

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

COUNTY TEXT AMENDMENT NO. 19010:)	
TEXT AMENDMENT TO THE LANCASTER)	
COUNTY ZONING RESOLUTION, ARTICLE)	
2 DEFINITIONS, ARTICLE 4 AG-DISTRICT,)	RESOLUTION NO. <u>R-20-0011</u>
ARTICLE 13 SPECIAL PERMITS AND)	
ARTICLE 22 GENERAL PROVISIONS, AS)	
PROVIDED IN EXHIBIT B)	

WHEREAS, pursuant to Neb. Rev. Stat. § 23-114, the Lancaster County Board of Commissioners (“Board”) is authorized to make amendments to the 1979 Zoning Resolution of Lancaster County, which are consistent with the County’s Comprehensive Plan and after receipt of specific recommendations from the Lincoln/Lancaster County Planning Commission (“Planning Commission”);

WHEREAS, David Cary, the Lincoln-Lancaster County Planning Department Director, (“Applicant”) has requested a text amendment to the Lancaster County Zoning Resolution, Article 2 Definitions, Article 4 AG-District, Article 13 Special Permit, and Article 22 General Provisions, as provided in Exhibit “A,” attached hereto and incorporated by this reference;

WHEREAS, the Lincoln-Lancaster County Planning Department (“Department”) has recommended approval of this amendment concluding that the requested amendment would allow for uniformity of conditions as they pertain to Animal Feeding Operations and will be in line with the Nebraska Department of Environment and Energy’s regulations. The proposed text amendment is the result of six months of work with the Confined Animal Feeding Operation Working Group. The proposed text amendment is also in conformance with the Comprehensive Plan by establishing conditions for Animal Feeding Operations that help establish uniformity for this type of agricultural use, while still protecting the surrounding properties;

WHEREAS, on January 8, 2020, after the public hearing, the Planning Commission voted 9-0 to recommend approval of the text amendment, as provided in Exhibit "A,";

WHEREAS, on February 4, 2020, the Board conducted a public hearing regarding the text amendment, as provided in Exhibit "A,";

WHEREAS, on February 4, 2020, the Board during a public meeting voted to APPROVE the proposed text amendment with general changes to be subsequently drafted by the Lancaster County Attorney's Office as follows:

1. Increase the Large Enclosed Animal Feeding Operation setback to $\frac{3}{4}$ mile;
2. Make a decommissioning bond a requirement of the application process for Large Animal Feeding Operations; and
3. Require water well permits from the Natural Resources District to be included in the application;

WHEREAS, the Lancaster County Attorney's Office has drafted the requested changes to the proposed text amendment, as provided in Exhibit "B", attached hereto and incorporated by this reference;

NOW, THEREFORE, BE IT RESOLVED, by the Board, that the amendments to the Lancaster County Zoning Resolution, as provided in Exhibit "B," are hereby approved; and

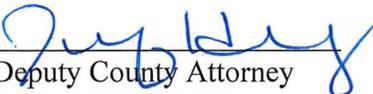
BE IT FURTHER RESOLVED, that any other references in the Lancaster County Zoning Resolution which may be affected by the amendments specified in Exhibit "B," and they hereby are, amended to conform to such specific amendments.

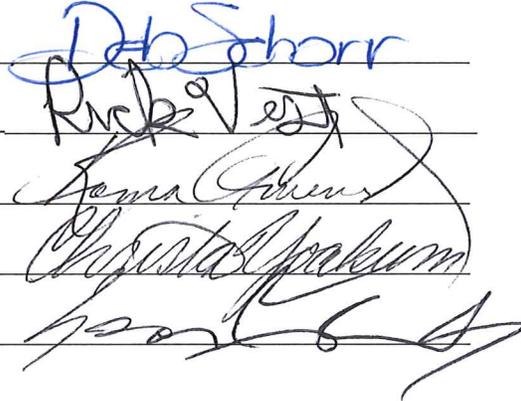
DATED this 10 day of March, 2020, in the County-City Building, Lincoln,

Lancaster County, Nebraska.

BY THE BOARD OF COUNTY
COMMISSIONERS OF
LANCASTER COUNTY, NEBRASKA

APPROVED AS TO FORM
this 10 day of
March, 2020.


Deputy County Attorney
for PAT CONDON
County Attorney


The Board of County Commissioners is represented by four signatures on horizontal lines: Deb Shorr, Rick Vest, Janna Green, and Crystal Palumbo.

POTENTIAL AMENDMENTS TO THE
LANCASTER COUNTY ZONING REGULATIONS

Proposed Revisions to Article 2 Definition

2.002 A

Except for special permit applications for Commercial Feedlots under Section 13.035(a) filed prior to [FUTURE EFFECTIVE DATE], “Agriculture” shall mean the use of land for the purpose of raising and harvesting crops; for the raising, breeding, or management of livestock, poultry, fish or honeybees; for Small Animal Feeding Operations, for dairying, truck gardening, forestry, nurseries or orchards; for the non-commercial on-farm storage or processing of agricultural products produced on the premises; or for any other similar agricultural, horticultural, or silvicultural or aquacultural use.

For special permit applications for Commercial Feedlots under Section 13.035(a) filed prior to [FUTURE EFFECTIVE DATE], “Agriculture” shall mean the use of land for the purpose of raising and harvesting crops; or for the raising, breeding, or management of livestock, poultry, fish or honeybees; or for dairying, truck gardening, forestry, nurseries or orchards; for the non-commercial on-farm storage or processing of agricultural products produced on the premises; or for any other similar agricultural, horticultural, or silvicultural or aquacultural use.

Except for special permit applications for Commercial Feedlots under Section 13.035(a) filed prior to [FUTURE EFFECTIVE DATE], “Animal Feeding Operation” (AFO) shall mean an operation and any buildings or designated areas necessary for an operation that stables or confines and feeds or maintains beef cattle, dairy cattle, horses, swine, sheep, poultry, or other livestock for a total of forty five (45) days or more in any twelve (12) month period. AFO does not include aquaculture.

2.006. E.

Except for special permit applications for Commercial Feedlots under Section 13.035(a) filed prior to [FUTURE EFFECTIVE DATE], Enclosed Animal Feeding Operation (Enclosed AFO) shall mean an AFO that stables or confines the animals within totally enclosed buildings. Each enclosed building shall be roofed and have walls that extend from the floor to the ceiling. The floor may be of a type including, but not limited to, hard surfaced, earthen, or slatted. An Enclosed AFO may include accessory buildings necessary for an operation that are not totally enclosed.

2.007. F.

Feedlot, Commercial For special permit applications for Commercial Feedlots under Section 13.035(a) filed prior to [FUTURE EFFECTIVE DATE], a Commercial Feedlot is a use where the principal business is the feeding of livestock or poultry for the purpose of sale for slaughter or butcher. Commercial Feedlot shall not include dairy herds or the keeping of livestock other than for slaughter or butcher.

2.013 L.

Except for special permit applications for Commercial Feedlots under Section 13.035(a) filed prior to [FUTURE EFFECTIVE DATE], Large Animal Feeding Operation (Large AFO) shall mean an AFO that stables or confines as many as or more than the number of animals specified in any of the following categories:

- 700 mature dairy cows, whether milked or dry;
- 1,000 veal calves;
- 1,000 cattle other than mature dairy cows or veal calves and including but not limited to heifers, steers, bulls, and cow/calf pairs;
- 2,500 swine each weighing 55 pounds or more;
- 10,000 swine each weighing less than 55 pounds;
- 500 horses;
- 10,000 sheep or lambs;
- 55,000 turkeys;
- 30,000 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system;
- 125,000 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure handling system;
- 82,000 laying hens, if the animal feeding operation uses other than a liquid manure handling system;

- 5,000 ducks, if the animal feeding operation uses a liquid manure handling system; or
- 30,000 ducks, if the animal feeding operation uses other than a liquid manure handling system.

2.014 M.

Except for special permit applications for Commercial Feedlots under Section 13.035(a) filed prior to [FUTURE EFFECTIVE DATE], Medium Animal Feeding Operation (Medium AFO) shall mean an AFO that confines or stables the type and number of animals in any of the following ranges:

- 200 to 699 mature dairy cows, whether milked or dry;
- 300 to 999 veal calves;
- 300 to 999 cattle other than mature dairy cows or veal calves. Cattle include but are not limited to heifers, steers, bulls, and cow/calf pairs;
- 750 to 2,499 swine each weighing 55 pounds or more;
- 3,000 to 9,999 swine each weighing less than 55 pounds;
- 150 to 499 horses;
- 3,000 to 9,999 sheep or lambs;
- 16,500 to 54,999 turkeys;
- 9,000 to 29,999 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system;
- 37,500 to 124,999 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure handling system;
- 25,000 to 81,999 laying hens, if the animal feeding operation uses other than a liquid manure handling system;
- 1,500 to 4,999 ducks, if the animal feeding operation uses a liquid manure handling system; or
- 10,000 to 29,999 ducks, if the animal feeding operation uses other than a liquid manure handling system.

2.016. O

Except for special permit applications for Commercial Feedlots under Section 13.035(a) filed prior to [FUTURE EFFECTIVE DATE], Open Animal Feeding Operation (Open AFO) shall mean an AFO within pens, shed-type areas, open buildings, or other similarly concentrated areas, wherein animals are fully or partially exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed-type areas.

2.020. S

Except for special permit applications for Commercial Feedlots under Section 13.035(a) filed prior to [FUTURE EFFECTIVE DATE], Small Animal Feeding Operation (Small AFO) shall mean an AFO that is not a Medium or Large AFO.

Proposed Revisions to Article 4 “AG” Agricultural District

4.003 Permitted Uses

- a. Agriculture, except commercial feedlots

4.007 Permitted Special Uses

aa. Commercial feedlot, if the special permit application for a Commercial Feedlot under Section 13.035(a) is received prior to [FUTURE EFFECTIVE DATE].

ai. Medium or Large Animal Feeding Operation.

Proposed Revisions to Article 13 Special Permit

13.035.

a. Commercial Feedlot

Commercial feedlot facilities for livestock and poultry may be allowed by special permit in the AG zoning district if the special permit application for the Commercial Feedlot under this Section is received prior to [FUTURE EFFECTIVE DATE]. The application for a special permit shall be accompanied by a statement from the Department of Environmental Quality (DEQ) that either the facility does not need to provide for anti-pollution controls, or that the applicant has received approval from DEQ for anti-pollution controls.

b. Medium or Large Animal Feeding Operation (Medium or Large AFO)

A Medium or Large AFO, except for special permit application for a Commercial Feedlot under Section 13.035(a), may be allowed by special permit in the AG District under the following conditions:

1. A site plan showing the location and distance from each area and building used as part of the AFO to the premises' lot lines shall be included with the application. The site plan also shall indicate any floodplain and/or floodway on the site. A topography map shall be included with the application.

2. A Construction and Operating Permit approved by the Nebraska Department of Environment and Energy shall be submitted with the application.
3. A road maintenance agreement between the County and the permittee, approved by the Lancaster County Engineer and the County Attorney, shall be included as a condition of the special permit if requested by the Lancaster County Engineer.
4. A completed Lancaster County Animal Feeding Operation Siting Assessment Matrix and any necessary documentation to verify the accuracy of the completed matrix shall be included with the application. The County may request additional documentation.
5. An AFO shall be setback, at a minimum, from the nearest wall of a dwelling that is not associated with the AFO and from any area designated as Residential-Low Density in the Future Land Use Plan of the Lincoln/ Lancaster County Comprehensive Plan as follows:

Open AFO 5,280 feet (1 mile)

Enclosed AFO 2,640 feet (0.5 miles)

However, the setback from an Open or Enclosed AFO shall be, at a minimum, to the lot line of any designated National or local landmark, place of worship, cemetery, school, residential or non-residential health care facility, public park (not including trails), public recreational facility, or a special permitted early childhood care facility shall be as follows:

Large AFO 7,920 feet (1.5 miles)

Medium AFO 5,280 feet (1 mile)

6. Each application shall have a decommissioning plan outlining the means, procedures and cost of removing or reusing the AFO. A bond or equivalent enforceable resource, acceptable to the Planning Director, to guarantee removal or reuse upon discontinuance, decommissioning or abandonment shall be included as a condition of the special permit if required by the Planning Commission, and if appealed, the County Board. For purposes of this Section, discontinuance, decommissioning or abandonment shall mean the facility has not stabled or confined and fed or maintained animals for at least forty-five (45) days in a twelve (12) month period.
7. A buffer consisting of two (2) rows of trees shall be supplied around the perimeter of the application area or the lot on which the AFO is located at the rate of one

(1) deciduous tree and three (3) evergreen trees every one-hundred (100) lineal feet. The trees shall have a mature height of at least fifteen (15) feet.

Proposed Revisions to Article 22 General Provisions, Legislative Provisions, Penalty

22.005. Notice of Hearings

- d. When a proposed amendment will affect the zoning or use of specific property, a notice describing the Planning Commission's public hearing shall be mailed at least ten (10) days prior to the Planning Commission's public hearing to the owner or owners of the affected property and to the following:
1. AG District: to all owners of property within one (1) mile of the boundaries of the affected property said tract or,
 2. All other districts: to all owners of property within one-half (1/2) mile of the boundaries of the affected property said tract.

Except that for special permit applications for Animal Feeding Operation a received on or after [FUTURE EFFECTIVE DATE], notice for Section 13.035(b) shall be mailed at least thirty (30) days prior to the Planning Commission's public hearing to all property owners within one (1) mile of the boundaries of the application area.

POTENTIAL AMENDMENTS TO THE
LANCASTER COUNTY ZONING REGULATIONS
AS MODIFIED BY DIRECTION OF THE BOARD
ON FEBRUARY 4, 2020

Proposed Revisions to Article 2 Definition

2.002 A

Except for special permit applications for Commercial Feedlots under Section 13.035(a) filed prior to March 10, 2020, "Agriculture" shall mean the use of land for the purpose of raising and harvesting crops; for the raising, breeding, or management of fish or honeybees; for Small Animal Feeding Operations, for truck gardening, forestry, nurseries or orchards; for the non-commercial on-farm storage or processing of agricultural products produced on the premises; or for any other similar agricultural, horticultural, or silvicultural or aquacultural use.

For special permit applications for Commercial Feedlots under Section 13.035(a) filed prior to March 10, 2020, "Agriculture" shall mean the use of land for the purpose of raising and harvesting crops; or for the raising, breeding, or management of livestock, poultry, fish or honeybees; or for dairying, truck gardening, forestry, nurseries or orchards; for the non-commercial on-farm storage or processing of agricultural products produced on the premises; or for any other similar agricultural, horticultural, or silvicultural or aquacultural use.

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2.008. G.

“Ground Water Reservoir” shall mean a designated area of land under which a major aquifer is known to exist and which has been delineated by the Lower Platte South Natural Resources District (LPSNRD).

2.013 L.

Except for special permit applications for Commercial Feedlots under Section 13.035(a) filed prior to March 10, 2020, Large Animal Feeding Operation (Large AFO) shall mean an AFO that stables or confines as many as or more than the number of animals specified in any of the following categories:

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- 10,000 swine each weighing less than 55 pounds;
- 500 horses;

- 10,000 sheep or lambs;
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Except for special permit applications for Commercial Feedlots under Section 13.035(a) filed prior to March 10, 2020, Small Animal Feeding Operation (Small AFO) shall mean an AFO that is not a Medium or Large AFO.

Proposed Revisions to Article 4 “AG” Agricultural District

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- ai. Medium or Large Animal Feeding Operation.

Proposed Revisions to Article 13 Special Permit

13.035.

a. Commercial Feedlot

Commercial feedlot facilities for livestock and poultry may be allowed by special permit in the AG zoning district if the special permit application for the Commercial Feedlot under this Section is received prior to March 10, 2020. The application for a special permit shall be accompanied by a statement from the Department of Environmental Quality (DEQ) that either the facility does not need to provide for anti-pollution controls, or that the applicant has received approval from DEQ for anti-pollution controls.

b. Medium or Large Animal Feeding Operation (Medium or Large AFO)

A Medium or Large AFO, except for special permit application for a Commercial Feedlot under Section 13.035(a), may be allowed by special permit in the AG District under the following conditions:

1. A site plan showing the location and distance from each area and building used as part of the Medium or Large AFO to the premises' lot lines shall be included with the application. The site plan also shall indicate any floodplain and/or floodway on the site. A topography map shall be submitted with the application.
2. A Construction and Operating Permit approved by the Nebraska Department of Environment and Energy shall be submitted with the application.
3. A water well permit issued by the applicable Nebraska Natural Resources District (NRD), or water well design documentation showing a water well permit isn't required by the applicable NRD, shall be submitted with the application.

If the water well is located within the Lower Platte South Natural Resources District's (LPSNRD) boundaries, a water well permit and any results from tests completed as a part of the water well permitting process shall be submitted with the application for each of the following wells:

- a. A water well that is located in a Ground Water Reservoir and is designed, constructed, or modified to either:
 - i. Pump more than fifty (50) gallons per minute and less than one thousand (1000) gallons per minute and pump less than two hundred fifty (250) acre-feet of water per year; or
 - ii. Pump one thousand (1000) gallons per minute or more, or pump two hundred fifty (250) acre-feet or more of water per year.
- b. A water well that is not located in a Ground Water Reservoir and is designed, constructed, or modified to either:
 - i. Pump more than twenty (20) gallons per minute and less than two hundred fifty (250) gallons per minute and use less than twenty five (25) acre-feet of water per year; or
 - ii. Pump two hundred fifty (250) gallons per minute or more, or pump twenty five (25) acre-feet or more of water per year.

If the water well is located within the Nemaha Natural Resources District's (NNRD) boundaries, a water well permit and any results from tests completed as

a part of the water well permitting process shall be submitted with the application for each of the following wells:

- c. A water well that is designed, constructed, or modified to pump more than fifty (50) gallons per minute.
 - d. A water well that is designed, constructed, or modified to pump fifty (50) gallons per minute or less if such water well is commingled, combined, clustered, or joined with any other water well(s) or other water source serving a single purpose, other than a water source used to water an AFO.
4. A road maintenance agreement between the County and the permittee, approved by the Lancaster County Engineer and the County Attorney, shall be included as a condition of the special permit if requested by the Lancaster County Engineer.
5. A completed Lancaster County Animal Feeding Operation Siting Assessment Matrix and any necessary documentation to verify the accuracy of the completed matrix shall be submitted with the application. The County may request additional documentation.
6. The Medium or Large AFO shall be setback, at a minimum, from the nearest wall of a dwelling that is not associated with the Medium or Large AFO and from any area designated as Residential-Low Density in the Future Land Use Plan of the Lincoln/ Lancaster County Comprehensive Plan as follows:

<u>Medium or Large Open AFO</u>	<u>5,280 feet (1 mile)</u>
<u>Large Enclosed AFO</u>	<u>3,960 feet (0.75 miles)</u>
<u>Medium Enclosed AFO</u>	<u>2,640 feet (0.5 miles)</u>

However, the setback from a Open or Enclosed AFO shall be, at a minimum, to the lot line of any designated National or local landmark, place of worship, cemetery, school, residential or non-residential health care facility, public park (not including trails), public recreational facility, or a special permitted early childhood care facility shall be as follows:

<u>Large AFO</u>	<u>7,920 feet (1.5 miles)</u>
<u>Medium AFO</u>	<u>5,280 feet (1 mile)</u>

7. Each application shall have a decommissioning plan outlining the means, procedures and cost of removing or reusing the Medium or Large AFO upon discontinuance, decommissioning or abandonment. For a Medium AFO, the

requirement for the applicant to obtain, and to maintain at all times prior to discontinuance, decommissioning or abandonment, a bond or equivalent enforceable resource, acceptable to the Planning Director, to guarantee removal or reuse upon discontinuance, decommissioning or abandonment shall be included as a condition of the special permit if required by the Planning Commission, and if appealed, the County Board. For a Large AFO, the requirement for the applicant to obtain, and to maintain at all times prior to discontinuance, decommissioning or abandonment, a bond or equivalent enforceable resource, acceptable to the Planning Director, to guarantee removal or reuse upon discontinuance, decommissioning or abandonment shall be included as a condition of the special permit.

For purposes of this Section, discontinuance, decommissioning or abandonment shall mean the facility has not stabled or confined and fed or maintained animals for at least forty-five (45) days in a twelve (12) month period.

8. A buffer consisting of two (2) rows of trees shall be supplied around the perimeter of the application area or the lot on which the Medium or Large AFO is located at the rate of one (1) deciduous tree and three (3) evergreen trees every one-hundred (100) lineal feet. The trees shall have a mature height of at least fifteen (15) feet.

Proposed Revisions to Article 22 General Provisions, Legislative Provisions, Penalty

22.005. Notice of Hearings

- d. When a proposed amendment will affect the zoning or use of specific property, a notice describing the Planning Commission's public hearing shall be mailed at least ten (10) days prior to the Planning Commission's public hearing to the owner or owners of the affected property and to the following:
 3. AG District: to all owners of property within one (1) mile of the boundaries of the affected property or,
 4. All other districts: to all owners of property within one-half (1/2) mile of the boundaries of the affected property.

Except that for special permit applications for Animal Feeding Operation a received on or after March 10, 2020, notice for Section 13.035(b) shall be mailed at least thirty (30) days prior to the Planning Commission's public hearing to all property owners within one (1) mile of the boundaries of the application area.