

LOCAL LAW NO. 3 FOR 2007

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK ENACTING A RIGHT-TO-FARM LAW

Introduced: 4/9/07

By Messrs. Gordon, Houghtaling, Aylward, Reilly, Shafer, Dawson, Cotrofeld, Nichols, Mss. McKnight, Wiley, Messrs. Hoblock, Tunny, Monjeau, Infante, Horstmyer, Burke and Ms. Connolly:

BE IT ENACTED by the Legislature of the County of Albany as follows:

SECTION 1. Legislative intent and purpose.

The Albany County Legislature hereby recognizes that small and large farms are an integral component of the County's economic base; productive agricultural soil is an irreplaceable asset; and agriculture contributes to the economic diversity, environmental quality and overall quality of life in Albany County. Through this local law, this Legislature also declares that it is the policy of Albany County to promote effective communication between farm and non-farm neighbors resulting in a shared understanding of the value of the agricultural enterprises to Albany County and the necessary day-to-day operations involved in farming.

It is the general purpose and intent of this Local Law to maintain and preserve the agricultural traditions of Albany County; to permit the continuation of sound agricultural practices necessary for the operation of farms; to encourage the initiation and expansion of farms and agribusinesses where it is compatible with existing land use regulations; and to promote effective and efficient means to resolve disputes which may arise concerning agricultural practices and farm operations.

SECTION 2. Definitions.

a. Agricultural and Farmland Protection Board – The board formally appointed by the Albany County Legislature according to Article 25AA section 302 of NYS Agriculture and Markets Law.

b. Farmland – Any single or multiple, contiguous, or non-contiguous parcel or parcels that are being used for agricultural farm operations or upon which agricultural practices are being utilized or upon which agricultural farm operations or agricultural practices may be established or utilized in the future.

c. Agricultural Products – Those products including but not limited to:

1. Field crops, including corn, wheat, rye, barley, hay, potatoes and dry beans.
2. Fruits, including apples, peaches, grapes, cherries and berries.
3. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.
4. Horticultural crops, including nursery stock, ornamental shrubs, ornamental trees, flowers and sod.
5. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, farmed deer, farmed buffalo, fur bearing animals, milk, eggs and furs.
6. Maple sap and maple syrup.
7. Christmas trees derived from a managed tree operation whether dug for transplanting or cut from the stump.
8. Aquaculture products, including fish, fish products, water plants and shellfish.
9. Woody biomass, which means short rotation woody crops raised for bio-energy and shall not include farm woodland.
10. Apiary products, including but not limited to honey, royal jelly, pollen, beeswax and propolis.
11. Compost products

d. Farmer – Any person, organization, entity, association, partnership, limited liability company, or corporation engaged in the business of agriculture, whether for profit or otherwise, including the cultivation of land, the raising of crops or the raising of livestock.

e. Farm operation – The land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products including a “commercial horse boarding operation” as a commercial enterprise, with \$2,000 or more in annual gross sales.

f. Agricultural Practices – Those practices necessary for the on-farm production, preparation, and marketing of agricultural commodities. Examples of such practices include, but are not limited to, operation of farm equipment, nutrient management, proper use of agricultural chemicals, and other crop protection methods, and construction and use of farm structures and fences.

SECTION 3. Right to Farm Declaration.

Farmers, and those employed, retained, or otherwise authorized to act on behalf of farmers, may lawfully engage in agricultural practices within this county at all times and at all such locations as are reasonable and necessary to conduct the business of agriculture. For any agricultural practice, in determining the reasonableness of the time, place, and methodology of such practice, due weight and

consideration shall be given to both traditional customs and procedures in the farming industry as well as to advances resulting from increased knowledge and improved technologies and whether the practice is reasonable and necessary, conducted in accordance with generally accepted agricultural practices and not a threat to public health.

SECTION 4. Nuisance.

Agricultural practices conducted on farmland shall not be found to be a public or private nuisance if such agricultural practices are:

1. Reasonable and necessary to the particular farm or farm operation.
2. Conducted in a manner which is not negligent or reckless.
3. Conducted in conformity with generally accepted and sound agricultural practices.
4. Conducted in conformity with all local, state, and federal laws and regulations.
5. Conducted in a manner which does not constitute a threat to public health and safety or cause injury to health or safety of any person.
6. Conducted in a manner which does not obstruct the free passage or use of navigable waters or public roadways.

SECTION 5. Notification to Real Estate Buyers.

Lands in agricultural districts; disclosure.

When any purchase and sales contract is presented for the sale, purchase, or exchange of real property located in Albany County partially or wholly within an agricultural district established pursuant to the provisions of Agriculture and Markets Law Section 310 of Article twenty-five-AA or within 500 feet of an Agricultural District, the prospective grantor shall present to the prospective grantee a disclosure notice which states the following: "It is the policy of Albany County to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This disclosure notice is to inform prospective buyers that the property they are about to acquire lies partially or wholly within an Agricultural District or within 500 feet of an Agricultural District and that farming activities occur within the area. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors. Prospective buyers are also informed that the location of property may impact the ability to access water and/or sewer services for such property under certain circumstances."

A copy of this notice shall be included by the seller or seller's agent as an addendum to the purchase and sale contract at the time an offer to purchase is made. Receipt of such disclosure notice shall be recorded on a property transfer report prescribed by the state board of real property services as provided for in section three hundred thirty three of the real property law.

SECTION 6. Resolution of Disputes.

In order to maintain a viable farming economy in Albany County, it is necessary to limit the circumstances under which farming may be deemed to be a nuisance and to allow agricultural practices inherent to and necessary for the business of farming to proceed and be undertaken free of unreasonable and unwarranted interference or restriction.

This process is intended to resolve disputes between farmers and non-farming neighbors through a mutual understanding of each other's needs, concerns, and desires so that both parties are afforded due property rights.

- a. Should any dispute arise regarding an agricultural operation or agricultural practice which cannot be settled by direct negotiation between parties involved, either party may submit the controversy to a dispute resolution committee as set forth below in an attempt to resolve the matter prior to the filing of any court action and prior to a request for a determination by the Commissioner of Agriculture and Markets about whether the practice in question is sound pursuant to Section 308 of Article 25AA of the State Agriculture and Markets Law.
- b. Any controversy between parties shall be submitted to the committee within thirty (30) days of the last date of occurrence of the particular activity giving rise to the controversy or the date the party became aware of the occurrence.
- c. The committee shall be composed of three (3) members; the Chairman of the County Agricultural and Farmland Protection Board or a designee, the Supervisor from the local government in which the dispute arose or a designee, and a Cornell Cooperative Extension Agricultural Agent. In the case that a member of the Committee must recuse himself due to a conflict of interest, the Chair of the Agricultural and Farmland Protection Board shall appoint an alternate.
- d. The effectiveness of the committee as a forum for the resolution of disputes is dependent upon full discussion and complete presentation of all pertinent facts concerning the dispute in order to eliminate any misunderstandings. The parties are encouraged to cooperate in the exchange of pertinent information concerning the controversy.
- e. The controversy shall be presented to the committee by written request of one of the parties within the time limits specified. Thereafter, the committee may investigate the facts of the controversy but must, within twenty-five (25) days, hold a meeting at a mutually agreed upon place and time to consider the merits of the matter and within five (5) days of the meeting render a written decision to the parties. At the time of the meeting, both parties shall have an opportunity to present what each considers to be pertinent facts. The time limits provided in this subsection for action by the committee may be extended upon the written stipulation of all parties in the dispute.

- f. Parties bringing a complaint to the committee for settlement or resolution may not involve legal counsel in the meeting.
- g. Parties requesting mediation shall stipulate, in writing, that the statements made in mediation shall be deemed to be in the nature of settlement discussions, and that such statement, and any agreement reached in mediation shall not be used for evidentiary purposes in any other action or proceeding.
- h. Any reasonable costs associated with the functioning of the dispute resolution committee process shall be borne by the participants.
- i. Records of the dispute resolution committee shall be maintained by the Albany County Agricultural and Farmland Protection Board.

SECTION 7. Severability.

If any article, section, subsection, paragraph, phrase or sentence of this local law is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereof.

SECTION 8. Precedence.

The Local Law and its provisions are in addition to all other applicable laws, rules and regulations.

SECTION 9. Effective Date.

This local law shall take effect immediately.