

ORDINANCE 01-25

(NOTE: This Ordinance shall only apply to animal feeding operations in townships that are subject to Burleigh County zoning regulations, including Crofte, Burnt Creek, Fort Rice, Gibbs, Glenview, Hay Creek, Lincoln, Lyman, Menoken, Phoenix, Riverview and West Hay Creek Townships.)

AN ORDINANCE TO AMEND AND RE-ENACT ARTICLE 3; ARTICLE 7, SECTION 15; ARTICLE 8, SECTIONS 1(a) AND 1(e); ARTICLE 11, SECTION 4; AND ARTICLE 25, SECTION 4; AND TO CREATE AND ENACT ARTICLE 8, SECTIONS 1A AND 19 OF THE 1972 AMENDED ZONING ORDINANCE OF BURLEIGH COUNTY, NORTH DAKOTA RELATING TO GENERAL REQUIREMENTS FOR SPECIAL USE PERMITS AND SPECIFIC REQUIREMENTS FOR ANIMAL FEEDING OPERATION SPECIAL USE PERMITS.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BURLEIGH COUNTY, NORTH DAKOTA:

Section 1. Amendment. Article 3 (Definitions) of the Zoning Ordinance is hereby amended and re-enacted as follows:

ANIMAL FEEDING OPERATION ----A place where: 1) livestock have been, are, or will be confined, concentrated and fed for forty-five (45) or more days in any twelve (12) month period; 2) pasture, crops, or other vegetation are not normally managed or sustained for grazing during the normal growing season; and 3) animal waste or manure accumulates. All such operations containing one thousand (1,000) or more animal units shall be defined as an animal feeding operation. 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. An animal feeding operation in place and operating on the date this ordinance is effective shall be considered an existing animal feeding operation and shall not be subject to the requirements of this ordinance unless it expands by any number of animal units.

ANIMAL FEEDING OPERATION 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.

ANIMAL WINTERING OPERATION----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 one thousand (1,000) animal units or 2) weaned

offspring which are kept longer than one hundred-twenty (120) days and that are not retained for breeding purposes. Animal wintering operations are not subject to the requirements of this ordinance.

ANIMAL UNIT EQUIVALENT----A unitless number developed from the nutrient and volume characteristics of manure for a specific livestock type. The term is used to normalize the number of animals (e.g., head) for each specific livestock type that produce comparable bulk quantities of manure. The animal unit equivalents (AUE) for types of livestock and numbers of livestock for facility size thresholds are listed in the following table:

<u>Livestock Type</u>	<u>AUE</u>	<u>Equivalent Numbers of Livestock</u>			
		<u>300</u>	<u>1,000</u>	<u>2,000</u>	<u>5,000</u>
<u>Horse</u>	<u>2.0</u>	<u>150</u>	<u>500</u>	<u>1,000</u>	<u>2,500</u>
<u>Dairy Cow</u>	<u>1.33</u>	<u>225</u>	<u>750</u>	<u>1,500</u>	<u>3,750</u>
<u>Mature Beef</u>	<u>1.0</u>	<u>300</u>	<u>1,000</u>	<u>2,000</u>	<u>5,000</u>
<u>Beef Feeder – Finishing</u>	<u>1.0</u>	<u>300</u>	<u>1,000</u>	<u>2,000</u>	<u>5,000</u>
<u>Beef Feeder – Backgrounding</u>	<u>0.75</u>	<u>400</u>	<u>1,333</u>	<u>2,667</u>	<u>6,667</u>
<u>Mature Bison</u>	<u>1.0</u>	<u>300</u>	<u>1,000</u>	<u>2,000</u>	<u>5,000</u>
<u>Bison Feeder</u>	<u>1.0</u>	<u>300</u>	<u>1,000</u>	<u>2,000</u>	<u>5,000</u>
<u>Elk</u>	<u>1.0</u>	<u>300</u>	<u>1,000</u>	<u>2,000</u>	<u>5,000</u>
<u>Swine, >55 lbs</u>	<u>0.4</u>	<u>750</u>	<u>2,500</u>	<u>5,000</u>	<u>12,500</u>
<u>Swine, Nursery</u>	<u>0.1</u>	<u>3,000</u>	<u>10,000</u>	<u>20,000</u>	<u>50,000</u>
<u>Sheep</u>	<u>0.1</u>	<u>3,000</u>	<u>10,000</u>	<u>20,000</u>	<u>50,000</u>
<u>Goose or Duck</u>	<u>0.2</u>	<u>1,500</u>	<u>5,000</u>	<u>10,000</u>	<u>25,000</u>
<u>Turkey</u>	<u>0.0182</u>	<u>16,500</u>	<u>55,000</u>	<u>110,000</u>	<u>275,000</u>
<u>Chicken</u>	<u>0.01</u>	<u>30,000</u>	<u>100,000</u>	<u>200,000</u>	<u>500,000</u>

LIVESTOCK-----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 animals raised for pelts.

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.

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 the State of North Dakota, 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 defined.

Section 2. Amendment. Article 7 (Use Groups), Section 15 of the Zoning Ordinance is hereby amended and re-enacted as follows:

Section 15. GENERAL FARMING GROUP

A use in the General Farming Group is one ~~which~~ that is customarily carried out in non-urban areas. It is the intent of this article to permit as an integral part of any particular use in the General Farming Group all customary accessory buildings for breeding and rearing poultry and livestock and for the storage of feed and farm crops. All of the livestock related uses in the following list refer to activities that are not defined as animal feeding operations as specified in the Zoning Ordinance.

- a) The following uses are declared to be in the General Farming Group:
1. Dairy farming
 2. Fur animal farming
 3. Livestock raising and feeding
 4. Pig hatchery-farrowing and feeding
 5. Poultry hatchery
 6. Poultry farming and feeding
 7. Roadside stand for the sale of products grown on the premises
 8. Field crop farming
 9. Grain elevators
 10. General animal husbandry
 11. All customary farming and ranching operations

Section 3. Amendment. Article 8 (Special Uses), Sections 1(a) and 1(e) of the Zoning Ordinance are hereby amended and re-enacted as follows:

Section 1. GENERAL PROVISIONS *(Note: These provisions apply to all special use permits except special use permits for animal feeding operations.)*

- a) Special use permit applications shall be submitted to the Planning Department at least twenty-one (21) days prior to a meeting of the County Planning Commission. The following items shall accompany the special use permit application:
1. A fee in accordance with Article 25 of the Zoning Ordinance.
 2. Three (3) copies of a preliminary scaled site plan ~~at a scale of one (1) inch equals twenty (20) feet or less~~ containing all items required by the Zoning Ordinance for each particular special use, ~~unless waived~~ as specified by the County Planner.
 3. A photographic reduction or digital copy of the ~~preliminary~~ site plan described above ~~designed to fit an 8 1/2 x 11 sheet.~~ as specified by the County Planner.

- e) Upon receipt of the Planning Commission's recommendation and report, the Board of County Commissioners shall consider the proposed special use and shall take final action on the request. The Board of County Commissioners may approve, deny or table the request for further consideration and study.
- l) Failure to comply with any condition set forth as part of a special use permit shall be a violation of this Ordinance and is subject to the enforcement process. Continued non-compliance shall be grounds for revocation of the special use permit, as determined by the Board of County Commissioners following a public hearing on the issue.
- m) When a special use has been established and is discontinued for any reason for a period of two (2) years or longer, the special use permitted shall be considered abandoned.

Section 4. Amendment. Article 8, Section 1A (General Provisions – Animal Feeding Operations) is hereby created and enacted as follows:

Section 1A. GENERAL PROVISIONS – ANIMAL FEEDING OPERATIONS

- a) The operator of a new livestock facility, or an existing livestock facility which meets the definition of an animal feeding operation and which meets the following criteria shall be considered an animal feeding operation subject to the conditions specified in this section:
 - 1. A new animal feeding operation that would be capable of handling one thousand (1,000) or more animal units.
 - 2. An existing animal feeding operation that expands to handle one thousand (1,000) or more animal units.
 - 3. An existing animal feeding operation with one thousand (1,000) or more animal units that expands by any number of animal units.
- b) Special use permit applications shall be submitted to the Planning Department at least thirty (30) days prior to a meeting of the Planning Commission. The following items shall accompany the special use permit application:
 - 1. A fee in accordance with Article 25 of the Zoning Ordinance.
 - 2. Three (3) copies of a scaled site plan including the total acreage of the site; existing and proposed roads and access ways within and adjacent to the site; topographic contours with a minimum interval of five (5) feet; surface water, streams, drainage areas and one-hundred (100) year floodplain and floodway elevations; existing and proposed building locations; waste system locations; surrounding land uses, zoning and ownership; and locations of existing wells. Such site plans shall be prepared by a registered land surveyor, a civil engineer or other person having comparable experience or qualifications.

3. A description of the operation, including the proposed number of animal units; the proposed waste and nutrient management system; and any aquifers, sources of drinking water and wells.
 4. A copy of the state permit application to be submitted by the applicant to the North Dakota Department of Health.
 5. A photographic reduction or digital copy of the site plan as specified by the County Planner.
- c) Following submission of a special use permit application, the Planning Department shall notify the Department of Health that it has received such application and shall set a time and place for a public hearing before the Planning Commission. Notice of the time and place of such public hearing shall be published in a newspaper of general circulation in the County of Burleigh once each week for two (2) consecutive weeks prior to the date of the hearing. Not less than ten (10) days prior to the scheduled public hearing all known adjacent property owners within the corresponding odor setback distances specified in Section 19 of this Article shall be notified by letter of the hearing. The Planning Commission may approve, deny or table the application for further consideration and study.
 - d) Following the public hearing, and approval by the Planning Commission, the Planning Department shall forward the proposed special use to the Board of County Commissioners together with the Planning Commission's recommendation and a report fully setting forth the reasons for such recommendation.
 - e) Upon receipt of the Planning Commission's recommendation and report, the Board of County Commissioners shall consider the proposed special use and shall take action on the request. The Board of County Commissioners may approve, deny or table the application for further consideration and study. If granted approval by the Board of County Commissioners, such action shall be considered tentative until a state permit for the operation is granted by the North Dakota Department of Health.
 - f) The applicant shall then forward its application for a special use permit, together with the tentative approval by the Board of County Commissioners, to the North Dakota Department of Health.
 - g) Following a review by the Department of Health of the operator's application for a state permit, the Department of Health will notify the Planning Department of its decision.
 - h) The special use permit will become final following the granting of a state permit by the Department of Health.
 - i) The special use permit granted to the operator of an animal feeding operation shall be put into use within twenty-four (24) months, or the permit shall lapse and the operator may re-apply.
 - j) Prior to construction or establishment of an animal feeding operation with 5000 or more animal units, one or more confinement buildings, and one or more 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.

- n) Failure to comply with any condition set forth as part of a special use permit for an animal feeding operation shall be a violation of this Ordinance and is subject to the enforcement process. Continued non-compliance shall be grounds for revocation of the special use permit, as determined by the Board of County Commissioners following a public hearing on the issue.
- o) When a special use for an animal feeding operation has been established and is discontinued for any reason for a period of two (2) years or longer, the animal feeding operation shall be considered abandoned.

Section 5. Amendment. Article 8, Section 19 (Special Uses) is hereby created and enacted as follows:

Section 19. ANIMAL FEEDING OPERATIONS

Animal feeding operations may be permitted in an A-Agricultural District as a special use provided:

- a) *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.
- b) *Location Requirements.* The operator of a new animal feeding operation that has one thousand (1,000) or more 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 that supplies the water for the public water system, including all or portions of the surface-water's shoreline.
 - 2. Within one thousand two hundred (1,200) feet of a private ground water well that is not owned by the operator or within one thousand five hundred (1,500)

feet of a public ground water well which does not have a delineated source water protection area.

3. Within one thousand (1,000) feet of surface water which is not included in a source water protection area.
4. Within the extra-territorial zoning jurisdiction of an incorporated city.
5. Less than the following specified distance from existing residences, businesses, churches, schools, public parks and areas of property that are zoned residential:

<u>Number of Animal Units</u>	<u>Hog Operations</u>	<u>Other Animal Operations</u>
<u>Less than 1000</u>	<u>None</u>	<u>None</u>
<u>1000 – 1999</u>	<u>0.75 mile</u>	<u>0.5 mile</u>
<u>2000 – 4999</u>	<u>1.0 mile</u>	<u>0.75 mile</u>
<u>5000 or More</u>	<u>1.5 miles</u>	<u>1.0 miles</u>

The County Board of Commissioners, upon recommendation of the Planning Commission, may increase or decrease a setback distance for any 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 or environmental concerns.

- c) Reverse Odor Setback. An owner of property shall locate and establish a residence, business, church, school, or public park so as to provide a separation distance from any existing animal feeding operations that meets or exceeds the corresponding setback from those places listed in the above odor setback table. An owner of property who is an operator may locate the owner's residence within the setbacks.
- d) Temporary Odor Setback. If notified in writing by an operator of a planned future expansion of an animal feeding operation, the County 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.
- e) Sale or Transfer of Ownership. An operator of a facility that includes an animal feeding operation having a permit granted by this ordinance shall notify the County of the sale or the transfer of ownership of the property.
- f) Inclusion of Alternative Livestock Type. An operator of a facility that includes an animal feeding operation having a permit granted by this ordinance shall notify the County in writing of intent to include an alternative livestock type at least one hundred-twenty (120) days prior to the anticipated date of the change.

Section 6. Amendment. Article 11, Section 4 (Agricultural District Regulations) of the Zoning Ordinance is hereby amended and re-enacted as follows:

Section 4. SPECIAL USES

- a) The following special uses are allowed in the A-Agricultural District, in accordance with Article 8:
- 1) Airport or heliport
 - 2) Cemetery
 - 3) Drive-in theater
 - 4) Golf driving range, not accessory to a golf course
 - 5) Recreational vehicle park
 - 6) Salvage yard
 - 7) Junkyard
 - 8) Veterinary/animal clinic
 - 9) Animal hospital/kennel
 - 10) Solid waste disposal facility
 - 11) Vehicular race tracks
 - 12) Rodeo or rodeo events
 - 13) Trap or skeet shooting range
 - 14) Animal feeding operations, as defined herein

Section 7. Amendment. Article 25 (Schedule of Fees), Section 2 of the Zoning Ordinance is hereby amended and re-enacted as follows:

Section 2. FEES

D. Special Use Permit and Variance Applications

For each application for a variance from height, area, yard, parking, or loading space provisions 60.00

For a Special Use Permit of any type, including animal feeding operations100.00

Section 8. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 9. Effective Date. This ordinance shall be in full force and effect from and after its final passage and adoption.

Section 10. Severability. If any section, 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 portions of this ordinance.

Final passage and adoption: September 5, 2001