

ORDINANCE NO. 2024-02

AN ORDINANCE OF MCCOOK COUNTY, SOUTH DAKOTA, AMENDING ORDINANCE NO. 2014-01 – 2014 REVISED ZONING REGULATIONS FOR MCCOOK COUNTY BY AMENDING CHAPTER 3, AG: AGRICULTURAL DISTRICT, SECTION 3.03 CONDITIONAL USES; AND CHAPTER 11, ADDITIONAL USE REGULATIONS, SECTION 11.08, CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOS).

BE IT ORDAINED BY MCCOOK COUNTY, SOUTH DAKOTA:

*Section 1. That Chapter 3.03 of the 2014 Revised Zoning Regulations for McCook County, South Dakota is hereby amended to add the following conditional use:*

**3.03 Conditional Uses**

Conditional Use	Applicable Standards
Class C concentrated animal feeding operation (50 to 199 animal units)	11.08 Not within identified flood plain area Applies only to swine feeding operations

*Section 2. That Chapter 11.08 of the 2014 Revised Zoning Regulations for McCook County, South Dakota, is hereby amended to read as follows:*

**11.08 Concentrated Animal Feeding Operations (CAFOs).**

A. Intent and Scope.

It is the intent of this section to provide for a viable livestock industry within agriculturally zoned areas of McCook County, protect ground and surface waters and ensure that concentrated animal feeding operations (CAFOs) are properly sited, maintained, and managed. CAFOs are hereby classified as Class A containing one thousand (1,000) or more animal units as defined in these regulations, Class B containing two hundred (200) to nine hundred-ninety-nine (999) animal units and Class C containing fifty (50) to one hundred-ninety nine animal units as defined in these regulations. Class C applies only to swine feeding operations.

Any person who owns, operates, or proposes to own or operate a Class A CAFO as defined in these regulations shall be required to apply for a conditional use permit whenever any of the following occurs: (1) a new operation is proposed where one does not exist; (2) the number of animal units at an existing or permitted operation increases beyond what a current permit allows; (3) the species of confined animals changes; (4) a signed complaint is received or made by the Planning and Zoning Administrator or the South Dakota Department of Agriculture and Natural Resources (DANR) and inspection reveals the operation is in

violation of county, state, or federal regulations; and/or (5) an operation has been non-operational for forty-eight (48) consecutive months.

Any person who owns, operates, or proposes to own or operate a Class B CAFO as defined in these regulations shall be required to apply for a conditional use permit whenever any of the following occurs: (1) a new operation is proposed where one does not exist; (2) the number of animal units at an existing operation increases to an amount for which approval is required; (3) the number of animal units at an existing Class A CAFO, whether permitted or a non-conforming use, decreases to an amount for which approval is required; (4) the species of confined animals changes; (5) a signed complaint is received or made by the Planning and Zoning Administrator or the DANR and inspection reveals the operation is in violation of county, state, or federal regulations; and/or (6) an operation has been non-operational for forty-eight (48) consecutive months.

Any person who owns, operates, or proposes to own or operate a Class C CAFO as defined in these regulations shall be required to apply for a conditional use permit whenever any of the following occurs: (1) a new operation is proposed where one does not exist; (2) the number of animal units at an existing operation increases to an amount for which approval is required; (3) the number of animal units at an existing Class A or Class B CAFO, whether permitted or a non-conforming use, decreases to an amount for which approval is required; (4) the species of confined animals changes; (5) a signed complaint is received or made by the Planning and Zoning Administrator or the DANR and inspection reveals the operation is in violation of county, state, or federal regulations; and/or (6) an operation has been non-operational for forty-eight (48) consecutive months.

**B. State General Water Pollution Control Permit and State-Approved Construction Plans.**

A State General Water Pollution Control Permit is required if any of the following situations are met:

1. A general permit is required by the South Dakota Department of Agriculture and Natural Resources (DANR).
2. A general permit is required by McCook County as a requirement or condition of approval.
3. Where the site is located over or within a sensitive environmental area including, but not limited to, a mapped shallow aquifer, wetland, floodplain, or floodway.

Where a state general permit is required, copies of all state-approved construction plans shall be filed with the County. The operator shall maintain all records required by the DANR including annual renewal forms. Copies shall be provided to the County upon request.

**C. Required Information for All CAFOs.**

Any person who owns, operates, or proposes to own, operate, or expand a CAFO shall provide the following information to the Planning and Zoning Administrator:

1. Name(s), address(es), and telephone number(s) of each owner, manager, management company, or similar entity.
2. Legal description of the operation site.
3. Site plan showing all existing and proposed buildings and structures.
4. The number and species of animals to be housed.
5. Information on the site's ability to meet designated setback requirements, including map(s) showing measured distances.
6. Information on the types of soils at the site, and whether there are any shallow aquifers, designated wellhead protection areas, and 100-year floodplain designations at or within one half (1/2) mile of the proposed site.
7. Test soil boring locations and results shall be provided if the site is located over or within a sensitive environmental area identified above.
8. A location map drawn to scale or other documentation identifying all state, county, or township "haul roads" that will be utilized during construction and operation of the CAFO. Where practical, existing all-whether roadways shall be used. Additionally, the applicant(s) shall, prior to receiving a conditional use permit or any building permit (whichever occurs first), enter into negotiated written road haul/maintenance agreements with the appropriate state, county, or township having jurisdiction over the identified haul roads. For county and township roads, the owner/developer of the site shall accept responsibility for all additional costs resulting from its use of the roads. For purposes of this section, additional costs shall include all work and material costs incurred over and above the average cost of maintaining that specific type of road.

Failure to correct or supplement any required information within thirty (30) days of making any material change thereto shall constitute a violation of this Ordinance and possible revocation of the conditional use permit (if applicable).

D. Additional Information Required for Class A CAFOs.

1. General information regarding the species and habitats that could potentially be impacted by development on the site. This shall include information not just about the site itself, but also about neighboring properties, because development next to sensitive habitats can greatly impact species.

E. Classification of CAFOs. For purposes of these regulations, CAFOs are divided into Class A, Class B, and Class C Operations.

CAFO	
Class A	1,000 AU or more
Class B	200 to 999 AU
Class C	50 to 199 AU

F. Animal Unit Computation.

Animal units (AU) are computed by multiplying the number of head of a particular animal by the corresponding animal unit ratio. For the purposes of this Ordinance, animal unit ratios are as follows:

ANIMAL TYPE	ANIMAL UNIT RATIO (AU/HEAD)
Feeder or Slaughter Cattle	1.0
Cow/Calf Pair	1.2
Mature Dairy Cattle	1.4
Heifer	0.7
Dairy Calf	0.2
Finisher Swine (Over 300 lbs.)	0.4
Finisher Swine (55 to 300 lbs.)	0.3
Nursery Swine (less than 55 lbs.)	0.1
Farrow-to-Finish (sows)	3.7
Swine Production Unit (sow breeding, gestating, and farrowing)	0.47
Horses	2.0
Sheep and Lamb	0.1
Turkeys (over 5 lbs.)	0.018
Turkeys (under 5 lbs.)	0.005
Laying Hens and Broilers (continuous overflow watering in facility)	0.033
Chicken over 5 lbs. (dry manure system)	0.005
Chickens under 5 lbs. (dry manure system)	0.003
Ducks	0.002

Other animal species ratios which are not listed will be determined based on dividing the average weight of the animal species in pounds by one-thousand (1,000) pounds.

**G. Required Minimum Setbacks and Separation Distances for CAFOs; Exemption from Setback and Separation Distances Under Certain Limited Circumstances.**

1. No CAFO shall be permitted that is closer than the separation distances set forth below, unless that operation qualifies under either exception contained within Article 11.08(G)(2). These setbacks are minimum standards and may be increased during the conditional use permit issuance process for reasons including, but not limited to, adjoining or nearby uses within the same or different districts, prevailing wind direction, or other unique reasons. Setbacks shall be measured from the outermost point of the CAFO to the structure/use as identified below. For purposes of this measurement, the CAFO includes everything located on the lot that either houses the animals and/or is utilized for manure storage, including lagoons.

The required minimum setbacks and separation distances for CAFOs shall be as follows:

	<u>Class A</u>	<u>Class B</u>	<u>Class C</u>
Dwellings, Churches, Schools, Businesses, Designated State or County Park	2,640 feet (1/2 Mile) plus 220 ft. per each additional 1,000 animal units over 1,000 animal units	2,640 feet (1/2 Mile)	2,640 feet (1/2 Mile)
Incorporated Municipalities	5,280 feet (1 Mile) plus 440 ft. per each additional 1,000 animal units over 1,000 animal units	5,280 feet (1 Mile)	5,280 feet (1 Mile)
Existing Swine Feeding Operation over 240 AU – (Only applies to new swine feeding operations)	5,280 feet (1 Mile)	5,280 feet (1 Mile)	5,280 feet (1 Mile)
Public Water Supplies	1,000 feet	1,000 feet	1,000 feet
Private Shallow Wells (other than owner's or operator's)	250 feet	250 feet	250 feet
Private Shallow Wells (owner's or operator's)	150 feet	150 feet	150 feet
Lake, Rivers and Streams classified as Fisheries	500 feet	300 feet	300 feet
Federal, State, County, and Township Road ROW (Confinement)	150 feet	150 feet	150 feet
Federal, State, County, and Township Road ROW (Open Lot)	50 feet	50 feet	50 feet
Designated 100 Year Floodplain	Prohibited	Prohibited	Prohibited

2. If an applicant wishes to locate either a Class A, Class B, or Class C CAFO closer than the separation distances set forth in these regulations, the applicant may request an exception to the separation distance from the Board of Adjustment. The Board of Adjustment, at its discretion, may allow an exception to the separation distance when the applicant provides one of the following:
  - a. A signed waiver from each landowner closer than the minimum separation distance. Each waiver shall be filed with the McCook County Register of Deeds and shall run with the land.
  - b. Documentation showing that either new technology, management practices, pit additives, topographic features, soil conditions, or other factors substantiate a reduction in the minimum separation distances.

#### H. Manure Application Setbacks.

The following manure application setbacks apply to all classes of CAFOs:

**COUNTY MANURE APPLICATION SETBACKS**

<b>CATEGORY</b>	<b>SURFACE OR IRRIGATION APPLIED</b>	<b>INCORPORATED OR INJECTED</b>
Lakes, Rivers, and Streams Classified as Fisheries	300 feet (lakes) 50 feet (river & stream)	100 feet (lake) 50 feet (river & stream)
Stream & Lakes classified as Drinking Water supplies	1,000 feet	300 feet
Public Wells	1,000 feet	1,000 feet
Private Wells	250 feet	250 feet
Municipality	1,000 feet	1,000 feet

- I. Conditional Use Permit Public Hearing. In addition to the requirements of Chapter 17.01(D), the applicant shall give notice by certified mail to all property owners within one (1) mile of the of the boundary of the property upon which the operation is proposed to be located. The notice shall include at a minimum the name of the proposed operation, the name and contact information for a person responsible for addressing questions related to the proposed operation, a statement that the recipient(s) own property within one (1) mile of the proposed operation, a general geographic description of the site, the time and place of the public hearing, and a statement that all materials submitted by the applicant are available for public inspection prior to the public hearing at the McCook County Planning & Zoning Office. Notices shall be postmarked not less than ten (10) days prior to the date of the public hearing. The applicant is responsible for meeting all requirements and shall provide documentation to the Planning & Zoning Administrator that these public notice requirements have been satisfied at least four (4) business days prior to the date of the public hearing. Failure to provide all required notices shall result in the cancellation of the public hearing. Failure of the recipient of the certified letter to accept delivery does not invalidate service.
  
- J. Nutrient Management Plan. All CAFOs shall have a Nutrient Management Plan (NMP) reviewed and approved by the DANR prior to land application of any manure. The NMP shall be prepared at the applicant’s expense by an engineer, licensed in the State of South Dakota, or other qualified professional, be in writing, be approved as an adjunct to the County building permit. Additionally, an engineer that is licensed in the State of South Dakota shall approve and sign off on all confinement building and manure storage facility plans associated with the CAFO. All confinement buildings and manure storage facilities shall be engineered to DANR standards. The following minimum requirements shall apply:
  - 1. Due to crop rotation, site changes, and other operational changes, the NMP shall be updated at least annually to reflect the current operation and crops grown on all application sites. The NMP shall contain the legal description of all tillable agricultural lands in McCook County where manure application is to be conducted.
  
  - 2. Unless otherwise required by state or federal law, all manure shall be collected in self-contained, enclosed pits, and transport equipment conveying it to the disposal site shall be fully enclosed and structurally sound to prevent leakage or spillage.

3. All manure produced from swine facilities shall be knifed or injected. Manure produced by any other animal facility may be either surface/irrigation applied or incorporated/injected.
4. Written agreements with all owners of manure application sites (other than those of the facility owner) for the use of such land shall accompany the NMP. Each agreement shall include the provision that no such land shall be withdrawn from use without written notice being provided to the Planning and Zoning Administrator within thirty (30) days.
5. Manure application at all sites shall meet the separation distance requirements specified in Article 11.08(H).

K. Additional Standards or Considerations to be Utilized by the Board of Adjustment for Conditional Use Permits. In addition to the requirements outlined in Article 17.01(H), the decision of the Zoning Board of Adjustment whether to grant a Conditional Use Permit shall be based on the following:

1. Fly and Odor Management Plan. The Board of Adjustment shall review the need for fly and odor control measures on a site-specific basis, taking into consideration prevailing wind direction and topography. The Applicant shall provide a Pest, Fly, and Odor Control Plan that provides sufficient information for the Board of Adjustment to determine whether adequate safeguards exist to protect the public from flies and odors at both the facility itself, any habitable buildings and structures located within one (1) mile or the required minimum setback distance from the proposed facility (whichever is greater), and all waste disposal sites. The plan shall include monitoring of odors at the required locations through accepted scientific means, including dynamic olfactometry, dispersion modelling, or a combination thereof as required by the Board of Adjustment. Additionally, the Pest, Fly, and Odor Control Plan shall contain sufficient information to assist the Board of Adjustment with determining reasonable conditions to reduce fly and odor problems at the facility, neighboring properties, and all manure disposal sites.
2. Consideration of Past Violations. When considering an Class A CAFO conditional use permit application, the Board of Adjustment shall take into consideration any current and past violations of any local, State, and/or Federal permit or law relating to a CAFO in which the applicant(s) has an interest. Evidence of any such violation may be presented through documented evidence prepared by any public entity designed to enforce any local, State, or Federal law, or by any other form of evidence that would typically be deemed admissible in a court of law in the State of South Dakota.
3. Additional Standards Allowed. The Board of Adjustment may impose, in addition to the standards and requirements set forth herein, any additional conditions which are reasonable and necessary to protect the health, safety, and general welfare of the public.

Failure to correct or supplement any required information within thirty (30) days of making any material change thereto shall constitute a violation of this Ordinance and possible revocation of the conditional use permit (if applicable).

L. Liability Insurance.

Applicant is required to obtain and maintain liability insurance of an adequate amount determined by a licensed insurance professional. This insurance is intended to provide funds to ensure proper clean-up of any environmental damage caused by the operation of the CAFO and/or ensure proper closure of the operation. Applicant shall provide the County with Proof of Insurance when insurance is obtained or within thirty (30) days after construction of the operation is complete, whichever is later. The Planning and Zoning Administrator shall be notified by the owner/operator of the site if insurance is not maintained. Failure to correct or supplement this information within thirty (30) days of materially changing or discontinuing any required insurance shall constitute a violation of this Ordinance and possible revocation of the conditional use permit (if applicable).

Adopted this 28<sup>th</sup> day of May 2024.

Charles Liesinger  
Chairman, McCook County Board of  
Commissioners

ATTEST:

Geralyn Sherman



First Reading: April 23, 2024

Second Reading & Adoption: May 28, 2024

Publication: June 6, 2024

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## NOTICE OF PUBLIC HEARING

Pursuant to SDCL 11-2-29, notice is hereby given that the McCook County Commission as the McCook County Planning Commission will hold a public hearing/2<sup>nd</sup> reading on May 28, 2024, regarding amendment of the 2014 Revised Zoning Regulations for McCook County. Specifically, the County Commission will be considering adoption of amendments to Chapter 3, AG: Agricultural District, Section 3.03 Conditional Uses; and Chapter 11, Additional Use Regulations, Section 11.08, Concentrated Animal Feeding Operations (CAFOs).

A copy of the proposed amendments to the 2014 Revised Zoning Regulations for McCook County is available for public review at the McCook County Courthouse in the office of the Planning and Zoning Administrator during regular business hours.

The County Commission/Planning Commission public hearing and 2<sup>nd</sup> reading will be held at the following time, date, and location:

10:30 a.m.  
Tuesday, May 28, 2024  
McCook County Courthouse (130 West Essex Ave)

The purpose of this hearing is to explain the proposed amendments to interested persons, to answer questions regarding this item and to hear public comment on this item. The County Commission invites all interested persons to attend and offer their comments. Those interested persons not able to attend are invited and encouraged to send written comments, prior to the hearing, to the McCook County Planning and Zoning Administrator, PO Box 38, Salem, SD 57058.

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this hearing, please contact the Planning and Zoning Administrator at (605) 425-3281. Anyone who is deaf, hard-of-hearing or speech-disabled may utilize Relay South Dakota at (800) 877-1113 (TTY/Voice). Notification 48 hours prior to the hearing will enable the County to make reasonable arrangements to ensure accessibility to this hearing.

Geralyn Sherman  
McCook County Auditor

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NOTICE OF PUBLIC HEARING

Pursuant to SDCL 11-2-29, notice is hereby given that the McCook County Commission as the McCook County Planning Commission will hold a public hearing/2<sup>nd</sup> reading on May 14, 2024, regarding amendment of the 2014 Revised Zoning Regulations for McCook County. Specifically, the County Commission will be considering adoption of amendments to Chapter 3, AG: Agricultural District, Section 3.03 Conditional Uses; and Chapter 11, Additional Use Regulations, Section 11.08, Concentrated Animal Feeding Operations (CAFOs).

A copy of the proposed amendments to the 2014 Revised Zoning Regulations for McCook County is available for public review at the McCook County Courthouse in the office of the Planning and Zoning Administrator during regular business hours.

The County Commission/Planning Commission public hearing and 2<sup>nd</sup> reading will be held at the following time, date, and location:

~~10:30~~ a.m.                      10:  
Tuesday, ~~May 14~~, 2024                      28th  
McCook County Courthouse (130 West Essex Ave)

The purpose of this hearing is to explain the proposed amendments to interested persons, to answer questions regarding this item and to hear public comment on this item. The County Commission invites all interested persons to attend and offer their comments. Those interested persons not able to attend are invited and encouraged to send written comments, prior to the hearing, to the McCook County Planning and Zoning Administrator, PO Box 38, Salem, SD 57058.

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