

## **Essentials of Local Health Ordinances to Regulate CAFOs**

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1. A local health ordinance strategy to regulate concentrated animal feeding operations (CAFOs) must be comprehensive. Lacking any one of its critical components, the strategy ultimately is quite likely to fail. Either the ordinances will not be enacted by local government officials or the ordinances will be overturned in the courts.
2. A significant body of scientific evidence must be collected, documenting the health risks associated with CAFOs in general and the specific type of CAFO that is raising the greatest public concern in the local area. There is a mountain of evidence regarding health risks associated with cattle, hog, and poultry CAFOs. Even though there is less evidence related to dairy, simply because the rise in popularity of dairy CAFOs is more recent, there is no reason to believe that the overall health risks for dairy CAFOs is significantly less than for hogs or poultry. For example, although dairy may not have as high a risk of developing antibiotic resistant bacteria as hogs or chickens, dairy CAFOs are breeding grounds for E-Coli 157: H7, while hog and chicken CAFOs are not. Flies also are a more important vector for diseases in dairy than in hogs or chickens.
3. The case must be made that the burden of proof in cases involving public health is on the person or organization proposing to carry out an activity that poses health risks, rather than upon the public that may be adversely affected by the action. This is known as the "precautionary principle," which simply states that when it can be documented that a threat is potentially severe and irreversible, as in the case of public health, the action should not be taken, even if there is no scientific "proof" that action will result in the potential adverse consequence. For example, drug manufactures must present compelling scientific evidence that their proposed new drugs are safe and effective. The burden of proof is upon the drug manufactures to prove they are safe, not upon the public to prove they are dangerous.
4. The constitutional right of local communities to develop health ordinances ultimately must be established, if local health ordinances are to be sustained after they are established. In states where local health ordinances currently exist, new ordinances still must be established with the understanding that they ultimately will be challenged in the courts. In states where state governments appear to preempt local governments in matters of public health, counties must be willing to challenge existing interpretation of such state laws. The U.S. Supreme Court had consistently upheld the rights of states to pass health regulations more stringent than federal health regulations, even when such regulations interfere with interstate commerce. There is no reason to believe that local communities do not have the same rights to enact local health ordinances more stringent than state health regulations, even when they restrict local economic activity. The case must be made that public health interests are a higher constitutional priority than are economic interests -- including higher than the right to operate a CAFO.
5. In order to be upheld constitutionally, local health ordinances must be linked directly to specific local health risks. These risks may include health threats associated with air pollution, water pollution, spread of disease by flies, mosquitoes, etc., contamination of food crops though

irrigation water, or exposure of those who work in CAFOs to other people in the community. Individual regulations must be logically linked to one or more of the documented health risks. The Iowa Supreme Court overturned a number of local health ordinances by claiming that they were veiled attempts to regulate agriculture, not legitimate attempts to protect public health. Similar arguments against health ordinances must be anticipated in other states in the future.

6. CAFOs must be clearly separated from traditional or conventional farms in the mind of the rural and urban residents of local communities. Health ordinances must have the support of the vast majority of residents in the local community. Lacking strong community support, ordinances will not be enacted or they will not be defended once enacted. This is a very contentious issue and there are very strong economic and political interests opposing all issues of local control. If CAFO operators are able to wrap themselves in the traditional public goodwill afforded traditional family farmers, they are likely to prevail. If CAFOs can be separated from family farming and treated as "industry," which they are, rather than agriculture, they can be regulated as other industry is regulated, to protect public health. Health ordinances are the only thing that I have seen that have the potential to standing up against the powerful political and economic interests supporting CAFOs.