

MODEL AFO ZONING ORDINANCE

A suggested zoning ordinance pertaining to animal feeding operations is provided for use by local governments as deemed appropriate. A summary of the work group's discussions that governed substance of this model ordinance is included in a subsequent chapter of this document.

This land-use ordinance for animal feeding operations includes the following sections.

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1. GENERAL PROVISIONS

1.1 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 33.1-16-03.1 of the North Dakota Administrative Code. The definitions for these terms and for additional terms (bold print) are:

"Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

- A. Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and
- B. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Concentrated animal feeding operation" means an animal feeding operation that is defined as a large, medium, or small concentrated animal feeding operation or any animal feeding operation designated as a concentrated animal feeding operation under section 33.1-16-03.1-04. For purposes of determining animal numbers, two or more feeding operations under common

ownership are a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

"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 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 wash 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 wintering operations*.

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

"Surface water" means waters of the state that are located on the ground surface, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of water on the surface of the earth, natural or artificial public or private.

"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.

1.2 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 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 (hd) 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 hd	500hd	1,000 hd	2,500 hd
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 - backgrounding	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, > 55 lbs	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

1.3 ENVIRONMENTAL PROTECTION

The *operator* of a new facility for animal feeding is expected to locate, construct, operate and maintain the facility 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 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 Environmental Quality and with any permits granted by that department.

1.4 ENFORCEMENT

In the event of a violation of this ordinance, the local unit of government, after due process; can order cessation of a facility for animal feeding within a reasonable period and until such time as the *operator* corrects or abates the cause(s) of the violation. If the cause(s) of the

violation is not remedied within a reasonable period of time as set by the local unit of government; the permit may be revoked.

1.5 SEVERABILITY

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

2. SETBACK REQUIREMENTS

2.1 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.

2.2 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 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 or *operator* may locate the owner's residence or business within the setbacks. An owner or *operator* of an animal feeding operation may locate a residence or business within the setbacks for that operation.

Setback Distances for <i>Animal Feeding Operations</i>		
Number of Animal Units	Hog Operations	Other Animal Operations
fewer than 300	none	none
300 - 1000	0.50 mi (0.805 km)	0.50 mi (0.805 km)
1001 or more	0.75 mi (1.207 km)	0.50 mi (0.805 km)
2001 or more	1.00 mi (1.609 km)	0.75 mi (1.207 km)
5001 or more	1.50 mi (2.414 km)	1.00 mi (1.609 km)

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 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 period not to exceed two years, after which time the setback will remain in effect only if the expansion was completed.

A local unit of government may, upon recommendation of the zoning commission or land use administrator, increase or decrease a setback distance for a new *animal feeding operation* based on results of the North Dakota Odor Footprint Tool. The local unit of government may not use an odor annoyance free percentage above 94%.

3. CONDITIONAL USES

3.1 PERMIT PROCEDURES

3.1.A. 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 (or special) use of land as listed below, shall apply for, and obtain a conditional (or special) use permit.

1. A new *animal feeding operation* that would be capable of handling, or that expands to handle, more than 1000 animal units is a conditional (or special) use of land.
2. An *existing animal feeding operation* that expands to handle more than 1000 animal units are a conditional (or special) use of land.

Whenever the capacity of an *animal feeding operation* is expanded to handle more than their current setback criteria, the *operator* shall apply for a new conditional (or special) use permit.

3.1.B. Procedure.

The local unit of government may practice any or all the provisions in the following subparagraphs in harmony with the permitting process of its general zoning regulations.

1. Application for a conditional use (or special use) permit shall be submitted to the local unit of government for tentative approval. The local unit of government shall notify the Department of Environmental Quality that it has received such application.
2. The local unit of government shall notify by 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 local unit of government may include at least one advertised public hearing.
3. Following tentative approval or denial of the application by the local unit of government, the applicant shall be notified by letter of the decision, including conditions imposed, if any within 60 days of receiving application.
4. The applicant shall then forward its application for a conditional (or special) use permit, together with the tentative approval by the local government, to Department of Environmental Quality.
5. Following a review by the Department of Environmental Quality of the operator's application for a state permit, the Department of Environmental Quality will notify the local unit of government of its decision.
6. The conditional (or special) use permit will become final following the granting of a permit by the Department of Environmental Quality.
7. A conditional (or special) use permit granted to the operator of a new animal feeding operation shall be put into use within thirty-six (36) months, or the permit shall lapse, and the operator may re-apply.

3.1.C. Application Requirements.

The application for a conditional use (or special use) permit to operate a facility for an *animal feeding operation* shall include a scaled site plan. If the facility will handle more than 999 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 local unit of government may require any or all 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 999 animal units.

3.2 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.

3.3 OPERATING 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 intent to include an alternate livestock species and will be required to reapply for a conditional (or special) use permit.