

CERRO GORDO COUNTY, IOWA

ORDINANCE #40

ANIMAL CONFINEMENT MORATORIUM
ORDINANCE

Adoption Date:

May 14, 2002

TABLE OF CONTENTS

SECTION 1: DEFINITION.....3
SECTION 2: MORATORIUM AND VARIANCES.....5
SECTION 3: POWERS AND AUTHORITY5
SECTION 4: ENFORCEMENT.....5
SECTION 5: REFUSAL OF ADMITTANCE5
SECTION 6: NOTICE6
SECTION 7: HEARING.....6
SECTION 8: PENALTIES6
SECTION 9: COURT ORDER6
SECTION 10: APPLICABILITY.....6
SECTION 11: AMENDMENTS7
SECTION 12: SEVERABILITY.....7
SECTION 13: REGULATION EFFECTIVE UPON PUBLICATION7

An ordinance imposing and regulating a one-year moratorium on any new construction, expansion or activity occurring on land used for the production, care, feeding or housing of animals. The intended promulgation of this ordinance is directed at confined feeding operations and exempting open feedlots. The purpose is to afford local public health officials adequate time to appropriately assess health and environmental concerns that may be related to confined animal feeding operations and concentration of animals; establish objective measurable standards of enforcement; exercise the Board of Health's responsibility to protect and improve the health of the public; refrain from impacting farm operators unfairly, and provide penalties for violations of the provisions hereof pursuant to Chapter 137, Code of Iowa.

The Cerro Gordo County Board of Health, hereby adopts the following regulation to wit;

SECTION 1: DEFINITION

- 1.1 "ANIMAL" a domesticated animal belonging to the bovine, porcine, ovine, equine, or avian species.
- 1.2 "ANIMAL CAPACITY" the maximum number of animals which the owner or operator will confine in animal feeding operation at any one time. In a confinement feeding operation, the animal capacity of all confinement buildings will be included in the determination of the animal capacity of the operation, unless the building has been abandoned in accordance with the definition of "abandoned animal feeding operation structure".
- 1.3 "ANIMAL FEEDING OPERATION" a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structure used for the storage of manure from animal in the operation. An animal feeding operation does not include a livestock market. Open feedlots and confinement feeding operations are considered to be separate animal feeding operations.
- 1.4 "APPLICANT" the person applying for a construction or operation permit for an animal feeding operation. The applicant shall be the owner or owners of the animal feeding operation.
- 1.5 "AUTHORIZED REPRESENTATIVE" is the Cerro Gordo County Public Health Director or his/her designee.
- 1.6 "BOARD OF HEALTH" the Cerro Gordo County Board of Health.
- 1.7 "BOARD OF SUPERVISORS" the Cerro Gordo County Board of Supervisors.
- 1.8 "CONFINEMENT FEEDING OPERATION" an animal feeding operation in which animals are confined to areas which are totally roofed.
- 1.9 "DEPARTMENT" the Cerro Gordo County Department of Public Health, or its authorized representatives, having jurisdiction to promulgate, monitor, administer and enforce these regulations.

- 1.10 “DEPARTMENT OF NATURAL RESOURCES” the Iowa Department of Natural Resources (DNR).
- 1.11 “DESIGNATED AREA” a known sinkhole, or a cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface tile inlet, drinking water well, lake, or a farm pond or privately owned lake as defined in Iowa Code section 462A.2. A designated area does not include a terrace tile inlet or surface tile inlet other than an agricultural drainage well surface tile inlet.
- 1.12 “ENFORCEMENT ACTION” an action against a confinement feeding operation initiated by the department or the Board of Health to enforce the provisions of the rules adopted pursuant to the ordinance. An enforcement action begins when the department issues a criminal citation for a violation of the County Ordinance to the responsible person or persons in writing to include statement of reason. An enforcement action is pending until final resolution of the action is satisfied; rescission or other final resolution of an administrative order or satisfaction of a court order, for which all administrative and judicial appeal rights are exhausted, expired, or waived.
- 1.13 “MAJOR WATER SOURCE” a lake, reservoir, river or stream located within the territorial limits of the state, any marginal river area adjacent to the state which can support a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding. Major water sources in the state are listed in Table 1 and Table 2 at the end of this chapter.
- 1.14 “MANURE” animal excreta or other commonly associated wastes of animal including, but not limited to, bedding, litter, or feed losses. Manure does not include wastewater resulting from the washing and in-shell packaging of eggs.
- 1.15 “MORATORIUM” a suspension of activity.
- 1.16 “OPEN FEEDLOT” an unroofed or partially roofed animal feeding operation in which no crop, vegetation, or forage growth or residue cover is maintained during the period that animals are confined in the operation.
- 1.17 “OWNER” the person who has title to the property where the animal feeding operation is located or the person who has title to the animal feeding operation structures. It does not include a person who has a lease to use the land where the animal feeding operation is located or to use the animal feeding operation structures.
- 1.18 “PUBLIC USE AREA” that portion of land owned by the United States, the state, or a political subdivision with facilities which attract the public to congregate and remain in the area for significant periods of time. Facilities include, but are not limited to, picnic grounds, campgrounds, cemeteries, lodges, shelter houses, playground equipment, lakes as listed in Table 2 at the end of this chapter, and swimming beaches. It does not include a highway, road right-of-way, parking areas, recreational trails or other areas where the public passes through, but does not congregate or remain in the area for significant periods of time.

- 1.19 “PERSON” includes natural persons and also includes corporations, partnerships, associations, and any other business or charitable entities, a natural person who has supervisory authority over the operation of a confinement feeding operation whether or not such a person is an owner of this operation, and a natural person who applies animal waste or animal waste water originating from the operation.

SECTION 2: MORATORIUM AND VARIANCES

- 2.1 New construction, expansion, or activity occurring on land in Cerro Gordo County, Iowa used for the production, care, feeding or housing of animals is suspended until February 25, 2003. Any person requesting a variance to these rules shall make an application to the Board of Health. Variance approval or disapproval shall be recommended by the Board of Health or authorized representative pursuant to guidelines adopted by the Board of Health and presented to the Board of Supervisors for consideration of final approval or disapproval provided sufficient information is afforded to substantiate the need and propriety of such action based on “Guidelines For Moratorium Variance”. Application of variance and justification shall be in writing and copies filed with the Board of Health and recorded with the Board of Supervisors.

SECTION 3 POWERS AND AUTHORITY

- 3.1 Code of Iowa, Chapter 137 – Local Board of Health, 137.6 – Additional Powers of Local Boards, Subsection 2 states, “Make and enforce such reasonable rules and regulations not inconsistent with law or with the rules of the state board as may be necessary for the protection and improvement of the public health.”
- 3.2 Code of Iowa, 331.301 – General Powers and Limitations, Subsection 1 states, “A county may, except as expressly limited by the Constitution, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve peace, safety, health, welfare, comfort, and convenience of its residents. This grant of home rule powers does not include the power to enact private or civil law governing civil relationships, except as incident to an exercise of an independent county power.”

SECTION 4: ENFORCEMENT

- 4.1 It shall be the duty and responsibilities of the Board of Health to enforce the provision of this regulation, however, this duty may be delegated to an authorized representative. The Ordinance may be enforced by issuing a criminal citation for a violation of the County Ordinance, and/or violation of 137.21 of the Iowa Code 2001.

SECTION 5: REFUSAL OF ADMITTANCE

- 5.1 In the event of the Department, in proceeding to enter any premise for the purpose of making an inspection to carry out the provisions of this regulation, shall be refused entry, a complaint may be made under oath at the District Court in the County and said Court thereupon issue a warrant directed to some peace officer of the County, commanding him/her between the hours of sunrise and sunset, accompanied by the Department, to

enter upon the premise and make such inspection, and to obtain such samples as may be required to carry out the provision of this Ordinance.

SECTION 6: NOTICE

6.1 Whenever the Department determines that there are reasonable grounds to believe there has been a violation of any provision of this regulation, the Department shall give notice of such alleged violation to the person or persons responsible, as thereof provided. Such notice shall:

- (A) Be in writing.
- (B) Include a statement of the reason why it is being used.
- (C) Allow reasonable time for performance of any act it requires.
- (D) Be served upon the owner or his/her agent or occupants and/or person engaging in an act or practice, as the case may require. Such notice shall be deemed to be properly served upon him/her personally, or if a copy is sent by certified mail to his/her last known, or if he/she is served with such notice by any other known address, or if he/she is served with such notice by any other method authorized or required by the laws of this state.

SECTION 7: HEARING

7.1 In the event any person is aggrieved by any order made by the Department, he/she may within twenty (20) days of the date of such order, appeal to the Board of Health and in writing state his/her reasons for requesting to be rescinded or modified. The Board of Health shall review the action of the Department, and if reasonable grounds exist, shall modify, withdraw, or order compliance with the said order.

SECTION 8: PENALTIES

8.1 Any individual, public or private health agency, governmental or nongovernmental agency or independent contractor violating any regulation in or any provision of this Ordinance or of any amendment or supplement thereto, shall be guilty of a simple misdemeanor which is punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment of not more than thirty (30) days. Each day that a violation occurs or is permitted by the defendant to exist, constitutes a separate offense.

SECTION 9: COURT ORDER

9.1 Whenever in the judgement of the Board of Health or the Department any person that has engaged or is about to engage in any acts or practices which constitutes or will constitute a violation of this Ordinance, application may be made to the appropriate court to grant relief to abate or halt the violation, or both.

SECTION 10: APPLICABILITY

10.1 Provisions contained herein are applicable to all individuals, public or private health care agencies, governmental or nongovernmental agencies and independent contractors residing in or enter in Cerro Gordo County.

SECTION 11: AMENDMENTS

11.1 Amendments and additions to this Ordinance shall be made as required by Iowa Chapter 137.6. The Board of Health shall propose amendments and additions to this regulation to the Board of Supervisors whenever the Board of Health determines such changes are necessary to fulfill the purpose of this regulation.

SECTION 12: SEVERABILITY

12.1 In the event that any particular section, paragraph, clause or provision of this Ordinance should be declared invalid or unconstitutional by the court of competent jurisdiction, the remaining provision of this Ordinance shall be in full force and effect. Toward that end, the provisions of these regulations are declared to be severable.

SECTION 13: REGULATION EFFECTIVE UPON PUBLICATION

13.1 This regulation being deemed essential and imperative for the preservation of public health, shall be in force and effect from and after its passage and publication as provided by law, until February 25, 2003.

An earlier and different version was adopted by the Cerro Gordo County Board of Health April 12, 2002

Approved by the Cerro Gordo County Board of Supervisors May 14, 2002

Chairman Dr. Mark Johnson
Board of Health

Chairman Phillip E. Dougherty
Board of Supervisors

ATTEST:

Kenneth W. Kline
County Auditor