

Appendix C

Related Legislation

**Summary of Selected Agricultural Districts Law Provisions
(from Article 25AA-Agriculture Districts)**

(This summary is provided courtesy of John Lamb, Associate Planner, Monroe County Planning and Development, 2 State Street, Suite 500 Rochester, NY 14614, telephone (716) 428-5464. This is an interpretation, for official use please refer directly to Article 25AA)

Typed by E. Strother 2/97

Section 302. County agricultural and farmland protection board

The county legislative body may establish a county agricultural and farmland protection board. The board shall have eleven members, four of which shall be active farmers; one from agribusiness; one from an agricultural land preservation group; chair of the county soil and water conservation district's board of directors; a member of the county legislative body; a county cooperative extension agent; the county planning director; and the county director of real property services. The board advises the county legislative body on agricultural districts and, generally, on agricultural matters, and may review notice of intent filings and develop a farmland protection plan.

Section 305. Agricultural districts; effects

1. Agricultural assessments. Land used in agricultural production is eligible for an agricultural assessment based on soil types. Land owner must apply annually for this assessment. If land receiving an agricultural assessment is converted to a non-farm use before the district's eight year review, the owner may be subject to a penalty consisting of back taxes plus interest.
2. Limitation on local regulation. Municipalities cannot enact local laws or ordinances that are contrary to agriculture and markets law by placing unreasonable regulations on farm structures and farming practices unless the regulation relates directly to protecting public health and safety.
3. Policy of state agencies. State agency policies must be consistent with encouraging viable farming in agricultural districts as long as the administrative procedures and regulations to implement the policies do not conflict with public health and safety nor with federal regulations.

(NOTE: Agriculture and markets law has been in existence for about 25 years. During that time, state agencies have adopted regulations and policies that minimize the effects of their actions on farming in agricultural districts).

4. Limitation on eminent domain, public acquisition, advancement of public funds. Notice of Intent (NOI) are required to be filed with the commissioner and the county agricultural and farmland protection board by state agencies, public benefit corporations and local governments whenever they propose to: (1) acquire land or interest in land which amounts to more than one acre from an actively operated farm in a district or more than 10 acres in a district or, (2) construct or provide funds to construct dwellings, commercial or industrial facilities, or water and sewer facilities to serve non-farm structures in a district.

The NOI shall identify impacts to agriculture and shall also identify what reasonable means will be taken to minimize the impacts. The owner of the land to be acquired may waive the NOI requirement.

5. Limitation to impose benefits assessments in certain improvement districts or benefit areas. On land used in agricultural production, fees for municipal improvements such as sewer, water, lighting, non-farm drainage, and solid waste disposal are restricted to: (1) a one-half acre lot surrounding any dwelling and non-farm structure and (2) farm structures which directly benefit from the improvement. However, all land and/or structures are subject to the fees if the fees were imposed prior to the establishment of the agricultural district.

6. Use of assessment for certain purposes. A fire, fire protection or ambulance district may use the agricultural assessment as established in section 305 of the agriculture and markets law for purposes of assessing land used in agricultural production for improvements.
7. Land used to replant or expand orchards or vineyards is exempt from real property taxes for four successive years from the date of replanting/expansion if: (1) the land is part of an existing orchard/vineyard which is located on land used in agricultural production in a district, (2) the land is part of an existing orchard/vineyard which is eligible for an agricultural assessment and the owner has filed for the assessment or (3) the land is outside a district but is part of the land for which the owner has filed for an agricultural assessment.

The land eligible for exemption in any one year cannot exceed 20 percent of the total acreage devoted to the orchard/vineyard, and the land must remain in production for each year the exemption is granted.

Section 305-a. Coordination of local planning and land use decision-making with the agricultural districts program

1. Policy of local governments. Local governments, when enacting and administering comprehensive plans and local land use laws, ordinances, rules or regulations shall exercise these powers so as to be consistent with the purpose and intent of agricultural districts, and shall not unreasonably regulate agricultural operations in districts unless it can be shown that there is a threat to public health and safety.
2. Agricultural Data Statement (ADS). Certain land development proposals must be reviewed for their impacts on agriculture if they are to be located: (1) on property in an agricultural district which contains a farm operation or (2) on property with boundaries within 500 feet of a farm operation in an agricultural district. Notice of the proposed development is sent to farmers listed by the developer in the ADS.

Section 308. Right to farm

Agricultural practices on any land in an agricultural district shall not be considered nuisances as long as they are found to be sound agricultural practices by the commissioner. Fees and expenses in certain private nuisance actions may be awarded by the courts.

Section 310. Disclosure

Prior to the sale, purchase or exchange of real property in a district, a disclosure statement must be provided to the buyer stating that the land is in an area where farming activities occur, and the buyer may be subject to noise, odors, and dust.

Summary of Provisions Relating to Farms Outside of Districts

Section 306. Agricultural lands outside of districts; agricultural assessments

1. Land used in agricultural production is eligible for an agricultural assessment. Land owner must apply annually for this assessment.
2. If the land receiving an assessment is converted to non-farm use within eight years from the last time an agricultural assessment was received, the owner will be subject to a penalty consisting of back taxes plus interest.

Section 308. Right to farm

Agricultural practices on land used in agricultural production which is receiving an agricultural assessment shall not be considered nuisances as long as they are found to be considered sound agricultural practices by the commissioner. Fees and expenses in certain private nuisance actions may be awarded by the courts.

TOWN OF CHARLTON, SARATOGA COUNTY

A LOCAL LAW ESTABLISHING RIGHT-TO-FARM LEGISLATION

Be it enacted by the BOARD of the TOWN of CHARLTON as follows:

Section 1. Legislative Intent and Purpose

The Board recognizes that farming is an essential enterprise and an important industry which enhances the economic base, natural environment and quality of life in Charlton. Therefore, the Town Board of Charlton finds and declares that this Town encourages its agriculture and urges understanding of and cooperation with the necessary day to day operations involved in farming.

It is the general purpose and intent of this law to maintain and preserve the rural traditions and character of the town, to permit the continuation of agricultural practices, to protect the existence and operation of farms, to encourage the initiation and expansion of farms and agribusiness's, and to promote new ways to resolve disputes concerning agricultural practices and farm operations. In order to maintain a viable farming economy in Charlton, 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.

Section 2. Definitions

1. "Farmland" shall mean land used in agricultural production, as defined in subdivision four of section 301 of Article 25AA of the State Agriculture and Markets Law.
2. "Farmer" shall mean 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.
3. "Agricultural products" shall mean those products as defined in section 301(2) of Article 25AA of the State Agriculture and Markets Law, including but not limited to:
 - a) Field crops, including corn, wheat, rye, barley, hay, potatoes and dry beans
 - b) Fruits, including apples, peaches, grapes, cherries and berries
 - c) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, and onions
 - d) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
 - e) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, farmed deer, farmed buffalo, fur bearing animals, milk, eggs and furs.
 - f) Woodland products, including maple sap, lumber, posts, and firewood.
 - g) Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.
 - h) Aquaculture products, including fish, fish products, water plants and shellfish.
 - i) Woody biomass, which means short rotation woody crops raised for bioenergy, and shall not include farm woodland.
4. "Farm woodland" includes land used for production and sale of woodland products, including but not limited to logs, lumber, posts and firewood.
5. "Agricultural practices" shall mean 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, proper use of agricultural chemicals and other crop protection methods, manure application and construction and use of farm structures and fences.

6. "Farm operation" shall be defined in section j301(11) in the State Agriculture and Markets Law.

Section 3. Right-to-Farm Declaration

Farmers, as well as those employed, retained, or otherwise authorized to act on behalf of farmers, may lawfully engage in agricultural practices within this Town at all such times and all such locations as are reasonably 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.

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, and
6. conducted in manner which does not unreasonably obstruct the free passage or use of navigable waters or public roadways.

Nothing in this local law shall be construed to prohibit an aggrieved party from recovering from damages for bodily injury or wrongful death due to a failure to follow sound agricultural practices, as outlined in this section.

Section 4. Notification of Real Estate Buyers and Prospective Neighbors

In order to promote harmony between farmers and their neighbors, the Town requires land holders and/or their agents and assigns to comply with Section 310 of Article 25AA of the State Agriculture and Markets Law and provide notice to prospective purchasers and occupants as follows: "It is the policy of this state and this community 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 notice is to inform prospective residents that farming activities occur within the Town. Such farming activities may include, but not be limited to, activities that cause noise, smoke and odors."

A copy of this notice shall be included as an addendum to the purchase and sale contract at the time an offer to purchase is made.

In addition, this notice shall be included in building permits and on plats of subdivisions submitted for approval pursuant to Town Law section 276.

Section 5. Resolution of Disputes

- a. Should any controversy arise regarding any inconveniences or discomfort occasioned by agricultural operations which cannot be settled by direct negotiation between the 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 the section 308 of Article 25AA of the State Agriculture and Markets Law.
- b. Any controversy between the 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 which be composed of three (3) members selected from the county including one representative from the County Agricultural and Farmland Protection Board, one person from the town government selected by the Town Board, and one person mutually agreed upon by both parties involved in the dispute.
- 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. The parties are also encouraged to consult with agricultural experts such as New York State Agriculture and Markets, Cornell University, Cornell Cooperative Extension, Natural Resources Conservation Service, and Soil and Water Conservation district.
- 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 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. No party bringing a complaint to the committee for settlement or resolution may be represented by counsel unless the opposing party is also represented by counsel. The time limits provided in this subsection for action by the committee may be extended upon written stipulation of all parties in the dispute.
- f. Any reasonable costs associated with the functioning of the committee process shall be borne by the participants. However, the prevailing participant shall be entitled to reasonable fees and other expenses incurred if the agricultural practice at issue constitutes a sound agricultural practice pursuant to an opinion issued by the Commissioner under section 308 of the New York Agriculture Districts Law.

Section 6. Severability Clause

If any part of this local law is for any reason held to be unconstitutional or invalid, such decision shall not effect the remained of the local law. The Town hereby declares that it would have passed this local and each section and subsection thereof, irrespective of the fact that an one or more of these sections, subsections, sentences, clauses, or phrases may be declared unconstitutional or invalid.

Section 7. Precedence

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

Section 8. Effective Date

This local law shall be effective immediately upon filing with the Town of Charlton and Secretary of State pursuant to section 27 of Municipal Home Rule Law and shall be filed with New York State Agriculture and Markets, New York State Department of Environmental Conservation and New York State Department of Health.

Effective December 24, 1996