

# TURNER COUNTY

## Concentrated Animal Feeding Operation Control Requirements

Turner County Director of Equalization  
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### ORDINANCE NO. 21-03 *(Effective January 15, 2004)*

An Ordinance amending the Turner County Zoning and Subdivision Regulations relating to concentrated animal feeding operations.

WHEREAS, concentrated animal feeding operations are a matter of important public concern for the health and safety of Turner County, therefore,

BE IT ORDAINED by the Board of County Commissioners of Turner County, South Dakota:

That Section 3.01.11 of the Turner County Zoning Ordinances shall be repealed and amended to read as follows:

#### **3.01.11 Concentrated Animal Feeding Operation Control Requirements**

##### **1. Intent**

It is the intent of this section to provide for a viable livestock industry within agriculturally zoned areas of Turner County, protect ground and surface waters and ensure that concentrated animal feeding operations are properly sited, maintained, and managed.

##### **2. Conditional Use Permit for Concentrated Animal Feeding Operations Required**

Any person who owns, proposes to own, manages, or operates a Class A, Class B, or Class C Concentrated Animal Feeding Operation, as those terms are defined in these Ordinances, shall be required to obtain a Turner County Conditional Use Permit for Concentrated Animal Feeding Operation whenever a new Concentrated Animal Feeding Operation is proposed where one does not exist, or when a change in operation occurs as defined within these regulations. A change of ownership between family members does not constitute a change in operation. The burden of proof shall be on the Applicant to show they should be granted a Turner County Conditional Use Permit for a Concentrated Animal Feeding Operation.

##### **3. Aggregation of Commonly Owned Concentrated Animal Feeding Operations for the Purposes of Classification of Such Operations**

For the purpose of considering Building Permits or Conditional Use Permits for the placement of animals and livestock within the agriculturally zoned areas of Turner County and determining the number of animals necessary to meet the criteria for a Class A, Class B, or Class C concentrated animal feeding Operations, any person, company, business, or entity which owns or operates more than one building, location or site which has for its purpose the feeding or housing of animals within

one mile of another building, location, or site which also has for its purpose the feeding or housing of animals also owned or operated by that same person, company, business, or entity shall be counted as one site and shall count toward the number of animals which are considered in determining whether the proposed building, location, or site is a Class A, Class B, or Class C concentrated animal feeding operation.

#### **4. Classifications of Concentrated Animal Feeding Operation for the Purpose of Obtaining Conditional Use Permit for Concentrated Animal Feeding Operations**

Concentrated animal feeding operations are hereby classified as Class A concentrated animal feeding operations, which consist of any concentrated animal feeding operation in excess of 2,000 animal units as defined in these regulations, Class B concentrated animal feeding operations which consist of concentrated animal feeding operations between 1,000 and 1,999 animal units as defined in these regulations, and Class C concentrated animal feeding operations which consist of concentrated animal feeding operations between 300 and 999 animal units as defined in these regulations.

The following table defines and establishes each type of animal confinement (species) with the animal unit ratio and number of animals indicated. **All animal classifications are based upon the standard animal unit ratio as defined in Section 2.02.**

<b><u>SPECIES</u></b>	<b><u>AU RATIO</u></b>	<b><u>CLASS A NUMBER OF ANIMALS</u></b>	<b><u>CLASS B NUMBER OF ANIMALS</u></b>	<b><u>CLASS C NUMBER OF ANIMALS</u></b>
Feeder or Slaughter Cattle	1.0	2,000 or more	1,000 to 1,999	300 to 999
Mature Dairy Cattle	1.4	1,428 or more	714 to 1,427	214 to 713
Finisher Swine over 55 pounds	0.4	5,000 or more	2,500 to 4,999	750 to 2,499
Nursery Swine under 55 pounds	0.1	20,000 or more	10,000 to 19,999	3,000 to 9,999
Farrow-to-Finish (sows)	3.7	540 or more	270 to 539	81 to 269
Swine Production Unit (sows breeding gestating and farrowing)	0.47	4,255 or more	2,127 to 4,254	638 to 2,126
Horses	2	1,000 or more	500 to 999	150 to 499
Sheep	0.1	20,000 or more	10,000 to 19,999	3,000 to 9,999
Turkeys	0.018	111,111 or more	55,555 to 111,110	16,666 to 55,554
Laying Hens & Broilers (Overflow)	0.01	200,000 or more	100,000 to 199,999	30,000 to 99,999
Laying Hens & Broilers (Liquid Handle)	0.033	60,606 or more	30,300 to 60,605	9,090 to 30,299
Ducks	0.2	10,000 or more	5,000 to 9,999	1,500 to 4,999

## **5. Standards to be Utilized by the Board of Adjustment for Conditional Use Permits for Concentrated Animal Feeding Operations**

The Turner County Board of Adjustment may, in its discretion, approve or deny applications for Conditional Use Permits for Concentrated Animal Feeding Operations. The decision of the Board of Adjustment shall be based on the standards for approval set forth below.

### **A. Required Minimum Setbacks and Separation Distances for New Concentrated Animal Feeding Operations; Exemptions from Setback and Separation Distances Under Certain Limited Circumstances:**

There shall be a minimum setback and separation distances for all new concentrated animal feeding operations and changes in operation in any existing concentrated animal feeding operation. No concentrated animal feeding operation shall be permitted that is closer than the separation distances set forth in this Ordinance, unless that operation falls within the specific exception set forth in this Ordinance. The required minimum setbacks and separation distances shall be as follows:

	<b><u>CLASS A</u></b>	<b><u>CLASS B</u></b>	<b><u>CLASS C</u></b>
Dwellings, Churches, Schools, Businesses, Cemetery and Public Use Areas	½ mile plus 200 ft. per additional 1,000 animal units over 2,000 animal units	¼ mile plus 100 ft. per additional 100 animal units	¼ mile
Incorporated Municipalities	1 mile plus 400 ft. per each additional 1,000 animal units over 2,000 animal units	1 mile	½ mile
Existing Swine Feeding Operation over 300 AU – only related to new swine feeding operations	2 miles	1 mile	½ mile
Public Water Supplies	1,000 feet	1,000 feet	1,000 feet
Private Shallow Wells	250 feet	250 feet	250 feet
Lakes, Rivers and Streams Classified as Fisheries	500 feet	200 feet	200 feet
Federal, State & County Road Right of Way	100 feet	100 feet	100 feet
Township Road Right of Way	100 feet	100 feet	100 feet
Designated 100 Year Flood District	Prohibited, unless the Applicant can show by appropriate soil borings that the site is appropriate.	Prohibited, unless the Applicant can show by appropriate soil borings that the site is appropriate.	Prohibited, unless the Applicant can show by appropriate soil borings that the site is appropriate.
Designated Aquifer Protection Dist.	Prohibited, unless the Applicant can show by appropriate soil borings that the site is appropriate.	Prohibited, unless the Applicant can show by appropriate soil borings that the site is appropriate.	Prohibited, unless the Applicant can show by appropriate soil borings that the site is appropriate.

These setback and separation distances shall be calculated from the manure or waste storage area, feed storage area, animal housing building, or the edge of a feedlot of the facility to the nearest structure or use.

If an Applicant wishes to place a Concentrated Animal Feeding Operation closer than the separation distances set forth in these regulations, the Applicant can request an Exception for the separation distance from the Board of Adjustment. The Board may allow an Exception from the separation distance only when the Applicant obtains waivers from all the owners of property within the separation distance. Any authorized person, business, or governmental entity that is within the separation distance may waive the separation distance through a written instrument to be filed with the Turner County Register of Deeds. This waiver would run with the land.

**B. Fly and Odor Control**

Class A, B and C Concentrated Animal Feeding Operations shall dispose of dead animals, manure and wastewater in such a manner as to control odors or flies. The County Board of Adjustment will review the need for control measures on a site-specific basis, taking into consideration prevailing wind direction and topography. The Applicant shall provide the Board of Adjustment with a Fly and Odor Control Plan that will provide sufficient information for the Board of Adjustment to determine whether adequate safeguards exist to protect the public from flies and odors. Information in the Fly and Odor Control Plan shall contain the information necessary to allow the Board of Adjustment to determine what conditions may be necessary to reduce fly and odor problems, as set forth below.

**C. Conditions on Permit Allowed**

Any Turner County Conditional Use Permit for Concentrated Animal Feeding Operations may be approved by the Board of Adjustment, subject to any reasonable conditions, including, but not limited to, the following:

1. Demonstration of, or requiring, adequate methods to be utilized to dispose of dead animals.
2. Demonstration of, or requiring, trees and shrubs to be planted to reduce wind movement of odors away from buildings, manure storage ponds and/or lagoons. A minimum of four rows of trees, with each row being at least ten feet apart, according to the generally accepted practices and recommendations of NRCS, or its successor or equivalent agency, must be planted and maintained. The planting of trees must be within one year of the start of the use of the facility.
3. Demonstration of, or requiring, adequate slope and drainage at the proposed site to remove surface water from pens and keep the pen area dry so odor production is minimized.
4. Demonstration of, or requiring, manure storage is containment areas having good drainage to minimize odor production.
5. Demonstration of, or requiring, removal of manure from open pens as frequently as possible to minimize odor production.
6. Consider the use of covers on open storage systems for liquid manure systems to reduce odor production.

7. Consider alternatives to the spreading of manure on weekends, holidays and evenings during warm seasons when neighbors may be involved in outdoor recreation activities. Consider alternatives to spreading manure in such situations whenever possible.
8. Requiring the application of liquid manure to be completed by an injection or knifing in process.
9. Requiring the proper maintenance of the facility, including, but not limited to, the completion of dirt work, proper handling of garbage and waste, and proper drainage.

**D. State General Water Pollution Control Permit for Concentrated Swine Feeding Operations or General Water Pollution Control Permit for Concentrated Animal Feeding Operations Required** Class A and B Concentrated Animal Feeding Operations shall obtain a General Water Pollution Control Permit for Concentrated Swine Feeding Operations or a General Water Pollution Control Permit for Concentrated Animal Feeding Operations or other similarly appropriate state environmental permit pertaining to the animal species of the Concentrated Animal Feeding Operation. The Turner County Conditional Use Permit for Concentrated Animal Feeding Operations may be approved for owners, operators or applicants contingent on receiving a State permit.

**E. Manure Application Setbacks** No person, owner, employee, contractor, agent, or similar person associated in any way with the holder of a Turner County Conditional Use Permit for a Concentrated Animal Feeding Operation shall apply manure to any location in Turner County unless the application of manure is performed in accordance with the minimum manure application setbacks set forth in this Ordinance. The following manure application setbacks apply to all classes of Concentrated Animal Feeding Operations.

**COUNTY MANURE APPLICATION SETBACKS**

<b><u>CATEGORY</u></b>	<b><u>SURFACE OR IRRIGATION APPLIED</u></b>	<b><u>INCORPORATED OR INJECTED</u></b>
Lakes, Rivers, & Streams Classified as Fisheries	300 feet (lakes) 50 feet (river & stream)	100 feet (lakes) 50 feet (river & stream)
Stream & Lakes Classified as Drinking Water Supplies	1,000 feet	300 feet
Public Roads	25 feet (surface) from right-of-way 300 feet (irrigation)	10 feet from right-of-way
Dwellings	300 feet (surface) 1,000 feet (irrigation)	300 feet
Public Wells	1,000 feet	1,000 feet
Private Shallow Wells	250 feet	250 feet
A Residence other than the Operator	300 feet (surface) 1,000 feet (irrigation)	300 feet
Natural or Man-made Drainage Ditch or Canal	200 feet	50 feet

**F. Additional Standards Allowed.** The County Board of Adjustment may impose, in addition to the standards and requirements set forth in these regulations, additional conditions which are reasonable and related to the use being controlled.

**G. Sufficient Land for Manure Application Required.** Conditional use permits for Concentrated Animal Feeding Operations shall be in effect only as long as sufficient land specified for manure management purposes is available for such purposes and other provisions of the permit are being adhered to.

**H. Consideration of Past Violations.** When considering an application, the County Board of Adjustment shall take into consideration any current and past violations of any local, State, or Federal permit or similar approval for the operation of a concentrated animal feeding operation, or any local, State, or Federal law relating to concentrated animal feeding operations that the applicant has an interest in. Evidence of any such violation shall be documented by some action on the part of any public entity to enforce any local, State, or Federal law, or by any evidence that would typically be deemed to be admissible in a court of law in the State of South Dakota.

**I. Additional Standards.** Those standards found in Section 4.04.02(D)(2).

#### **6. Information Required for a Class A, B, or C Concentrated Animal Feeding Operation Permit**

Any applicant for a Turner County Conditional Use Permit for Concentrated Animal Feeding Operations shall provide the following information to the Zoning Administrator prior to consideration by the Board of Adjustment:

- A. The owners', managers', management company's, or similar entities' name, address and telephone number.
- B. Legal descriptions of site.
- C. The number and type of animals to be housed.
- D. A fly and odor control plan.
- E. Information on ability to meet designated setback requirements.
- F. Plans and Specifications of the proposed site and a Nutrient Management Plan.
- G. Information on the types of soils at the site, and whether there are any shallow aquifers, designated well-head protection areas, and 100-year floodplain designations at or within one half mile of the proposed site.
- H. Site Plan of the land utilized for manure application.
- I. Site Plan of all existing and proposed buildings and structures.
- J. Provide Farm Service Agency wetland map.
- K. Testing boring location and test boring results, which must be supplied to the Board at least five days before any hearing on an application.

- L. The County Board of Adjustment or the Zoning Administrator may request information relating to a Concentrated Animal Feeding Operation not contained in these regulations.
- M. Information on whether the applicant has ever violated any of the conditions or provisions of any Turner County Conditional Use Permit, Turner County Conditional Use Permit for Concentrated Animal Feeding Operation Permit, or similar permit in any other county in the State of South Dakota, or any state in the United States.

### **7. Inspection of a Concentrated Animal Feeding Operation to Verify Compliance.**

To assist the Zoning Administrator in these inspections, the holder of the Permit shall provide any relevant information requested by the Zoning Administrator.

When granted a Conditional Use Permit for Concentrated Animal Feeding Operation, or their successors-in-interest, shall provide reasonable information to the Zoning Administrator, at least once per year, to show their compliance with the terms and conditions of the Permit. After such information is provided the Zoning Administrator may conduct an inspection of the site. Additional information shall be provided to the Zoning Administrator at his or her request, if reasonably related to the purpose and intent of the Conditional Use Permit for Concentrated Animal Feeding Operations, the intent of the Board in approving the permit, or if such information is in the public interest.

Any delay in providing such information, or refusal to provide such information is grounds for the suspension or revocation of the Conditional Use Permit for the Concentrated Animal Feeding Operations.

This provision will apply to any Conditional Use Permit issued after the effective date of these amendments to the Ordinance.

### **8. Conditional Use Permit for Concentrated Animal Feeding Operation Not Permitted if Applicant Applies for the Permit for the Purpose of Selling, Transferring, or Brokering.**

The Board of Adjustment shall not grant a Conditional Use Permit for Concentrated Animal Feeding Operation if the Applicant is applying for the Permit for the purpose of selling, transferring, or brokering the Permit.

For the purposes of this Ordinance, any sale or transfer of the Permit from the Applicant to any other person or entity within 2 years of the date that the Permit is issued shall be considered to be prima facie evidence that such Permit was obtained for the purpose of selling, transferring, or brokering the Permit.

Any evidence that is presented by any person that any Conditional Use Permit for Concentrated Animal Feeding Operation was sought for the purpose of selling, transferring, or brokering the Permit may be considered by the Board of Adjustment in considering a new application for Conditional Use Permit and may be the basis for a denial or revocation of the application or a conditional use permit by the Board of Adjustment.

**9. Enforcement of the Provision of this Chapter.**

**A. Violation as Cause for Revocation of Conditional Use Permit for Concentrated Animal Feeding Operation.**

Any violation of any of the provisions of this Chapter, or a violation of any of the conditions placed on any Conditional Use Permit for Concentrated Animal Feeding Operation, may be cause to revoke or suspend the Permit, or other appropriate legal action, including, but not limited to, an injunction or other legal process.

Action suspending or revoking a Conditional Use Permit for violation of this section, or for violating the terms and conditions of the Conditional Use Permit may be taken by the Zoning Administrator or the Board of Adjustment.

**B. Procedure**

The Zoning Administrator, or the Board of Adjustment, may issue a written notice to any person or entity that is in violation of the Turner County Zoning Ordinances and or a Turner County Conditional Use Permit for Animal Feeding Operations, or any condition placed on the Permit, that the person or entity is in violation of the Ordinances or the Permit and or conditions placed on the Permit.

If the Zoning Administrator or the Board of Adjustment determines that a written notice shall be given to any person or entity in violation of the Ordinances or the Permit, it should state the nature of the violation, the Ordinance or condition of the Permit being violated, and state a proposed course of corrective action to the person or entity, along with a timetable for taking corrective action.

The Zoning Administrator, or the Board of Adjustment, may proceed directly to attempt to suspend or revoke the permit, or to take appropriate legal action, including, but not limited to, asking for an injunction from a circuit court, or to take other appropriate legal process, when, in the judgment and discretion of the Zoning Administrator or the Board of Adjustment, it is in the best interests of Turner County to take such action to protect Turner County and its citizens.

The Zoning Administrator or the Board of Adjustment may issue an order to any person or entity holding a Conditional Use Permit for Concentrated Animal Feeding Operations, requiring the person or entity to show cause before the Board of Adjustment, why that person or entity's Permit should not be revoked, suspended, or modified. Any order issued pursuant to this section shall state the nature of the alleged violation, the approximate date or dates of the alleged violation, and shall cite the Ordinance or condition of the Permit violated. After the person or entity has been served with the order, a hearing shall be held not later than 30 days after the order was entered. At such hearing the person or entity shall be given an opportunity to show that the person or entity is not in violation of any Ordinance or condition of a Permit, including presenting testimony and the opportunity to cross-examine any witnesses that testify. Any testimony taken at such hearing shall be under oath. The burden of proof shall be on the person or entity that holds the Permit to show that they have not violated an Ordinance or condition of a Permit.

At the conclusion of the hearing, the Board shall vote on the issue of whether or not the person or entity has violated an Ordinance or a condition of the person's or entity's Permit. A majority vote shall prevail. The Board shall then issue a decision, which may suspend, revoke, or modify the Permit or the terms and conditions of the Permit.

**Turner County**

Any person aggrieved by a decision of the Board of Adjustment may appeal such decision according to the provisions for appeals in these Ordinances.

Public Hearing by Turner County Commission held on 12-1-03.

First Reading:	12-1-03
Second Reading:	12-9-03
Publication of Notice of Adoption:	12-26-03
Effective Date:	1-15-04