

AMENDMENT TO THE HOWES TOWNSHIP ZONING ORDINACE

Article V, Section VI of the Howes Township Zoning Ordinance is hereby revoked and rescinded.

Except as expressly cancelled, revoked, added to, or otherwise amended by this Amendment, the Howes Township Zoning Ordinance is hereby in all respects ratified, republished, and redeclared.

Approved and adopted this 26 day of October, 2016.

Howes Township
Howes Township
By: Paul. Fiedel
Its: Chairman

Attest:

Cindy Newitt
Clerk

CHAPTER 2
HOWES TOWNSHIP ANIMAL FEEDING OPERATION ORDINANCE

SECTION 1: INTENT AND PURPOSE

These regulations are designed to allow Animal Feeding Operations for feeding livestock, furbearers and poultry and at the same time protect the adjoining uses against odor, run off and other incompatible characteristics with animal feeding operations.

SECTION 2: DEFINITIONS

1. For the purpose of this Ordinance, certain terms or words used herein shall be interpreted as follows:

- A. The word “shall” is mandatory, and not discretionary; the word “may” is permissive.
- B. 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.
- C. Words shall be given their common usage if not defined.
- D. The word “Board” includes the “Howes Township Board” or any other word or words meaning the “Howes Township Board”.
- E. The word “Commission” includes the “Howes Township Zoning and Planning Commission” or any other words or word meaning the “Howes Township Zoning and Planning Commission.”
- F. The word “person” includes a firm, association, organization, partnership, trust, company, cooperative, corporation, or individual.

2. Animal Feeding Operation (AFO). 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.

3. 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 1,000 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 (taken from ND century code 58-03-11.1. section 2) For purposes of this section, animal units are determined as follows:

- A. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
- B. One dairy cow, heifer, or bull, other than an animal described in subdivision a equals 1.0 animal unit;
- C. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
- D. One cow-calf pair equals 1.0 animal unit;
- E. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
- F. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
- G. One horse equals 2.0 animal units;
- H. One sheep or lamb equals 0.1 animal unit;
- I. One turkey equals 0.0182 animal unit;
- J. One chicken, other than a laying hen, equals 0.008 animal unit.

4. Animal Wintering Operation. a parcel of land where animals are sheltered incidental to farming at any time between October 15 and May 15 of cash production cycle under circumstances in which these animals do not obtain a majority of their feed and nutrients from grazing. This term includes 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. For purposes of numbers, two or more animal wintering operations under common ownership are considered to be a single animal wintering operation if they adjoin each other or if they use a common area or system for manure handling or disposal.

5. Board. The Howes Township Board of Supervisors.

6. Building, Agricultural. All buildings, other than dwellings, which are incidental to a farming operation.

7. 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 considered to be 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.

8. Farm. A tract of land which is principally used for agricultural activities such as the production or cash crops, livestock or poultry farming.

9. Feedlot. Is a parcel of land which contains an animal feeding operation or a confined animal feeding operation as defined by this ordinance.

10. Modification. Any change in the feedlot operation that does not result in an increase in animal numbers.

11. NDDH. North Dakota Department of Health.

12. Owner/Operator. Any person having possession, control or title to a animal feeding unit.

13. Parcel. A contiguous quantity of land legally described and recorded with the County Register of Deeds as the property of a person.

14. Pastures. Areas where grass or other growing plants are used for grazing, and where the concentration of animals is such that a vegetative ground cover is maintained during the growing season except in the immediate vicinity of temporary supplemental feeding or watering devices.

15. Permit, State. A document issued by the NDDH which contains requirements, conditions, and compliance schedules relating to the discharge of animal manure pollutants, and, issued to the contractor, owner or operator, cooperative, stating that the feedlot meets the minimum standards as required by this Ordinance and the NDDH.

16. Permit, Township. A document issued by Howes Township which contains conditions and compliance schedules relating to the discharge of animal pollutants, and, issued to the contractor, owner or operator, cooperative, stating the feedlot meets the minimum standards as required by this Ordinance and the NDDH.

17. 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.

18. Surface Waters. Waters of the State which include, but are not limited to rivers, streams, creeks, coulees, ponds, intermittent streams, and wetlands.

19. USDA. United States Department of Agriculture.

SECTION 3: GENERAL PROVISIONS AND REQUIREMENTS

- 1. **Jurisdiction.** The jurisdiction of this Ordinance shall apply to all the areas of Howes Township.
- 2. **Scope.** From and after the effective of this Ordinance and subsequent amendments, all existing or proposed animal feeding operations shall be in conformity with the provisions of this ordinance.
- 3. **Application.**
 - A. In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements to satisfy the intent and purpose of this ordinance.
 - B. Where the conditions imposed by any provision of this ordinance are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail.
- 4. Animal feeding Operations are only permitted as conditional uses subject to the provisions of this ordinance and the requirements and permitting of the NDDH. A Cass County Special Use Permit must be obtained and submitted to the Board for its approval.
- 5. In addition to the requirements for a conditional use permit elsewhere contained in this ordinance, an Applicant must provide the following documents in order for its application to be deemed complete:
 - A. 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 Township 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:
 - i. Proposed number of animal units.
 - ii. Legal descriptions of the site and its associated lands.
 - iii. Existing and proposed roads and access ways within and adjacent to the site of the facility.
 - iv. Surrounding land uses and ownership, if the operation will have the capacity to handle more than 1,000 animal units.
 - v. A copy of the permit application submitted by the applicant to the Department of Health.

In its discretion, the zoning commission may require further submissions from an Applicant in order to evaluate whether the proposed operation is compatible with surrounding land uses

6. All Animal Feeding Operations shall be designed and constructed with all reasonable preventative measures to avoid surface run-off including construction of sealed collection and retention ponds.
7. In the event of a violation of this ordinance or a judgment on a civil action by the NDDH, the office of the Attorney General, or a person authorized to maintain an action under N.D.C.C. § 42-01-08, then the Township, after due process, can order cessation of a facility for animal feeding within a reasonable period of time and until such time as the owner/operator corrects or abates the cause(s) of the violation. If the causes(s) of the violation are not remedied within a reasonable period of time as set by the Township, the permit may be revoked.

SECTION 4: REQUIRED SETBACKS AND SEPARATION DISTANCES FOR ANIMAL FEEDING OPERATIONS AND THOSE EXPANDING

1. Required Setbacks and Separation Distances for New Animal Feeding Operation: The owner/operator of a new animal feeding operation shall locate the site of that operation pursuant to the distances set forth below from existing residences, businesses, churches, schools, and public parks as well as areas of property that are zoned residential, recreational, or commercial:

- i. If there are fewer than three hundred animal units, there is no minimum setback requirement.
- ii. If there are at least three hundred animal units but no more than one thousand animal units, the setback for any animal operation is .75 miles.
- iii. If there are at least one thousand one animal units but no more than two thousand animal units, the setback for a hog operation is 1.125 miles and the setback for any other animal operation is .75 miles.
- iv. If there are at least two thousand one animal units but no more than five thousand animal units, the setback for a hog operation is 1.50 miles and the setback for any other animal operation is 1.125 miles.
- v. If there are five thousand one or more animal units, the setback for a hog operation is 2.25 miles and the setback for any other animal operation is 1.50 miles.

The distance of the setback is calculated from the property line of the preexisting use to the facility. In areas agricultural zoned land, the setback distance shall be calculated from the area of residential use.

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-way and adjacent property lines shall be maintained.

2. Existing Animal Feeding Operations.

- i. An individual or entity who wishes to establish a residence, business, church, school, public park or zone for residential use, must comply with the above-referenced setbacks so as to provide a separation distance from any existing animal feeding operation.
- ii. An owner/operator of an existing animal feeding operation may locate the owner's residence or business within the setbacks.
- iii. Expansion of permitted animal units up to twenty-five percent shall require notification of the Howes Township Board of Supervisors within ten (10) days of expansion.
- iv. 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 period not to exceed two years, after which time the setback will remain in effect only if the expansion was completed.

SECTION 5: ANIMAL FEEDING OPERATION CLOSURE

1. Responsible Parties. The landowner, owner and operator of any animal feeding operation shall be responsible for the ongoing management of manure and the final closure of the animal feeding operation including the cleaning of buildings and the emptying and proper disposal of manure from all manure storage structures.

2. Closure Plan. If an animal feeding operation ceases operation, the owner shall submit to the Township a Closure Plan.

- A. The Closure Plan shall be submitted at least sixty (60) days prior to the final day of operation. This plan shall be prepared by a registered Professional Engineer.
- B. Closure may be postponed for a period of twelve (12) months if the property is posted for sale. However, pollution hazards must be remediated immediately.
- C. Manure storage structure closure shall include the removal of the sludge in the facilities and its disposal by proper land application at agronomic rates or by other legally permissible method. Manure storage structure and the seeding of the area.
- D. All wastes from the feedlot operation and its waste control system must be removed and disposed of on land or in some other manner which is legally permissible as soon as practical and in accordance with the approved Plan in order to promote and protect public health.
- E. Each time ownership of the feedlot changes, the new owner must notify the Howes Township Zoning and Planning Commission in writing within sixty (60) days of the transfer of ownership that the approved Plan has been read and is understood and that all provisions of the Plan will be implemented.
- F. If the new ownership will continue to operate the feedlot, closure shall not be required.

SECTION 6: ABANDONMENT

1. Owners and operators of animal feeding operations shall have joint and several liability for clean-up, closure or remediation of abandoned animal feeding operation sites, including cases of neglect.
2. Abandoned live animals shall be assessed for health by the State Veterinarian and costs of disposal shall be assessed against the bond.

Approved and adopted this 26 day of October, 2016.

Howes Township
Howes Township
By: Don K. Straub
Its: Chairman

Attest:

Candy Allweert
Clerk