

**GRAND HARBOR TOWNSHIP, RAMSEY
COUNTY, NORTH DAKOTA
ZONING ORDINANCE FOR
ANIMAL FEEDING OPERATIONS**

Draft September 2017

**GRAND HARBOR, RAMSEY COUNTY, NORTH DAKOTA
AFO ZONING ORDINANCE**

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

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1. GENERAL PROVISIONS

1.1 INTRODUCTION

Title: This ordinance shall be known as the "AFO ZONING ORDINANCE OF GRAND HARBOR TOWNSHIP."

Purpose: The purpose of this ordinance is to preserve and promote the health, safety, public convenience, agricultural use of the land, general prosperity, and the general welfare and orderly development of Grand Harbor Township and its residents.

Authority: These regulations are adopted under the authority granted by Chapter 58-03 of the North Dakota Century Code, as well as other state and federal laws and statutes.

Repeal: All other ordinances or regulations or parts thereof of Grand Harbor's Township in conflict with these regulations are hereby repealed.

Severability: If any section, paragraph, clause, or provision of this ordinance should be declared invalid or unconstitutional by a court of competent jurisdiction, the remaining provisions of this ordinance shall be in full force and effect. Toward that end, the provisions of these regulations are declared to be severable.

Effective Date: This ordinance shall be in full force and effect from and after its passage and approval by the Grand Harbor Township Board of Supervisors.

The word "shall" is mandatory, and not discretionary; the word "may" is permissive.

Words used in the present tense shall include the future and words used in the singular shall include the plural, and the plural the singular.

Words shall be given their common usage if not defined.

1.2 DEFINITIONS

For the purpose of this ordinance, the following definitions have been adopted.

Agriculture: The use of land for agricultural purposes, including the necessary buildings or structures for farm or farm labor use. Agriculture shall include farming, dairying, pasturage, horticulture, animal and poultry husbandry, and accessory uses and buildings for packing, treating, or storing produce, providing accessory uses are secondary to normal agricultural activities.

Animal feeding operation (AFO): 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 one 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.

Animal Unit (AU): A unit of measure used to compare differences in the production of animal manures that employs as a standard the average weight of the animal divided by 1000 pounds. The total number of animal units subject to permit or registration shall be determined by including operations under common ownership or management and which utilize a common area or system for manure disposal. For purposes of this ordinance, the following equivalents shall apply (obtained from N.D.C.C. § 58-03-11.1(2)). For purposes of this section, animal units are determined as follows:

Livestock Type	Animal Unit Equivalent
1 horse	2.0
1 dairy cow	1.33
1 mature beef	1.0
1 cow/cal	1.0
1 weaned beef	0.75
1 swine, > 55 lbs	0.4
1 swine, < 55 lbs	0.1
1 goose or duck	0.033
1 sheep or lamb	0.1
1 turkey	0.0182
1 chicken	0.008
1 laying hen	0.012
Any other not listed per 1000	1.0

Board: Includes the "Grand Harbor Township Board of Supervisors" or any other word or words meaning the "Grand Harbor Township Board of Supervisors."

Commission: Includes the "Grand Harbor Township Zoning Commission" or any other word or words meaning the "Grand Harbor Township Zoning Commission."

Concentrated Animal Feeding Operation (CAFO): means an animal feeding operation that is defined as a large concentrated animal feeding operation, as a medium concentrated animal feeding operation, or is a small or other type of animal feeding operation designated as a concentrated animal feeding operation in accordance with Section 33-16-03.1-04 of the North Dakota Administrative Code. 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. All concentrated animal feeding operations are required to obtain a North Dakota pollutant discharge elimination system permit pursuant to chapter 33-16-01 of the North Dakota Administrative Code.

For the purpose of these regulations, Animal Feeding Operations and Concentrated Animal Feeding Operations are divided into small, medium, and large Animal Feeding Operations and Concentrated Animal Feeding Operations as set forth in N.D.A.C 33-16-03.1-03

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.

Dwelling: A building or portion thereof occupied exclusively for residential purposes, but not including mobile recreational vehicles such as motor homes or travel trailers.

Dwelling, Farm: A single family dwelling or permanently established mobile home located on a farm which is occupied by the farm's owner/operator or person employed thereon.

Dwelling, Non-Farm: A single family dwelling or permanently established mobile home located on a farm, or otherwise, of which the occupant does not derive at least fifty (50) percent of his gross income from agricultural activities.

Existing: means in place and operating on the date this ordinance is effective.

Farm: Any aggregate area operated by one person, family, partnership, corporation or joint venture for agricultural or farming purposes.

Farming: See Agriculture

Feedlot: A parcel of land which contains an animal feeding operation or a confined animal feeding operation as defined by this ordinance

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.

NDDH: North Dakota Department of Health.

Manure: 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: 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.

Owner: The person who has title to the property.

Setback: The distance from a property boundary enclosing a concentrated animal feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or non-ranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes.

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, 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.

Variance: The grant of relief from the requirements of the ordinance where it can be shown that due to unusual conditions of the property, strict application of the regulations would result in undue hardship.

1.3 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.

1.4 ENFORCEMENT

In the event of a violation of this ordinance or a judgement 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 30 days 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 30 days, the permit may be revoked.

A Violations fee of \$500/day will be assessed following the 30 days 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.
- 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.

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 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 Distances for <i>Animal Feeding Operations</i>		
Number of Animal	Hog Operations	Other Animal
fewer than 300	0.50 miles	0.50 miles
300 - 1000	0.75 miles	0.75 miles
1001 - 2000	1.125 miles	0.75 miles
2001 - 5000	1.50 miles	1.125 miles
5001 or more	2.25 miles	1.50 miles

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.

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 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.

In addition to the above guidelines, all animal feeding operations shall maintain a setback of one quarter mile (1/4 mi.) from all federal or state highway rights-of way. A one hundred fifty-foot (150') setback from all county and township road rights-of-ways and adjacent property lines shall be maintained.

Expansion of permitted animal units up to twenty-five percent shall require notification of the Grand Harbor Township Board of Supervisors within ten (10) days of expansion.

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

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.1. 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 (or special) use of land.
- 1.A.2. An existing animal feeding operation that expands to handle more than 1,000 animal units is a conditional (or special) use of land.

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 (or special) use permit.

3.1.B. 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 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 application to be covered by this permit shall include the following:

- 1.B.1. Any and all applications for other governmental approval for the proposed CAFO, including any application for a construction permit.
- 1.B.2. Facility owner's name, address and telephone number.
- 1.B.3. Facility operator's name, address and telephone number.
- 1.B.4. Types of waste handling practices to be used for processing wastes (such as containment in a waste storage pond plus land application).
- 1.B.5. Names of receiving water(s) to which wastewaters are (or may be) discharged from the facility (receiving waters include canals, laterals, river, streams, etc.)
- 1.B.6. The type of livestock and number of animals confined, in AU's or, where animals will be included that are not listed in the definition of AU's, the number of animal unit equivalents.
- 1.B.7. A sketch of the operation, including control facilities, diversion ditches, building structures, feeding areas, slope, direction of overland and surface water flow, and proximity to surface waters.

1.B.8. A site plan, at a scale of one inch equals one hundred (100) feet, showing the following:

- Each confinement area
- Each lagoon or other waste disposal facility
- All plant filter areas
- All land areas in which the slope is greater than ten percent (10%)
- All rivers, streams, and wetlands
- All intended areas for waste dispersal including waste distribution buffering areas

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 type. The notice shall be given at least 120 days prior to the anticipated date of the change

Supervisor Jeff Kenner introduced the following resolution and moved for its adoption:

RESOLUTION TO ENACT THE FOLLOWING ZONING ORDINANCE OF GRAND HARBOR TOWNSHIP

Be it ordained by the Grand Harbor Township Board of Supervisors, Ramsey County, North Dakota, after making its findings consistent with N.D.C.C. # 58-03-13, hereby adopts the attached Zoning Ordinance of Grand Harbor Township, with the effective date of 9-25, 2017

APPROVED:

Jeff Kenner 9-25-2017
Chairman Date

Attest:

Penny Rohrer 9-25-17
Clerk Date

Supervisor Heather Johnson seconded the motion. On roll call the following members

voted in favor of said motion:

Deanna Anderson, Heather Johnson, Kent Rohrer
Greg Blanchfield

The following members voted nay: None

The majority having voted aye, the motion was carried and the resolution was duly adopted.