

Bowman County Planning and Zoning Ordinance

4.8

SECTION ANIMAL FEEDING OPERATIONS

This ordinance for animal feeding operations includes the following sections.

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1. General Provisions

1.A Definitions.

Terms used in this ordinance have the same meaning as given by the laws and rules of the State of North Dakota, specifically chapter 33-16-03 of the North Dakota Administrative Code. The definitions for these terms are:

"Animal feeding operation" means a place where: livestock have been, are, or will be confined, concentrated and fed for 45 or more days in any 12 month period; pasture, crops, or other vegetation are not normally managed or sustained for grazing during the normal growing season; and, animal waste or manure accumulates. This term does not include an animal wintering operation. Adjoining animal feeding operations under common ownership are considered to be on animal feeding operation, if they use common areas or systems for manure handling.

"Animal wintering operation" means the confinement of cattle or sheep used or kept for breeding purposes in a feedlot or sheltered area at any time between October 15 and May 15 of each production cycle under circumstances in which these animals do not obtain a majority of their feed and nutrients from grazing. The term includes the weaned offspring of cattle and sheep, but it does not include (1) breeding operations of more than 1,000 animal units or (2) weaned offspring which are kept longer than 120 days and that are not retained for breeding purposes.

"Due Process" involves two essential elements; (1) notice and (2) an opportunity for the hearing. The notice must adequately describe the potential action that might affect the person(s) being notified and it must provide the person(s) a reasonable time to respond. If

the person(s) request(s) a hearing, the hearing must be fair and allow the person(s) to present relevant evidence and arguments.

“Existing” means in place and operating on the date this Ordinance is effective.

“Livestock” means any animal raised for food, raw materials or pleasure, including, but not limited to, beef and dairy cattle, bison, sheep, swine, poultry and horses. Livestock also includes fur animals raised for pelts.

“ Manure” Means fecal material and urine from livestock, as well as animal-housing was water, bedding material, rainwater or snow melt that comes in contact with fecal material or urine.

“Operator” means an individual or group of individuals, a partnership, a corporation, a joint venture, or any other entity owning or controlling one or more animal feeding operations or animal winter operations.

“Shall” means that the requirement is mandatory, rather than optional.

“Surface water” means waters of the State located on the ground surface such as lakes, reservoirs, rivers and creeks.

“Waters of the State” means all waters within the jurisdiction of this State, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of water on or under the surface of the earth, natural or artificial, public or private, situated wholly or partly within or bordering upon the State, except those private waters that do not combine or effect a junction with natural surface or underground waters just defined.

1.B Equivalent Animal Numbers.

An “animal unit equivalent” is a unit-less number developed from the nutrient and volume characteristics of manure for a specific livestock type. The term “animal units” is used to normalize the number of animals (e.g., head) for each specific livestock type which produce comparable bulk quantities of manure. The animal unit equivalents for types of livestock and the numbers of livestock for facility size thresholds of 300 animal units, (a.u.), and so forth, are listed in the following table.

		Equivalent numbers of the Livestock (head) for Four Sizes (a.u.) of Animal Feeding Operations			
Livestock Type	Animal Unit Equivalent	300 a.u.	1,000 a.u.	2,000 a.u.	5,000 a.u.
1 horse	2.0	150 head	500 head	1,000 head	2,500 head
1 dairy cow	1.33	225	750	1,500	3,750
1 mature beef	1.0	300	1,000	2,000	5,000
1 beef feeder-Finishing	1.0	300	1,000	2,000	5,000
1 beef feeder back-	0.75	400	1,333	2,667	6,667

grounding					
1 mature bison	1.0	300	1,000	2,000	5,000
1 feeder bison	1.0	300	1,000	2,000	5,000
1 swine > 55 lbs	0.4	750	2,500	5,000	12,500
1 swine, nursery	0.1	3,000	10000	20,000	50,000
1 sheep	0.01	3,000	10,000	20,000	50,000
1 chicken	0.01	30,000	100,000	200,000	500,000
1 turkey	0.0182	16,500	55,000	110,000	275,000
1 goose or duck	0.02	1,500	5,000	10,000	25,000

1.C Environmental Protection.

The operator of a new facility for animal feeding is expected to locate, construct, operate and maintain the facility so as to minimize, reduce or abate effects of pollution on environmental resources and on public safety and health. The operator of an existing facility is expected to operate and maintain the facility so as to minimize, reduce or abate effects of pollution on environmental resources and on public safety and health. Each operator shall comply with applicable State laws and rules, including the laws and rules administered by the North Dakota Department of Health and with any permits granted by that department.

1.D Enforcement.

In the event of a violation of the Ordinance or a judgment on a civil action by the North Dakota Department of Health, the Bowman County board of County Commissioners, after due process, can order cessation of a facility for animal feeding within a reasonable period of time and until such time as the operator corrects or abates the cause(s) of the violation. If the cause(s) of the violation are not remedied within a reasonable period of time as set by the Bowman County Board of County commissioners, the permit may be revoked.

2 SETBACK REQUIREMENTS

2.A Water Resources Setbacks

The operator of a new animal feeding operation that has more than 1,000 animal units shall not locate or establish that operation:

1. Within a delineated source water protection area for a public water system. The source water protection areas for water supply wells include the entire wellhead protection area. For the surface water intakes of public water systems, source water protection areas include all or portions of the surface-water's shoreline.
2. Within 1,200 feet of a private ground water well which is not owned by the operator or within 1,500 feet of a public ground water well, which does not have a delineated source water protection area.
3. Within 1,000 feet of surface water which is not included in a source water protection area.

2.B Odor Setbacks.

The operator of a new facility for an animal feeding operations shall not locate that operation within the extra-territorial zoning jurisdiction of an incorporated city.

An owner of property shall locate and establish a residence, business, church, school, public park or zone for residential use so as to provide a separation distance from any existing animal feeding operation. The separation distances, or setbacks, are listed in the following table. An owner of property who is an operator may locate the owner's residence or business within the setbacks.

Setback Distance for Animal Feeding Operations		
Number of Animal Units	Hog Operations	Other Animal Operations
Fewer than 300	None	None
300 – 1,000	0.50 mile	0.50 mile
1,001 – 2,000	0.75 mile	0.50 mile
2,001 – 5,000	1.00 mile	0.75 mile
5,001 or more	1.50 mile	1.00 mile

The operator of a new animal feeding operation shall locate the site of that operation from existing residences, businesses, churches, schools, public parks and areas of property that are zoned residential so as to exceed the corresponding listed setback from these places.

If notified in writing by an operator of a planned future expansion of an animal feeding operation, the Bowman County Board of County Commissioners may implement the corresponding odor setback for a temporary time period not to exceed two years, after which time the setback will remain in effect only if the expansion was completed.

The Bowman County Board of County Commissioners may, upon recommendation of the Bowman County Planning and Zoning Commission, increase or decrease a setback distance for a new animal feeding operation after consideration of the proposed operation's plans, if it determines that a greater or lesser setback distance is necessary or acceptable, respectively, based upon site conditions or demonstrable safety, health, environmental or public welfare concerns.

2.C Building Setback.

All corrals, pens, and buildings included in the animal feeding operations shall be located at least 150 feet from an adjacent property line.

2.D Setbacks from Cities and Subdivisions.

1. The operator of a new animal feeding operations that has more than 1,000 animal units may not locate or establish that operation within four(4) miles of the extraterritorial boundaries of any incorporated city that has a population of more than 500 persons.

2. The operator of a new animal feeding operation that has more than 1,000 animal units may not locate or establish that operation within one and one-half (1 ½) miles of any platted subdivision with ten (10) or more residences.

2.E Odor Easements.

Setback distances do not apply to any existing residences, business, churches, schools, or public parks, if the owner or operator of the animal feeding operation has obtained an odor easement from the owner of the affected property and any person who is leasing the property at the time that the easement is granted.

3. Conditional Uses A Permit Procedures:

3.A.1 Applicability.

The operator of a new livestock facility or an existing livestock facility, which meets the definition of an animal feeding operation and which is a conditional use of land as listed below, shall apply for and obtain a conditional use permit.

- a. A new animal feeding operation that would be capable of handling, or that expands to handle, more than 1,000 animal units is a conditional use of the land.
- b. An existing animal feeding operation that expands to handle more than 1,000 animal units is conditional use of the land.
- c. A new animal feeding operation that is capable of handling, or that expects to handle or an existing animal feeding operation that expands to handle, more than 300 animal units is a conditional use of the land if it is located in any area identified in subsections 1, 2 or 3 or 2.D.

Whenever the capacity of an animal feeding operation is expanded to handle more than 2,000 or 5,000 animal units, the operator shall apply for a new conditional use permit.

3.A.2 Procedure.

- d. Application for a conditional use permit shall be submitted to the Bowman County Planning and Zoning Commission for tentative approval. The Bowman County Planning and Zoning Administrator shall notify the Department of Health that it has received such application.
- e. The Bowman County Planning and Zoning Administrator shall notify by certified mail all property owners having property within the corresponding odor setback distance of a proposed new animal feeding operation. This notification must occur within 21 days of receiving the application. The approval process utilized by the Bowman County Planning and Zoning Commission must include at least two advertised public hearing.
- f. Following tentative approval or denial of the application by the Bowman County Board of County Commissioners, as submitted by the Bowman County Planning and Zoning Commission, the applicant shall be notified by letter of the decision, including conditions imposed, if any.
- g. The applicant shall then forward its application for a conditional use permit, together with the tentative approval by the Bowman County Board of County Commissioners, to the North Dakota Department of Health.
- h. Following a review by the Department of Health of the operator's application for a State permit, the Department of Health will notify the Bowman County Planning and Zoning Administrator of its decision.
- i. The conditional use permit will become final following the granting of a permit by the ND Department of Health.
- j. A conditional use permit granted to the operator of a new animal feeding operation shall be put into use within twenty four (24) months, or the permit shall lapse and the operator may re-apply.

3.A.3 Application Requirements.

The application for a conditional use permit to operate a facility for an animal feeding operation shall include a scaled site plan. The facility will handle more than 1,000 animal units, the scaled site plan shall be prepared by a registered land surveyor, a civil engineer or other person having comparable experience or qualifications. The Bowman County Planning and Zoning Commission may require any or all of the following elements, or require additional elements, in its site plan review process when needed to determine the nature and scope of the animal feeding operation.

1. Proposed number of animal units.
2. Total acreage of the site of the facility.
3. Existing and proposed roads and access ways within and adjacent to the site of the facility.
4. Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 animal units.
5. A copy of the permit application submitted by the applicant to the ND State Department of Health.

3.A.4 Financial assurance bond requirements.

A financial assurance instrument (irrevocable letter of credit, cash surety bonds or cash bonds) shall be posted in an amount sufficient to ensure proper closure. Such letter or bond shall be posted prior to the time of final site approval by the County. The exact amount shall be site-specific and shall be determined by a study conducted by a professional engineer or consultant licensed by the State of ND. The cost of the engineer's or consultant's study will be paid for by the posting entity. The County reserves the right to seek a second opinion at the County's expense.

3.B Ownership Change

An operator of a facility that includes an animal feeding operation having a permit granted by the Ordinance shall notify the Bowman County Planning and Zoning Administrator of the sale or transfer of ownership of that operation.

3.C Operating Change

An operator of a facility that includes an animal feeding operation having a permit granted by this Ordinance shall notify the Bowman County Planning and Zoning Administrator of intent to include an alternate livestock type. The notice shall be given at least 120 days prior to the anticipated date of the change.

3.D Closure and Financial Assurance

3.D.1 Notice of Termination

The owner, operator or permitted shall provide the County with a minimum of thirty (30) days written notice prior to permanent cessation or abandonment of the animal feeding operation or any part of the wastewater treatment system. It shall be a violation of these rules to permanently cease the use or abandon any facility or site or any part of the wastewater treatment system, including but not limited to pits, lagoons, impoundments, piping, disposal areas, storage areas, and land application sites without complying with notice and closure requirements.

3.D.2 Closure and Financial Assurance Instruments.

- a. The Bowman County Commissioners shall establish a rule, the conditions and standards for proper closure of a concentrated animal feeding operation upon cessation of operations. These shall address at a minimum; lagoon draining, cleaning and filling, removal of waste handling facilities and equipment, disposal of animal parts or carcasses and other conditions to assure public health and safety.
- b. Upon proper closure, as determined by an inspection by the North Dakota State Health Department any financial assurance instrument required under Section C.1.d of NDCC shall be returned to the posting entity.