

**LOCAL LAW INTRODUCTORY NO. 5 OF 2006**

**A LOCAL LAW ESTABLISHING A RIGHT-TO-FARM POLICY IN ORANGE**

**COUNTY, NEW YORK.**

**BE IT ENACTED**, by the Legislature of the County of Orange, State of New York as follows:

**SECTION 1. LEGISLATIVE INTENT AND PURPOSE.**

It is the declared policy of the County of Orange to conserve, protect and encourage the use of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. It is the purpose of this policy to reduce the loss to the County of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. It is expressly found that whatever nuisance may be caused to others by such uses and activities so conducted with sound agricultural practices is more than offset by the benefits from farming to the County economy by the production of local food and products, and to neighborhood and community and to society, in general, by the preservation of open space by maintaining the inherent beauty of the countryside and by the preservation and continuance of farming operations in Orange County.

**SECTION 2. DEFINITIONS.**

As used in this Local Law, the following terms shall have the meanings indicated:

**AGRICULTURAL ACTIVITIES** -- Those activities involved in the production of crops, livestock, and livestock products by farm operations, all as defined in Section 301 of Article 25-AA of the New York Agriculture and Markets Law of New York, including but not limited to the following:

- a. Field crops including corn, wheat, oats, rye, barley, hay, potatoes, dry beans and sod;
- b. Vegetables including tomatoes, snap beans, cabbage, carrots, beets, onions and corn;
- c. Fruits including apples, berries, cherries, peaches and pumpkins;
- d. Horticultural ornamental specialties including nursery stock, shrubs, ornamental trees, flowers and vegetables;
- e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites such as ostriches, emus, rheas, kiwis, farmed deer, farmed buffalo, fur bearing animals, wool bearing animals, such as alpacas and llamas, milk, eggs and furs;
- f. Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump;
- g. Aquaculture products, including fish, fish products, water plants and shellfish;
- h. Forestry products such as short rotation woody crops used for bio-energy and maple syrup products.

Further, agricultural activities shall include an activity engaged in, by, or on behalf of a farmer in connection with and furtherance of the business of agriculture or farming and shall include without limitation, the collection, transportation, distribution, composting, cooling, drying and storage of animal and poultry waste; storage, transportation and use of equipment for tillage, planting, harvesting and marketing; transportation, storage and use of legally permitted fertilizers and limes, insecticides, pesticides, herbicides, and fungicides; construction of farm structures and facilities, including farm wineries and other on-farm food processing as permitted by local and State building code regulation; construction and maintenance of fences and other enclosures; and the use and/or maintenance of related pastures, idle or fallow land,

woodland, wetland, farm ponds, farm roads and certain farm buildings and other structures related to agricultural practices.

DISPUTE RESOLUTION CENTER -- shall mean the Dispute Resolution Center presently located at 14 Scotchtown Avenue, Goshen, New York serving Orange, Putnam, Sullivan and Ulster Counties.

FARMLAND -- Land within an agricultural district created pursuant to Section 303 or land used in agricultural production subject to an agricultural assessment pursuant to Section 306 of Article 25-AA of the New York Agriculture and Markets Law, used primarily for bona fide agricultural production, for commercial purposes, of all those items and products defined in the New York Agriculture and Markets Law, Section 301.

RIGHT TO FARM -- The right to farm shall apply to farmers, as well as those employed or otherwise authorized to act on behalf of farmers and shall also include, subject to the provisions of Section 3 of this Local Law, the use of large irrigation pumps and equipment, aerial and ground seeding and spraying, cooling and drying, transporting large, slow moving equipment over roads within the County, and the employment of farm laborers, all for the purpose of producing from the land agricultural products such as vegetables, grains, hay, fruits, fibers, wood, trees, plants, shrubs, flowers and seeds.

This "right to farm" shall also include, subject to the provisions of Section 3 of this Local Law, the right to use land for grazing by animals, subject to the restrictions for intensive fowl or livestock farms. The foregoing uses and activities included in the "right to farm," when reasonable and necessary for the particular farming, livestock or fowl production and when conducted in accordance with sound agricultural practices, as determined in accordance with Section 3 of this Local Law, may occur on holidays, Sundays and weekdays, any time of night or

day, and the noise, odors, dust and fumes that are caused by them are also specifically incorporated in the right to farm. In addition to the factors set forth in Section 3 of this Local Law for determining whether an agricultural practice is sound, and in determining the reasonableness of the time, place and methodology of such operation, due weight and consideration shall be given to traditional customs and procedures in the agricultural industry, advances resulting from increased knowledge or improved technologies and whether or not the practice is legal and not causing off-site property damage or bodily harm.

**SECTION 3. RESTRICTIONS ON PRIVATE NUISANCE ACTIONS AGAINST AGRICULTURAL OPERATIONS.**

Notwithstanding any other provision of this Local Law, agricultural activities conducted on farmland, if consistent with sound agricultural practices as may be determined by the New York State Commissioner of Agriculture and Markets and with Federal, State, and local laws, regulations or ordinances, are deemed to be reasonable and shall not constitute a nuisance.

**SECTION 4. NOTICE TO PROSPECTIVE NEIGHBORS/NOTICE OF FARM USE.**

For the purpose of giving due notice of agricultural activities to proposed new residential areas adjacent to unimproved land being farmed or suitable, this Local Law encourages and supports a local Planning Board requirement that any applicant for an adjacent major or minor subdivision, as a condition of approval of such application, include a provision in each and every deed conveying all or any portion of the lands thereby subdivided, as well as on filed final subdivision maps, the following record notice to and waiver by grantees of such present or future proximate farming uses, which provision shall be made to run with the land:

“The grantee hereby acknowledges notice that agricultural activities exist throughout the town and that there are presently or may in the future be farm uses adjacent or in close proximity to the within-described premises. The grantee acknowledges that farmers have the right to undertake sound agricultural activities as defined by the State of New York which may generate dust, odor, fumes, noise and vibrations associated with agricultural practices, and that these activities are permitted under the town, or, in the absence of a local right-to-farm law, Orange County’s Right-to-Farm Law, and, by acceptance of this conveyance, the grantee does hereby waive objection to such activities.”

#### **SECTION 5. REAL PROPERTY DISCLOSURE.**

In accordance with New York State Real Property Law, Section 333-c and Real Property Tax Law, Section 574 and Agriculture and Markets Law Section 310, prior to the sale, purchase, or exchange of any real property located partially or wholly within an Orange County Agricultural District established pursuant to the provisions of New York State Agriculture and Markets Law Article 25-AA, the prospective grantor shall deliver to the prospective grantee a notice which states the following:

“It is the policy of New York State and Orange 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 notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors.”

Failure of the grantor to provide such information to the grantee shall not prevent the recording officer from filing such deed.

**SECTION 6. RESOLUTION OF DISPUTES.**

Should any controversy arise regarding any agricultural operation or practice, the aggrieved parties may submit the controversy to the Dispute Resolution Center ("Dispute Resolution Center") for mediation under the New York State Agricultural Mediation Program.

**SECTION 7. CERTAIN ACTIONS NOT AFFECTED.**

The provisions of this Local Law shall not defeat the right of any person, firm or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on account of any overflow of lands of any such person, firm or corporation.

**SECTION 8. SEVERABILITY CLAUSE.**

If any part of this Local Law is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remainder of this Local Law.

**SECTION 9. EFFECTIVE DATE.**

This Local Law shall become effective on January 1, 2007.