

NOTICE OF FORMAL PROCEEDINGS TO CHANGE THE MILLARD COUNTY LAND USE CODE TO PROHIBIT SWINE CAFO, CCAFO.

Whereas: “The government of the State of Utah was founded pursuant to the people's organic authority to govern themselves.” [*Gallivan v Walker SC 2002*]

Whereas: “In conformity with this principle, the Utah Constitution vests the people's sovereign legislative power in both (1) a representative legislature and (2) the people of the State, in whom all political power is inherent. Utah Const. art. VI, § 1(1)” [*Gallivan v Walker SC 2002*]

Whereas: “...article VI, section 1 of the Utah Constitution, the people exercise their direct legislative power through initiatives and referenda. Utah Const. art. VI, § 1. Article VI, section 1 is not merely a grant of the right to directly legislate, but reserves and guarantees the initiative power to the people...” [*Gallivan v Walker SC 2002*]

Whereas: The Initiative Power “is a constitutionally guaranteed right that “form[s] an implicit part of the life of a free citizen in a free society.”⁽⁶⁾ Pub. Employees' Ass'n, 610 P.2d at 1273”

Whereas: “The people [are] a legislative body **coequal in power** and with **superior advantages to the Legislature....**” [*Gallivan v Walker SC 2002*]

Whereas: In *Sevier Power V Hansen UT SC 2008* the Court held “We express no opinion on the wisdom, worthiness, or wording of the initiative at issue. It is for the voters ... to determine if and how the measure is to be regarded. Imposing additional steps ... has both costs and benefits, **the value of which, and nature of which, are left to the consideration of the voters**, as with all initiatives proposed as direct legislation by the people. Highly participatory democracy is at times inefficient, expensive, and time consuming. However, the initiative power, as with all other powers identified in our constitution, is a creature of the people. It is for the people to determine when, if, and how it is to be modified. That much is clear.” [*Sevier Power Hansen SC 2008*]

Whereas: The Purpose of all Land Use and Zoning Regulations as stated by Section 10-1-4 of the Millard County Code “This title is provided to implement the goals and policies of the Millard County general plan (hereinafter “general plan”) and the other purposes, as provided by the act. This title contains standards,

provisions and requirements **intended to protect the health, safety, and welfare of the citizens**... of Millard County “

Whereas: Millard County Code 10-17-2 Requires “**CONSISTENCY AND CONFORMITY TO THE GENERAL PLAN REQUIRED:**

“No land use application approval, license or permit, and no land use ordinance, or amendment thereto, no map, or amendment thereto, and no official map, or amendment thereto shall be approved unless such land use application approval, license, permit, amendment, ordinance or map is found to be consistent and conform to the county general plan, as adopted. “(Ord. 12-12-04, 12-4-2012)

Whereas: The Southwest Utah Board of Health in a study done in 2001 about the effects of Circle Four Farms on the surrounding Community of Milford Found, “the negative health effects of the workers to be well established...**Unpleasant odors can produce impaired mood and increased stress which may influence health through biological mechanisms that include changes in immune system function** (University of North Carolina, 1998)... Respiratory illness was found to be elevated and statistically significant in Milford during each year from 1992 through 1998 in contrast to the State of Utah...Private wells in the Milford valley have experienced some contamination with both total and fecal coliforms...A private residential well and a Circle Four Farm well did test positive for contamination with numerous identical organisms...”

Whereas: Swine CAFO’s are not a historical use, do not conform to the General Plan, endanger the health and safety of not only those who work within its confines, but has been shown to also effect the health and safety of the community, degrade the environmental quality including not limited to sights, sounds odors, emissions, ground water contamination and substantially impair the adjoining property owners and community’s use and enjoyment of both public and private property.

Whereas: Millard County may be unwittingly participating in a legislative scheme (Right to Farm Act) in direct violation of the 5th amendment to the US Constitution. By taking private property rights of surrounding neighbors and the community for the exclusive benefit of SWINE CAFO’s without compensation. “ ... The essence of a private nuisance is an interference with the use and enjoyment of land. Examples include vibrations, blasting, destruction of crops, flooding, pollution, and disturbance of the comfort of the plaintiff, as by unpleasant odors, smoke, or dust...” [SC of Iowa No. 96-2276 1998]

Whereas, Millard County has failed to protect private property rights, failed to protect the safety and health of the community, has approved multiple Swine CAFO's in violation of the current land use code as promulgated by the Millard County General Plan. The Citizens of Millard County hereby notify the Millard County Commission of our intent to exercise our superior legislative authority via initiative to modify the current land use laws of Millard County to be consistent with and conform to the Millard County General Plan thereby protecting our historical uses today and into the foreseeable future.

IT's OUR FUTURE :

Shall The Millard County Zoning Code be amended as follows.

1. Swine CAFO's, CCAFO's are prohibited in any Zone.

2. All Applications for a Zone Change from any zone to AI will follow this process.

A. The PZ commission shall give recommendation on the record of the 8 points of the zone change. They shall also state on the record any competing public interest that may be jeopardized by the change. Forward recommendation with findings to the Commission.

B. The Commission shall give recommendation on the record of the 8 points of the zone change. They shall also state on the record any competing public interest that may be jeopardized by the change. Forward recommendation with findings to the County Clerk.

C. The County Clerk shall prepare a ballot measure with the findings of the P&Z and Commission findings and cause it to be submitted to a vote of the people.

D. The Zone change does not become effect unless it is approved by a majority vote of the people.

E. Effective date is 30 days after the final canvass unless a stay has been issued by a court of local jurisdiction.

3. All Applications for a large CAFO, CCAFO through the CUP process will follow this process.

A. The planning commission shall on record follow the process outlined in the current land policies and this part. They are also required to identify any negative impacts to the surrounding properties -community, identify best practices to mitigate with the goal of abatement. If they are unable to mitigate or abate they must state that on the record. Forward their recommendation with findings to the County Commission.

B. The county commission shall on record follow the process outlined in the current land policies and this part. They are also required to identify any negative impacts to the surrounding properties -community, identify best practices to mitigate with the goal of abatement. If they are unable to mitigate or abate they must state that on the record. Forward their recommendation with findings to the County Clerk.

C. The County Clerk shall prepare a ballot measure with the findings of the P&Z and Commission findings and cause it to be submitted to a vote of the people.

D. The CUP application does not become effect unless it is approved by a majority vote of the people.

E. Effective date is 30 days after the final canvass unless a stay has been issued by a court of local jurisdiction.

4. County Commission May Not REPEAL a citizen Initiative.

A. A county commission or other legislative or administrative body may not repeal a citizen initiative.

B. A county commission or other legislative or administrative body may not substantially amend a citizens initiative to make the legislative intent moot, void, conflict with any other part of the land use ordinance.

C. Any resolution, ordinance, or administrative rule that is adopted by the local legislative or administrative body in violation of this chapter must be put to a vote of the people and approved by a majority vote before it take effect.

D. The County Attorney shall review all resolutions, ordinances, administrative rules to determine if they conflict with this chapter.

1. If the County attorney determines that they are, The County Attorney shall direct the County Clerk to prepare a ballot question.

E. If directed by the County Attorney the County Clerk shall prepare the ballot measure.

F. Any person may challenge a failure to enforce these provisions to the District Court.

Whereas, The citizens have undertaken formal proceedings to modify land use regulations in Millard County that will prohibit Swine CAFO's, CCAFO's, we hereby respectfully demand Millard County put into effect a moratorium or temporary land use regulations that prohibit any new Swine CAFO's CCAFO's until this matter is fully decided by the voters of Millar County.