

**Ward County Zoning Resolution No. 8**  
**Requirements for animal feeding operations**

WHEREAS Chapter 11-33 of the North Dakota Century Code does authorize the counties of North Dakota to establish zoning requirements for animal feeding operations; now therefore

BE IT RESOLVED, that the Board of Ward County Commissioners hereby declares that all lands within the boundaries of Ward County unless otherwise excepted are included in the Ward County animal feeding operations by this Resolution, exclusions from the requirements of this resolution shall include townships that have existing or subsequently adopted zoning regulations covering animal feeding operations or whose existing or subsequently adopted zoning requirements necessitate obtaining a special use permit from the township for such use.

BE IT FURTHER RESOLVED, that this Resolution and any amendments made in accordance with provisions of this Resolution be adopted and instituted for the determination of whether or not and, if so, under what conditions animal feeding operations shall be permitted to operate in Ward County, North Dakota

This land-use ordinance for animal feeding operation includes the following sections:

1. General Provisions
  - 1.1 Definitions
  - 1.2 Equivalent Animals Numbers
  - 1.3 Environmental Provisions
  - 1.4 Enforcement
  - 1.5 Severability
2. Setback Requirements
  - 2.1 Water Resource Setbacks
  - 2.2 Odor Setbacks
3. Conditional Uses
  - 3.1 Permit Procedures
  - 3.2 Ownership Changes
  - 3.3 Operational Changes

**1. GENERAL PROVISIONS**

**1.1 Ward County Comprehensive Land Use Plan**

Ward County's Comprehensive Land Use Plan adopted June 07, 1994 or as thereafter amended is hereby incorporated as part of this Resolution.

**1.2 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 Century Code. The definitions for these terms and for additional terms are:

**Animal feeding operation**" means a place where: livestock have been, are, or will be confined, concentrated and fed 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.

**“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 resolution 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 animals-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 *animals feeding operations* or *animal wintering 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.

### 1.3 EQUIVALENT ANIMALS 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.

Livestock Type	Animal Unit	Equivalent Numbers of the Livestock (hd) for Four			
		300 a.u.	1,000 a.u.	2,000 a.u.	5,000 a.u.
1 horse	2.0	150 hd	500 hd	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
2 beef feeder-	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

#### **1.4 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.

#### **1.5 ENFORCEMENT**

In the event of a violation of this Resolution or a judgment on a civil action by the North Dakota Department of Health, Ward County, 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 Ward County Commissioners, the permit may be revoked.

#### **1.6 SEVERABILITY**

If any paragraph, sentence, clause or phrase of this resolution 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 the ordinance.

### **2.0 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 with 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.)

#### **2.1 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.

<b>Setback Distances for Animal Feeding Operations</b>		
Number of Animal Units	Hog Operations	Other Animal Operations
fewer than 1000	none	none
1001 or more	0.75 mi (1.207 km)	0.50 mi (.805 km)
2001 or more	1.00 mi (1.609 km)	0.50 mi (.805 km)
5001 or more	1.50 mi (2.414 km)	0.50 mi (.805 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 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 Ward 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 Ward County Commissioners 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.

## **1. 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 use of land as listed below, shall apply for and obtain a conditional use permit from Ward County.

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 use of land.
2. An *existing animal feeding operation* that expands to handle more than 1,000 animal units is a conditional 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 use permit.

#### **3.1.B. Procedure.**

The Ward County Commissioners may practice any or all of the provisions in the following subparagraphs in harmony with the permitting process of its general zoning regulations.

1. Application for a conditional use permit shall be submitted to the Ward County Commissioners for tentative approval. The Ward County Commissioners shall notify the

Department of Health that it has received such application. The applicant shall submit a fee of \$ 300.00 with the application.

2. Ward County Officials 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 Ward County Commissioners may include at least one advertised public hearing.
3. Prior to construction or establishment of an animal feeding operation with 5000 or more animal units, one or more confinement buildings, and one manure storage structures, the operator may be required to file an irrevocable surety bond with the County Auditor. Such bond shall be in an amount equal to an engineer's estimate of the cost of removing or demolishing such facilities and shall be held for the duration of the animal feeding operation. The amount of the bond may be reviewed by the County Board of Commissioners on an annual basis and adjusted if needed. This bond may be used to cleanup the animal feeding operation, including manure storage structures such as lagoons, should they be abandoned by the operator.
4. Following tentative approval or denial of the application by the Ward County Commissioners, the applicant shall be notified by letter of the decision including, conditions imposed, if any.
5. The applicant shall then forward its application for a conditional use permit, together with the tentative approval by the local government, to the North Dakota Department of Health.
6. Following a review by the Department of Health of the operator's application for a state permit, the Department of Health will notify the Ward County Commissioners of its decision.
7. The conditional use permit will become final following the granting of a permit by the Department of Health.
8. A conditional use permit granted to the operator of a new animal feeding operation shall be put into use within twelve (12) months, or the permit shall lapse and the operator may re-apply.

### **3.1.C. Application Requirements.**

The application for a conditional 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 Ward County Commissioners 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 Department of Health.

**3.1 OWNERSHIP CHANGE**

An operator of a facility that includes an *animal feeding operation* having a permit granted by this Resolution shall notify the Ward County Auditor of the sale, or the transfer of the ownership of that operation.

**1.2 OPERATION CHANGE**

An operator of a facility that includes an *animal feeding operation* having a permit granted by this Resolution shall notify the Ward County Auditor 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.

STATE OF NORTH DAKOTA    )  
  )  
COUNTY OF WARD            )

I, Devra Smestad, the County Auditor of Ward County, North Dakota, do hereby certify that the foregoing is a true, correct and complete copy of a resolution adopted by the Board of County Commissioners of Ward County at its regular meeting held on the 7<sup>th</sup> day of January, 2003, which Resolution is a part of the minutes of said Board; and that a copy thereof has been filed with the office of the Recorers and will be available to the public for inspection and copying thereat from and after this date.

Witness my hand and the official seal of said County the 26<sup>th</sup> day of July, 2007.

  
Auditor, Ward County, North Dakota