

ORDINANCE MC16-150-17

AN ORDINANCE AMENDING THE 1990 REVISED ZONING ORDINANCE FOR MINNEHAHA COUNTY BY AMENDING ARTICLES 3.00 A-1 AGRICULTURAL DISTRICT, 7.00 I-1 LIGHT INDUSTRIAL DISTRICT, 8.00 I-2 GENERAL INDUSTRIAL DISTRICT, 12.00 ADDITIONAL USE REGULATIONS, 19.00 CONDITIONAL USE PERMITS, & 26.00 DEFINITIONS.

BE IT ORDAINED BY MINNEHAHA COUNTY, SOUTH DAKOTA:

That Ordinance MC16-90, the 1990 Revised Zoning Ordinance for Minnehaha County hereby amended as follows:

Section 1: That Article 3.00 A-1 Agricultural District is amended to change:

3.03 PERMITTED SPECIAL USES. A building or premises may be used for the following purposes in the A-1 Agricultural District in conformance with the requirements prescribed herein. A building or premises intended to be used for the following purposes, where the prescribed requirements will not be met, shall obtain a conditional use in conformance with the requirements of Article 19.00: *(amended by MC16-40-98)*

(I). Concentrated Animal Feeding Operation (Class D) provided: *(amended by MC16-18-94 and MC16-40-98)*

- 1). The operation shall either be located in a farmstead, or shall be separated from a dwelling, church, school or business by a minimum distance of 660 feet, a public park by a minimum distance of 1320 feet and a municipality by a minimum distance of 2640 feet.
- 2). The operation shall be separated from an existing or permitted CAFO by a minimum distance of 660 feet.
- 3). The operation shall meet the minimum environmental separation requirements of Table 1 in Section 12.10 (F)(1) and manure application requirements of Section 12.10 (G).
- 4). The operation shall not be in the Water Source Protection Overlay District or a floodplain.
- 5). All CAFO structures, corrals, and manure containment facilities shall be setback a minimum of 50 feet from any property line.
- 6). A Zoning Permit shall be obtained which indicates the location and type of Facility and the location and compliance of required setbacks.

(J). Concentrated animal feeding operation (existing) shall be allowed to expand by provided: *(amended by MC16-40-98 and MC16-75-05 6/28/05 and MC16-89-06 8/19/06)*

- 1). The operation is located in a farmstead or property contiguous to, and smaller than, the aforementioned farmstead.
- 2). The operation shall not be located in the Water Source Protection Overlay District, over a mapped shallow aquifer area, or in a flood plain.
- 3). The operation shall not exceed 1000 animal units either before or after the expansion.

- 4). There is conformance with South Dakota Department of Environment and Natural Resources design standards for any newly constructed manure containment facility. A registered professional engineer shall certify the plan specifications and the construction of the facility.
- 5). Approval by the Planning Director of a manure management plan
- 6). The operation shall meet the environmental setbacks of Table 1 in Section 12.10 (F).
- 7). All manure shall be applied in accordance with Section 12.10 (G).
- 8). The operation is not located within 2640 feet of a municipality.

(N). Aquaculture provided:

- 1). The operation produces less than 20,000 pounds of cold water fish (harvest weight) per year.
- 2). The operation produces less than 100,000 pounds of warm water fish (harvest weight) per year.
- 3). The operation shall meet the permit requirements in Section 12.16 (B).
- 4). Approval by the Planning Director of an aquaculture waste management plan, which has been prepared in conformance with the South Dakota Department of Environment and Natural Resource standards.
- 5). No retail sales of products produced at the facility is conducted on the premises.
- 6). A Zoning Permit shall be obtained which indicates the location and type of Facility and the location and compliance of required setbacks.

3.04 CONDITIONAL USES. A building or premises may be used for the following purposes in the A-1 Agricultural District if a conditional use has been obtained in conformance with the requirements of Article 19.00:

(U). New Class A, B or C Concentrated Animal Feeding Operation in accordance with Article 12.10. *(amended by MC16-40-98)*

(GG). Aquaculture that produces more than 20,000 pounds of cold water fish (harvest weight) per year or more than 100,000 pounds of warm water fish (harvest weight) per year in accordance with Article 12.16.

Section 2: That Article 7.00 I-1 Light Industrial District, Section 7.04 Conditional Uses is amended to add:

(G). Aquaculture in accordance with Article 12.16.

Section 3: That Article 8.00 I-2 General Industrial District, Section 8.04 Conditional Uses is amended to add:

(T). Aquaculture in accordance with Article 12.16.

Section 4: That Article 12.00 Additional Use Regulations is amended to change:

12.10 CONCENTRATED ANIMAL FEEDING OPERATIONS

(A). Intent.

The raising of livestock is a regular and normal function of agriculture. It is the intent of this section to provide for viable livestock production within agriculturally zoned areas of Minnehaha County, protect ground and surface waters, and ensure that concentrated animal feeding operations are properly sited, maintained, and managed.

(B). Water Source Protection Areas and Floodplains.

A concentrated animal feeding operation – new shall not be permitted in the Water Source Protection Overlay District or within a floodplain.

(C). Application Procedures and Requirements. *(amended by MC16-84-06)*

Prior to application submittal the operator of the proposed facility shall meet with the Planning Director to discuss application requirements.

The conditional use application shall be accompanied, at a minimum, by the following information.

- (1). A description of the type of concentrated animal feeding operation and the number of animals proposed for the facility.
- (2). A site plan of the proposed facility including:
 - (a). The location of all existing and proposed structures, including manure containment facilities and confinement buildings and corrals. All new structures and corrals shall be located a minimum of 50 feet from any property line.
 - (b). A grading plan designed to minimize contamination of stormwater runoff from manure containment facilities or animal pens.
 - (c). All required site plan elements for a Conditional Use Permit as listed in Section 19.04.
- (3). A dead animal disposal plan which complies with South Dakota Animal Industry Board requirements. Temporary dead animal storage or disposal sites shall be screened or located out of site from neighboring dwellings and the adjacent right-of-way.
- (4). A manure management plan including the following information:
 - (a). Location and description of the manure containment facilities and structures.
 - (b). Description of type of manure and method of storage.
 - (c). Description of the proposed method and schedule for manure application.
- (5). Any applicable waivers for land use setback reduction as described in Section 12.10 (F). 2.

(D). [Reserved]

(E). Conditional Use Permit Requirements. (amended MC16-84-06)

A concentrated animal feeding operation which is granted a conditional use permit shall, at a minimum, meet the following requirements:

- (1). General Permit Requirement. A state general permit is required if any of the following situations are met.
 - (a) A general permit is required by the South Dakota Department of Environment and Natural Resources.
 - (b). A general permit is required by Minnehaha County as a condition of approval.
 - (c). When the site is located over a mapped shallow aquifer area as depicted on the Department of Environment and Natural Resources *First Occurrence of Aquifer Materials in Minnehaha County, SD*
 - (d). A Class C CAFO is proposed to be located within 1,320 feet from an operating or permitted Class C CAFO or larger.
- (2). General Permit Record Keeping. When a state general permit is required, the operator shall maintain and have available the following records.
 - (a). The operator shall file copies of all state-approved construction plans with Planning and Zoning Department prior to the issuance of a building permit.
 - (b). The operator shall maintain all records required by the DENR including annual renewal forms. Copies shall be provided to the County upon request.
- (3). Construction Documents. The following documents are required, when applicable, before a building permit can be acquired.
 - (a). Structures. Any newly constructed structure that is greater than 50 feet wide must be designed by a professional engineer. A copy of the certified plans must be provided to the Planning Department.
 - (b). Manure Containment Facilities. Any newly constructed manure containment facility must conform to South Dakota Department of Environment and Natural Resources design standards. A registered professional engineer shall certify the plan specifications and inspect the construction of the facility. A copy of the certified plans must be provided to the Planning Department.

(F). Separation Requirements and Criteria for Concentrated Animal Feeding Operations.

- (1). Environmental Setbacks. A concentrated animal feeding operation shall comply with the minimum environmental separation requirements in Table 1.

Table 1 Concentrated Animal Feeding Operations Minimum Environmental Separation Requirements				
	Class A	Class B	Class C	Class D
Public Water Supplies	1,000 feet	1,000 feet	1000 feet	500 feet

Private Wells (other than owner's or operator's)	250 feet	250 feet	250 feet	250 feet
Private Wells (owner's or operator's)	150 feet	150 feet	150 feet	150 feet
Lakes, Rivers and Streams Classified as Fisheries	500 feet	200 feet	200 feet	200 feet
Intermittent Streams or waterways	100 feet	100 feet	100 feet	100 feet

(2). Land Use Setbacks. The minimum separation criteria in Table 2 shall be used in siting a concentrated animal feeding operation. The minimum separation criteria may be increased based on site specific conditions. When a proposed operation does not meet the minimum separation criteria, the following alternatives may apply.

(a). Setback Reduction for Dwellings and Businesses.

1. A signed waiver from each landowner who owns land with a dwelling or business located closer than the minimum separation criteria.

2. In the absence of a waiver, the required setback may be reduced up to 50% if all of the following requirements are met:

i. The applicant must plant a shelter belt of trees between the proposed CAFO and the affected residence or business without a waiver.

ii. The shelterbelt must run the entire length of the footprint of the CAFO, and it must include a minimum of five rows of trees and consisting of both evergreen and deciduous species.

iii. The shelterbelt must be design to assist in the reduction of odor by a Professional Landscape Architect.

iv. The shelter belt shall be planted in the first year of obtaining a conditional use permit, and all trees that die must be replaced within one growing season.

(b). Setback Reduction for Municipalities.

1. A waiver from the minimum setback requirements may be obtained in the form of a signed resolution from the affected municipality's elected body.

Table 2 Concentrated Animal Feeding Operations Minimum Separation Criteria			
	Class A	Class B	Class C
Dwellings, Churches, and Businesses	3,960 ft (3/4 Mile)	1,980 ft (3/8 Mile)	1,320 ft (1/4 Mile)
Public Parks and Schools	5,280 ft (1 Mile)	2,640 ft (1/2 Mile)	1,980 ft (3/8 Mile)
Municipal Boundaries By the Following Municipal Classifications as of the most recent Census Data			

First Class (Population of 5,000 and more)	13,200 ft (2 & 1/2 Miles)	7,920 ft (1 & 1/2 Mile)	5,280 ft (1 Mile)
Second Class (Population between 500 and 5,000)	7,920 ft (1 & 1/2 Mile)	5,280 ft (1 Mile)	3,960 ft (3/4 Mile)
Third Class (Population Less than 500)	5,280 ft (1 Mile)	3,960 ft (3/4 Mile)	2,640 ft (1/2 Mile)

(G). Manure Application Requirements.

(1). The minimum separation requirements in Table 3 shall apply to the application of manure from a concentrated animal feeding operation.

	Manure, Surface Applied	Manure, Incorporated or Injected
Lakes, Rivers and Streams Classified as Fisheries	300 feet	100 feet (lake) 50 feet (river or stream)
Rivers, Streams and Lakes Classified as Drinking Water Supplies	1,000 feet	300 feet
Intermittent Stream or Waterway	200 feet	50 feet
Public Wells	1,000 feet	1,000 feet
Private Wells	250 feet	250 feet
Residence (other than operator)	300 feet (surface)	50 feet
Municipalities	1,000 feet	300 feet

(2). Liquid Manure Application.

(a). The accumulation of manure or bedding in a location other than where it is generated is prohibited unless approved through a combination of conditional use permit and state general permit.

(b). All liquid manure shall be injected to provide for better agronomic benefits and to reduce the potential for runoff and minimize odor. Liquid manure may be surface applied if approved by the State DENR as part of a nutrient management plan or for emergency discharge. Documentation of state approval shall be maintained by the CAFO operator and be available upon request by the Planning Department.

(c). The Planning Director may approve surface application of livestock production surplus water upon receiving an application from the producer that is approved by a certified crop consultant or registered engineer.

Such application shall include:

1. The results of tests on the livestock production surplus water proposed for surface application which shows the percentage of solids and the amount of N (nitrogen) per 1000 gallons of water.
2. The amount of livestock production surplus water to be applied.

3. A map showing the areas on which the producer proposes to surface apply the livestock production surplus water including soil types, slopes, and the required separations from natural features or adjoining land uses.

4. The separation requirements in Table 3, Section 12.10 (G) shall be met.

(3). Other Than Liquid Manure Application.

(a). The accumulation of manure or bedding in a location other than where it is generated is prohibited unless approved through a combination of conditional use permit and state general permit.

(b). Manure may not be spread thicker than 3 inches on tillable soil and 1 inch on frozen soil.

(c). Manure may not be spread on a slope greater than 6% without incorporation.

12.16 AQUACULTURE.

(A). Intent.

It is the intent of this section to provide for a viable aquatic species industry in Minnehaha County, protect ground and surface waters and ensure that aquaculture facilities are properly sited, maintained and managed.

(B). Application Procedures and Requirements.

Prior to application submittal the operator of the proposed facility shall meet with the Planning Director to discuss application requirements.

The conditional use application shall be accompanied, at a minimum, by the following information.

(1). A description of the type of facility, the number of aquatic animals, and amount of feeding per month proposed for the facility.

(2). A site plan of the proposed facility including:

(a). The location of all existing and proposed structures, including aquaculture waste management structures and confinement buildings.

(b). A grading plan designed to ensure that storage containment and/or wastewater treatment systems will not significantly conflict with navigation, other water dependent uses, public bodies of water, and downstream landowners.

(c). All required site plan elements for a Conditional Use Permit as listed in Section 19.04.

(C). Conditional Use Permit Requirements.

An aquaculture facility which is granted a conditional use permit shall, at a minimum, must meet the following requirements:

- (1). When a state surface water discharge permit is required. The operator shall file copies of all state-approved construction plans with the County.
- (2). Inspections. Any newly constructed aquaculture waste containment and/or wastewater treatment facility must conform to South Dakota Department of Environment and Natural Resources design standards. A registered professional engineer shall certify the plan specifications and inspect the construction of the facility. A copy of the certified plans must be provided to the Planning Department.
- (3). The proposed facility must provide a preliminary aquaculture waste management plan including the following information:
 - (a). Location and description of the aquaculture waste facilities and structures.
 - (b). Description of the aquaculture waste type, proposed method, and schedule for application or use.
- (4). Record Keeping. The operator shall maintain ongoing records of the implementation of the aquaculture waste management plan. Any state permit renewal shall be provided to the Planning and Zoning Office whenever a renewal permit is required by the state.
- (5). All facilities shall comply with all federal, state, and county rules, regulations, and ordinances.

Section 5: That Article 19.00 Conditional Use Permits is amended to change:

19.05 PLANNING COMMISSION HEARING. Upon the filing of an application for a conditional use permit, the Planning Director shall set a date for public hearing on such requested conditional use, at which time and place the Minnehaha County Planning Commission shall meet to consider the conditional use request.

(A). NOTIFICATION. A good faith effort must be made by the applicant to notify all property owners (inclusive of Contract for Deed buyers) of land laying within five hundred (500) feet, inclusive of right-of-way, of the outer boundaries of the property involved in the request. The list of landowners to be notified shall be determined by records of the Director of Equalization. The Planning Department shall provide the applicant with "Notice of Hearing" forms for this purpose, and the notices are to be sent by the applicant to all parties on the aforementioned list by first class mail no less than one (1) week prior to the public hearing on the request held by the Planning commission. The applicant shall sign an affidavit certifying that the required mailing was completed. The affidavit shall be provided to the Planning Department at least five (5) working days prior to the Planning Commission meeting. *(amended by MC16-88-06 7/18/06)*

CAFO & AQUACULTURE EXCEPTION: The applicant for a conditional use permit request for a new or expanding concentrated animal feeding operation or aquaculture facility must make a good faith effort to notify all property owners (inclusive of Contract for Deed buyers) of land laying within one-half (1/2) mile, inclusive of right-of-way, of the outer boundaries of the property involved in the request. The list of landowners to be notified shall be determined by records of the Director of Equalization. The Planning

Department shall provide the applicant with “Notice of Hearing” forms for this purpose, and the notices are to be sent by the applicant to all parties on the aforementioned list by certified mail with a return receipt no less than fifteen (15) days prior to the public hearing on the request held by the Planning commission. The applicant shall provide the Planning Department the addressed certified mail receipts at least five (5) working days prior to the Planning Commission meeting.

19.08 EXPIRATION. A conditional use permit which has been approved shall expire by limitation and become null and void if the building, work or use authorized by such conditional use permit is not commenced within two years from the date of approval. This provision shall not apply to a conditional use permit approved for a residential use in the A-1 or RC zoning districts. Upon written request to the Planning Director and prior to the conditional use permit expiration date, a one-year time extension for the conditional use permit may be granted by the Planning Director, subject to the following conditions: *(amended by MC16-19-94)*

(A). There was no public objection presented during the public hearing process for the original conditional use permit;

(B). The land uses for the surrounding properties have not significantly been altered since the original approval date for the conditional use permit.

Section 6: That Article 26.00 Definitions, Section 26.02 Definitions is amended to change:

10. **AGRICULTURE.** The use of land for agricultural purposes including farming, dairying, raising, breeding, or management of livestock, poultry, fish, or honey bees, truck gardening, forestry, horticulture, floriculture, viticulture, and the necessary accessory uses for packaging, treating or storing the produce providing that the operation of any such accessory use shall be secondary to the normal agricultural activities. *(amended by 16-40- 98)*

20. **ANIMAL UNIT.** A unit of measurement based on the amount of manure produced by the animal. For the purposes of this ordinance animal units (AU) shall be calculated according to the following chart. Animal units relate to inventory rather than annual production. Animal units are computed by multiplying the number of head of a particular animal times the corresponding animal unit equivalent. Other animal species equivalent which are not listed will be based on species’ manure production. *(amended by MC16-40-98)*

ANIMAL SPECIES	ANIMAL UNIT EQUIVALENT (AU/HEAD)
Feeder or Slaughter Cattle	1.0
Mature Dairy Cattle	1.4
Finisher Swine (over 55 lbs.)	0.4
Nursery Swine (less than 55 lbs.)	0.1
Farrow-to-Finish (sows)	3.7
Swine Production Unit (sows, breeding, gestating and farrowing)	0.47
Horses	2.0
Sheep	0.1

Turkeys	0.018
Laying Hens and Broilers (liquid manure handling system)	0.033
Chickens, other than laying hens (other than liquid manure handling system)	0.008
Laying Hens (other than liquid manure handling system)	0.012
Ducks (liquid manure handling system)	0.2
Ducks (other than liquid manure handling system)	0.033

21. [Reserved]

22. [Reserved]

23. [Reserved]

25A. AQUACULTURE. The farming or culture of food fish, shell fish, or other aquatic plants or animals and may require development such as fish hatcheries, rearing pens, and structures and shellfish rafts, as well as use of natural spawning and rearing areas. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility if it grows, contains, or holds aquatic animals in either cold or warm water produced in ponds, raceways, or other similar structures. The term also includes activities related to growing, handling, harvesting, or processing of aquatic produce, and, including, but not limited to, propagation, stocking, holding, nurturing, disease treatment, waste disposal, water use, development of habitat and structures, and processing for market.

25B. AQUACULTURE, COLD WATER SPECIES. The cold water species category includes facilities where animals are produced in ponds, raceways, or other similar structures that discharge at least 30 days per year but does not include facilities that produce less than approximately 20,000 pounds per year or facilities that feed less than approximately 5,000 pounds during the calendar month of maximum feeding. Cold water fish or other animals that thrive in cold water including the Salmonidae family of fish; for example, trout and salmon.

25C. AQUACULTURE, WARM WATER SPECIES. The warm water species category includes facilities where animals are produced in ponds, raceways, or other similar structures that discharge at least 30 days per year, but does not include closed ponds that discharge only during periods of excess runoff or facilities that produce less than approximately 100,000 pounds per year. Warm water fish or other animals that thrive in warm water including the Ameiuride, Centrachidae, and Cyprinidae families of fish; for example, catfish, sunfish, and minnows, respectively.

25D. AQUACULTURE, WASTE. Waste water and biosolids resulting from fish production of an aquaculture facility.

26A. AQUIFER. A zone stratum or group of strata that can store and transit water in sufficient quantities for specific use.

26B. AQUIFER, SHALLOW. Any aquifer having the following characteristics: (amended by MC16-40-98)

(1). The aquifer is within fifty (50) feet or less below the land surface with fifteen (15) feet or less of continuous, overlying, extremely low permeability material, such as clayey till or shale. Weathered till or highly fractured weathered shale is not an extremely low permeability for purposes of this ordinance; or

(2). The aquifer is greater than fifty (50) feet but less than one hundred feet (100) below the land surface with thirty (30) feet or less of continuous, overlying, low to extremely low permeability geological material that may be a combination of weathered and unweathered till, shale, or till and shale.

137. CONCENTRATED ANIMAL FEEDING OPERATION. A lot, yard, corral, building or other area where animals have been, are, or will be stabled or confined for a total of 90 days or more during any 12 month period; and where crops, vegetation, forage growth, or post-harvest residues are not sustained over any portion of the lot or facility. For the purpose of these regulations, a concentrated animal feeding operation is further divided into the following classes:

ANIMAL UNITS

Class A 2,000 or more

Class B 1,000 to 1,999

Class C 250 to 999

Class D 50 to 249

139. [Reserved]

260. FARMSTEAD. An area which encompasses a farm dwelling or dwellings and other agricultural buildings and structures devoted to and used in connection with a farming operation. A farmstead is generally bounded on one or more sides by a tree belt, is located on one or more quarter- quarter section parcels or equivalent area, and does not include crop land, hay land or pasture. (amended by MC16-40-98)

270. FLOODPLAIN. A land area adjoining a river, creek, watercourse or lake which is likely to be flooded and which is designated as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE, or V1-30 on the most recent adopted Flood Insurance Rate Map (F.I.R.M.)

281. FOOTPRINT. The spatial extent of the buildings, structures, maneuvering areas, storage, and similar items that are a part of a particular use of the site. The footprint is often bound by the exterior wall of a structure, driveway, the beginning of landscaping, or the beginning of an unrelated use on the same or different parcel. If the footprint of a land use that has the spatial extent of greater than 50% of the entire parcel of which it is located, then the lot lines of the parcel will be considered the footprint of the parcel.

307. GENERAL PERMIT. South Dakota General Water Pollution Control Permit for Concentrated Animal Feeding Operations.

332A. MANURE. Manure, bedding, compose and raw materials or other materials commingled with manure or set aside for disposal.

332B. MANURE APPLICATION. The application of manure, litter, or production surplus water onto or incorporated into the soil for the purpose of supplying nutrients for crop or pasture land.

332C. MANURE APPLICATION, INCORPORATED. Manure applied to the land surface and mechanically mixed into the soil within 24 hours.

332D. MANURE APPLICATION, INJECTED. Manure injected or tilled into the soil at the time of application.

332E. MANURE APPLICATION, SURFACE APPLIED. Manure applied to the land surface without benefit of incorporation or injection. This shall not include the use of animal waste in irrigation waters.

332F. MANURE CONTAINMENT FACILITY. Any structure or facility utilized for the storage or processing of animal manure.

332G. MANURE, LIQUID. A method of handling manure where greater than 90 percent of excreted manure will be stored in a form that – with or without agitation/mixing – can be handled with a common centerfugal pump under normal operating conditions.

709A. WELL. An artificial excavation or opening in the ground with a depth at least twice as large as the largest surface dimension, made by means of digging, boring, drilling, jetting, or any other artificial method for the purpose of obtaining groundwater. For regulatory purposes, a well is also registered with the State of South Dakota or has well logs on file with the South Dakota Department of Environment and Natural Resources or has been used for more than one week for water production on a quarterly basis within the past two years as established by sworn affidavit.

709B. WELL, PUBLIC. Active well in which water is obtained for domestic or municipal use by a common distribution system, including a municipality as defined by SDCL 9-1-1, a nonprofit rural water supply company as defined in SDCL 10-36A-1, a water user district as defined in SDCL 46A-9-2, a sanitary district as defined in SDCL 34A-5.

Adopted this 8th day of August, 2017.

MINNEHAHA COUNTY


Chair, Board of County Commissioners

ATTEST:

Olivia Larson

Deputy Auditor

I st Reading	July 11, 2017
Legal Ad. – Argus Leader, Dell Rapids Tribune, Brandon Valley Challenger	July 17, 2017 July 19, 2017 July 19, 2017
Public Hearing	August 8, 2017
Fact of Adoption – Argus Leader, Dell Rapids Tribune, and Brandon Valley Challenger	August 14, 2017 & August 21, 2017 August 16, 2017 & August 23, 2017 August 16, 2017 & August 23, 2017
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