

SECTION VIII  
3<sup>rd</sup> Amendment, 12-10-07

Animal Feeding Operation Regulations

An adequate supply of healthy livestock, poultry and other animals is essential to the well-being of County citizens. However, livestock poultry and other animals produce manure or other byproducts which may, where improperly stored, transported, or disposed, negatively affect the environment of Williams County. Animal manure or other byproducts must be controlled where it may add to air, surface water, ground water, or land pollution.

The following Ordinance, based on the Model Animal Feeding Ordinance issued by the North Dakota Department of Health, regulating the permitting, location, development, and expansion of feedlots has been adopted to protect the natural environment and to safeguard the public health, safety, and general welfare of the citizens of Williams County.

1. GENERAL PROVISIONS

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 and for additional terms are:

Animal Feeding Operation - 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. Two or more animal feeding operations under common ownership shall be considered a single animal operation if they are within a one mile radius of each other, or if they use a common area, or if they use a common system 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 weaning 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.

Closure – Taking of those actions to close and reclaim a feedlot. Closure actions may include, but are not limited to, cleaning of buildings, disposal of manure, and demolition and/or removal of all manure storage structures.

Due Process – Involves two essential elements; (1) notice and (2) an opportunity for a 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 operation on the date this ordinance is effective.

Livestock – Any domestic 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. (Delete definition as found on Page -4-.)

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

Operator – Means an individual, corporation, cooperative, group of individuals, partnership, joint venture, or any other entity owning or controlling one or more animal feeding operations or animal wintering operations.

Shall – The requirement is mandatory, rather than optional.

Surface Water – Waters of the State located on the ground surface such as lakes, reservoirs, rivers and creeks.

Waters of the State – All waters within the jurisdiction of this State, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water surface and underground, 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 affect a junction with natural surface or underground waters just defined

b. Equivalent Animal Numbers

An “animal unit equivalent” is a unitless 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 number of livestock for facility thresholds of 300 animal units (a.u.), and so forth are listed in the following table:

Equivalent Numbers of the Livestock (hd) for Four Sizes (a.u.) of Animal Feeding Operations

Livestock	Animal Unit Equivalent	300a.u.	1,000 a.u.	2,000 a.u.	5,000a.u.
1 horse	2.0	150hd	500 hd	1,000hd	2,500hd
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 grounding	0.75	400	1,333	2,667	6,667
1 mature bison	1.0	300	1,000	2,000	5,000
1 bison feeder	1.0	300	1,000	2,000	5,000
1 swine 55lbs.	0.4	750	2,500	5,000	12,500
1 goose or duck	0.2	1,500	5,000	10,000	25,000
1 sheep	0.1	3,000	10,000	20,000	50,000
1 swine, nursery	0.1	3,000	10,000	20,000	50,000
1 turkey	0.0182	16,500	55,000	110,000	275,000
1 chicken	0.01	30,000	100,000	200,000	500,000

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.

d. Enforcement

In the event of a violation of this Ordinance or a judgment on a civil action by the North Dakota Department of Health, the local unit of government, 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 violation. If the cause(s) of the violation are not remedied within a reasonable period of time as set by the local unit of government, the permit may be revoked.

e. Severability

1. If any paragraph, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this ordinance.

f. Final Closure and Abandonment

Prior to the issuance of a permit, the Williams County Commissioners shall establish by rule the conditions and standards for proper closure of a concentrated animal feeding operation upon cessation of operations.

1. The landowner, owner, and operator of any concentrated animal feeding operation shall be responsible for the ongoing management of manure and the final closure of the feedlot including the cleaning of buildings and proper disposal of manure from all manure storage structures and demolition and/or removal of all manure storage structures.
2. Owners and operators of any concentrated animal feeding operation shall have joint and several liability for clean-up, closure or remediation of abandoned sites.

g. Complaints

1. Any complaint against a Concentrated Feeding Operation must be in writing and signed.
2. All such complaints shall be investigated by the Zoning Administrator and, if necessary, referred to the North Dakota Department of Health or other appropriate agency.

2. SETBACK REQUIREMENTS

a. Water Resource Setbacks

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

A. 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 that supplies the water for the public water system, including all or portions of the surface-water’s shoreline.

B. Within 1,200 feet (365.6 meters) of a private ground water well which is not owned by the operator or within 1,500 feet (457.1 meters) of a public ground water well which does not have a delineated source water protection area.)

C. Within 1,000 feet (304.7 meters) of surface water which is not included in a source water protection area.

b. Odor Setbacks

The operator of a new facility for an animal feeding operation 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 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
Less than 300	None	None
300 to 1,000	0.50mi(0.805km)	0.50mi(0.805km)
1,001 or more	0.75mi(1.207km)	0.50mi(0.805km}
2001 or more	1.00mi(1.609km)	0.75mi(1.207km)

5001 or more	1.50mi(2.414km)	1.00mi(1.609km)
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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 local unit of government may implement the corresponding odor setback for a temporary time period not to exceed two (2) years, after which time the setback will remain in effect only if the expansion was completed.

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

### 3. CONDITIONAL USES AND PERMIT PROCEDURES

a. Applicability (Section II.G. (Conditionally Permitted Uses) will not apply as shown on pp.12 of this ordinance).

1. The operator of a new livestock facility or expansion of 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 land.

(b) An existing animal feeding operation that expands to handle more than 1,000 animal units is a conditional use of land.

2. 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.

b. Procedure

1. Application for a Conditional Use Permit shall be submitted to the Zoning Administrator along with the animal feeding operation information form a minimum of twenty-one (21) days prior to the Public Hearing. The Zoning Administrator shall notify the North Dakota Department of Health that such application has been received. This Conditional Use Permit application shall be available for public inspection at the Office of the Zoning Administrator for fourteen (14) days prior to the Public Hearing.
2. The 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 or the expansion of an existing animal feeding operation. This notification must be within twenty-one (21) days of receiving the application.
3. Upon receipt of the Conditional Use Permit application and animal feeding operation information form, the County Planning and Zoning Commission shall hold at least one (1) Public Hearing in a location to be prescribed by the Planning and Zoning Commission. At least fourteen (14) days in advance of each hearing, notice of the time and place of such hearing shall be published in the official newspaper of the County and any other such paper as deemed necessary by the Zoning Administrator. All townships within two (2) miles shall be notified by U.S. mail as to the time and place of the Public Hearing.
4. The County Planning and Zoning Commission shall report its findings to the Board of County Commissioners.
5. Following tentative approval or denial of the application by the Board of County Commissioners, the applicant shall be notified by mail of the decision, including conditions imposed, if any.
6. The applicant shall then forward its application for a Conditional Use Permit together with the tentative approval by the Board of County Commissioners to the North Dakota Department of Health.

7. Following a review by the North Dakota Department of Health of the operator's application for a state permit, the North Dakota Department of Health will notify the County of its decision.
8. The Conditional Use Permit will become final following the granting of a permit by the North Dakota Department of Health.
9. 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 must re-apply.
10. No construction shall take place until the permit has been issued by the North Dakota Department of Health.

c. Fees

1. The fee for each Conditional Use Permit application for animal feeding operations shall be established by the County Commission.

d. Application Requirements

1. The application for a Conditional Use Permit to operate an animal feeding operation shall include a scaled site plan. If 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 county may require any or all of the following elements or required additional elements in its plan review process when needed to determine the nature and scope of the animal feeding operation.
2. Owner's name, address and telephone number.
3. Legal description of the site, total acreage of the facility, existing and proposed roads and access ways within and adjacent to the site of the facility.
4. Number and type of animals.
5. Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 animal units.
6. A copy of the application submitted to the North Dakota Department of Health, if applicable.



- e. Ownership Change  
An operator of a facility that includes an animal feeding operation having a permit granted by this Ordinance shall notify the local unit of government of the sale or the transfer of the ownership of that operation.
  
- f. Operating Change  
An operator of a facility that includes an animal feeding operation having a permit granted by this Ordinance shall notify the Zoning Administrator of intent to include an alternate livestock type. The notice shall be given at least one hundred and twenty (120) days prior to the anticipated date of the change.
  
- g. Miscellaneous
  1. The Planning and Zoning Commission may request information relating to an animal feeding operation not contained in these regulations.
  2. The Planning and Zoning Commission may impose, in addition to the standards and requirements set forth in these regulations, additional conditions which the Planning and Zoning Commission considers necessary to protect the public health, safety and welfare of Williams County citizens. This shall including additional monitoring if the possibility exists that groundwater or surface water quality may be compromised.
  3. Any and all cost to implement any additional conditions as set forth by the Planning and Zoning Commission shall be borne by the owner of the facility.
  4. When considering an application, the Planning and Zoning Commission will take into consideration current and past violation relating to animal feeding operations that the applicant or operator has or has had an interest in.
  5. All State and Federal regulations shall be adhered to.