance on a case by case basis by the Health Department. The Health Department may place any additional requirements deemed reasonable and necessary to protect public health and the environment on the application of manure to frozen ground.
- xi. Manure shall not be applied to saturated ground or in a flood prone area.
- xii. Liquid manure shall not be applied at a rate that exceeds the infiltration rate of the soils or that causes the ponding of liquids on the surface.
- xiii. All solid manure shall be incorporated into the soil within twenty four (24) hours of application unless it is applied to a crop during the normal growing season.
- xiv. Manure shall not be surface applied when the National Weather Service predicts greater than a thirty (30) percent chance of precipitation during and for the twenty four (24) hours following the completion of manure application as reported by the National Weather Service on the morning or the day application is to be conducted.

15. Disposal of Dead Animals

- a. All dead animals shall be disposed of in accordance with this ordinance and the requirements of 327 IAC 16 and 345 IAC 7-7-3 as each may be amended from time to time.
- b. The burial of dead animals in a FEMA designated 100 year floodplain shall only be performed with the advanced approval of the Health Department.

16. Issuance of Standards and Requirements

- a. The County Board of Health may adopt, amend or rescind any rules, regulations or standards as deemed appropriate and necessary for proper enforcement of and to carry out the purposes and intent of this Ordinance subject to the following requirements:
 - i. Public comment periods, public meetings, and public hearings, as appropriate, in accordance with State law shall be used when developing rules, regulations or standards.
 - ii. The St. Joseph County Agricultural Advisory Board shall be consulted prior to the issuance of any such rules, regulations or standards.
- b. The Health Department may adopt, amend, or rescind policies and procedures for the appropriate implementation of this Ordinance.
- c. The rules, regulations, standards, policies and procedures issued pursuant to this Ordinance may not:
 - i. Threaten public health or
 - ii. Violate any provision of this Ordinance or other applicable federal, state, or county laws or regulations.

17. Enforcement

- a. Enforcement Authority
Except as provided for elsewhere in this Ordinance, the Health Department is authorized and charged with enforcing this Ordinance.
- b. Right-of Entry for Inspections
 - i. Any application for a permit submitted under the provisions of this Ordinance shall constitute permission for representatives of the Health Department bearing proper credentials and identification to enter any property identified in the application to:
 - 1. Inspect the status of construction, operations, or manure application,
 - 2. Collect data and information necessary to process a permit application,
 - 3. Collect data to determine potential impacts to the environment and public health, or
 - 4. Inspect any records deemed appropriate and necessary by the Health Department to assess the applicant's compliance with this Ordinance.

- ii. The Health Department shall consult with the Indiana State Board of Animal Health to establish procedures to protect confined animals from the transmission of disease from inspectors. The procedures shall be provided to CAFO operators who may request any reasonable and necessary changes to the procedures that are routinely used at their facility.
- iii. Any person entering into an agreement to provide or sell manure from a CAFO within St. Joseph County which is to be applied to a property in St. Joseph County shall include in that agreement prior authorization for representatives of the Health Department bearing proper credentials and identification to enter any property identified in the application to:
 - 1. Inspect the manure application,
 - 2. Collect data and information necessary to process a permit application,
 - 3. Collect data to determine potential impacts to the environment and public health, or
 - 4. Inspect any records deemed appropriate and necessary by the Health Department to assess compliance with this Ordinance.
- iv. Representatives of the Health Department bearing proper credentials and identification, may enter upon and inspect any property that accepts manure for land application from a CAFO located within or outside of St. Joseph County for such purposes as inspecting, observing, measuring, sampling, testing or examining records necessary to carry out the provisions of this Ordinance.
- v. After the issuance of a permit, representatives of the Health Department bearing proper credentials and identification, may enter upon and inspect any property listed in the permit application as part of the operation for such purposes as inspecting, observing, measuring, sampling, testing or examining records necessary to carry out the provisions of this Ordinance.
- vi. In the event a person who has common ownership over a building, structure, or land subject to a CAFO permit application or permit or the location of land application of manure from a CAFO does not allow an inspection, the following shall occur:
 - 1. The application submitted or permit issued pursuant to this Ordinance shall be immediately cancelled,
 - 2. All work being performed, except that necessary to protect the health of animals, shall be immediately suspended, and
 - 3. The work may only commence upon the approval of the Health Department.
- vii. The Health Department shall attempt to inspect each CAFO as often as deemed necessary and no less than twice each year subject to the availability of resources.
- c. Corrective Action for Violations of the Ordinance
 - i. When the Health Department has reasonable grounds to believe that there has been a violation of this ordinance which is also a violation of IDEM's requirements, the Health Department shall notify IDEM and may work with IDEM to implement a joint enforcement action or may defer enforcement to IDEM.
 - ii. Whenever the Health Department determines there are reasonable grounds to believe that there has been a violation of any provision of this Ordinance, the Health Department shall issue a written order to abate the violation to the person(s) responsible for the violation consistent with the following requirements:
 - 1. The abatement order shall be sent by certified mail to the last know address of the responsible person.
 - 2. If the certified letter is returned, a copy of the letter shall be posted at the property and the posting shall constitute due notice.
 - 3. The abatement order shall include:
 - a. A statement explaining the nature of the violation or condition,
 - b. A description of the remedies required to abate the violation or condition,
 - c. A reasonable time for correcting the violation or condition, and

- d. A description of the penalty that is imposed for the violation, if any.
 - iii. Any person notified of a corrective action requirement by the process identified above shall comply with the order or they shall be in violation of this ordinance and subject to the enforcement and penalty provisions of this ordinance.
- d. Issuance of Emergency Orders
 - i. Whenever the Health Officer finds that an emergency exists which requires immediate action to protect public health, the Health Officer may, without notice or hearing, issue an emergency abatement order to any person reciting the existence of such an emergency and requiring that action be taken as the Health Officer deems reasonable and necessary to meet the emergency. Notwithstanding any other provisions of this Ordinance, such order shall be effective immediately. An emergency abatement order may include, but need not be limited to, an order to:
 - 1. Immediately discontinuing any practice that threatens public health or the environment,
 - 2. Remove any contamination that has entered the environment, and/or
 - 3. Carry out any other action necessary to protect public health or the environment.
 - ii. Any person receiving an emergency abatement order:
 - 1. Shall comply with and carry out the order,
 - 2. May seek a hearing under Section 17.e while carrying out such order, and
 - 3. Shall have the right to recover any of its response costs to the extent that the order or any portion thereof is found to have been arbitrary or capricious or not otherwise in accordance with law.
 - iii. If a person fails to perform the lawful measures ordered by the Health Department pursuant to Section 17.d, the Health Department:
 - 1. May enter the property without prior notice to take or cause to be taken any emergency order and
 - 2. Shall be reimbursed by the person who failed to perform the emergency order for all costs incurred by the Health Department associated with taking the action ordered.
- e. Appealing an Order of the Health Department:
 - i. Any person affected by an order of abatement or any decision issued by the Health Department pursuant to the enforcement of this Ordinance may petition for and shall be granted a hearing on the matter before the Health Officer, provided that such person shall file a petition with the office of the Health Officer by mail postmarked or hand delivered, within fifteen (15) days after service of an order of abatement or issuance of the decision. The request for a hearing shall be written and shall set forth a brief statement of the grounds thereof.
 - ii. Upon receipt of such petition, the Health Officer shall arrange a time and place for such hearing and shall give the petitioner written notice thereof. Such hearing shall be held as soon as practicable after the receipt of a petition but in no case shall be more than thirty (30) days after receipt of the petition. At such hearing the petitioner shall be given an opportunity to be heard and to show cause why such notice or decision should not be enforced.
 - iii. The Health Officer shall sustain, modify, or withdraw the notice to the petitioner as soon as practicable and in no case later than fifteen (15) days following the hearing.
 - iv. A decision by the Health Officer to approve, amend, or disapprove an order or decision shall be final subject only to review by a court of competent jurisdiction.

18. Variances

- a. The Health Officer may issue a written variance to any provision of this Ordinance on a case by case basis, except where restricted herein.
- b. The Health Officer shall approve, amend, or disapprove a written petition by another party for a variance from any provision of this Ordinance, except where restricted herein, as soon as practical after receiving the petition and in no case more than thirty (30) days after the petition is filed or sixty (60) days if the petition is for a reduction in residential setbacks or the distance between CAFOs.
- c. If the variance request is for a reduction in the residential setback as allowed in Sections 9.c.ii and 9.d.iii or a reduction in the distance between CAFOs allowed by Section 10.b, the Health Officer shall follow the process described in Section 18 but shall additionally:
 - i. Request the opinion of the Agricultural Advisory Board on the appropriateness of the proposed reduction,
 - ii. Hold a public meeting, and
 - iii. Issue a determination of the setback based on the Health Department's assessment of the appropriateness of the proposed setback and the comments, data, and opinions of the applicant, Agricultural Advisory Board, and the public.
- d. Any person affected by a decision by the Health Officer to approve, amend, or disapprove a variance may petition for and shall be granted a hearing on the matter before the Board of Health subject to the following conditions.
 - i. The petitioner shall file a petition with the office of the Health Officer by mail postmarked or hand delivered, within fifteen (15) days after issuance of a decision on a waiver by the Health Officer. The request for a hearing shall be written and shall set forth a brief statement of the grounds thereof.
 - ii. Upon receipt of such petition, the Board of Health shall arrange a time and place for a hearing and shall give the petitioner written notice thereof. Such hearing shall be held as soon as practicable after the receipt of a petition but in no case shall be more than thirty (30) days after receipt of the petition. At such hearing the petitioner shall be given an opportunity to be heard and to show cause why such variance should or should not be enforced.
 - iii. The Board of Health may appoint a committee to hear the petition and make a report to the Board of Health.
 - iv. The Board of Health shall render a decision in the matter as soon as practical and, in no case, later than sixty (60) days after receipt of the petition. A decision by the Board of Health shall be final and appealable only to a court of competent jurisdiction.
- e. Neither the Health Officer nor the Board of Health may approve a variance that:
 - i. Threatens public health or
 - ii. Would result in a violation of any applicable federal, state, or county law, regulation, or rule.

19. Penalties

- a. Any person determined by the Health Officer to be in violation of this Ordinance shall be penalized for each offense by a penalty established by the Health Officer of not more than Five Hundred Dollars (\$500.00) for the first offense; not more than One Thousand Dollars (\$1,000.00) for the second; and by not more than Two Thousand Five Hundred Dollars (\$2,500.00) for each subsequent offense.
- b. Penalties shall be payable to St. Joseph County.

- c. Each day a person fails to perform the corrective action in accordance with the schedule identified in an abatement order issued by the Health Officer shall constitute a distinct and separate violation and said person shall be subject to the penalties identified in 19.a.
- d. Any person violating any provisions of this Ordinance shall be liable to the Health Department for any expense, loss, or damage occasioned it by reason of such violation, including the costs for labor, supplies, equipment, and services necessary to enforce an order of abatement .
- e. The Health Officer may restrict, suspend, or revoke any permit for:
 - i. Repeated substantive violations of this Ordinance,
 - ii. Failure to perform a corrective action ordered by the Health Department, or
 - iii. Providing false information to the Health Department.

20. Severability

If any section or part of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, that holding shall not affect the validity of the remaining portions of the Ordinance, and the remaining portions shall be and remain in full force and effect.

21. Disclaimer

- a. The Ordinance shall not create liability on the part of the Health Department or any officer, employee, or agent thereof for any damage that may result from reliance on this Ordinance or on any administrative decision lawfully made thereunder.
- b. All inspections shall be at the discretion of the Health Department and nothing in this Ordinance shall be construed as requiring the Health Officer to conduct any inspection nor shall any inspection imply a duty to conduct any other inspection. Nothing in this Ordinance shall be construed to hold the Health Officer responsible for any damage to persons or property by any failure to make an inspection or reinspection or for inspections that fail to identify unacceptable conditions or procedures.