

This publication is a result of
a cooperative effort by:

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Introduction

Counties, towns and villages in New York State have broad powers to enact laws to govern their own affairs. However, State laws impose certain restrictions on local government authority. One such restriction is found in Section 305-a of the Agriculture and Markets Law which contains the following mandate:

“Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article [*Article 25-AA of the Agriculture and Markets Law*], and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened.”

This guidance document has been prepared by the New York State Department of Agriculture and Markets to assist municipalities in drafting local laws and ordinances which may affect farming in an agricultural district. It should not be substituted for legal advice from a municipality’s attorney. This publication also offers guidance to farmers and landowners within an agricultural district on the application of Section 305-a.

The Commissioner of Agriculture and Markets may independently initiate a review of a proposed or existing local law or ordinance or proceed upon the request of a landowner in an agricultural district. The following describes the procedure for requesting review, how the local requirements are analyzed, and remediated, if necessary.

PROCEDURE

Questions concerning the impact of local laws and ordinances on farm structures or farming practices are solved far more easily at the drafting stage than after the provision is in place. Municipalities are, therefore, encouraged to contact the Department of Agriculture and Markets, either by phone or in writing, in advance of enacting a local law or ordinance which may restrict farming or farm operations in an agricultural district. The Department of Agriculture and Markets will provide an informal, non-binding response to such inquiries. Similarly, a farmer or other affected party in an agricultural district may seek the Department of Agriculture and Markets's informal opinion on a proposed or existing law or ordinance without filing a complaint.

If a landowner or farmer wishes to file a request for review with the Department of Agriculture and Markets, he or she must do so in writing. Such written request must contain at least the following information:

- \$the location of the farm operation including the town or village in which it is located, identification of the agricultural district in which it is situated, and the date of the properties' inclusion in the district;
- \$a brief description of the affected farm operation (e.g. size of farm, type of enterprise, years in operation);
- \$a description of the specific farm structures or practices involved and how they are affected;
- \$a copy of the complete local law or ordinance and identification of the specific section or sections involved;
- \$a listing of involved parties who can be contacted for further information (including addresses and phone numbers).

Following the receipt of a request for review of a local law or ordinance, the Department of Agriculture and Markets will contact the municipality to which the request pertains to discuss any issues raised regarding the regulation in question.

ANALYSIS

The Department of Agriculture and Markets examines several factors in evaluating whether a local law or ordinance is in compliance with Section 305-a. Tests that must be met in each case are as follows:

- **Is the affected farm located within an agricultural district?**

Section 305-a only applies to farm operations in an agricultural district.

- **Does the regulated activity encompass farm operations?**

Section 301(11) of the Agriculture and Markets Law defines “Farm Operation” as meaning: “...the land and on-farm buildings, equipment, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise.” The definition of “crops, livestock and livestock products” is found in Section 301(2) and reads as follows:

"Crops, livestock and livestock products" shall include but not be limited to the following:

a. Field crops, including corn, wheat, oats, 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, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, milk, eggs and furs.

f. Maple sap.

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.

Only farm operations are protected by Section 305-a. The Department of Agriculture and Markets draws on the expertise of its program and legal staff, and other resources as needed, to make these determinations.

•Is the local law or ordinance reasonable?

The evaluation of reasonableness consists of two parts: 1) whether the law or ordinance is reasonable “on its face,” and 2) whether it is reasonable as applied to a particular situation.

Some laws or ordinances are so vague that they inhibit farmers from undertaking certain activities or constructing certain buildings out of concern for violating the law or ordinance. In this case, it is possible that the law or ordinance, because of its vague construction, could be construed as unreasonably restricting farm structures or farming practices.

An ordinance may also appear reasonable in the abstract, but may unreasonably restrict or regulate a particular farmer or landowner. For example, many zoning ordinances impose setback requirements for structures in the interest of public safety or even aesthetics. These setbacks may be entirely reasonable under usual conditions, but may be construed as being unreasonable if applied to a farmer who, for example, constructs a building on a dead-end street, shielded from view, and near the only available water source.

A reasonable exercise of authority in one locality may translate into an unduly burdensome restriction on farming in another. In sum, reasonableness depends on the totality of circumstances in each case.

•Is the public health or safety threatened by the regulated activity?

Even if the Department of Agriculture and Markets concludes that a particular law or ordinance is unreasonably restricts farm operations, consideration must be given as to whether the public health or safety is threatened by the regulated activity. If it is the limitations of Section 305-a do not apply.

REMEDIES

If the Department of Agriculture and Markets concludes that a local law or ordinance unreasonably restricts or regulates farm operations in an agricultural district, the Department will notify the involved municipality and attempt to arrive at a solution which addresses the concerns of the Department as well as the concerns of the locality. If no resolution is reached and the locality does not show that the objectionable law/ordinance addresses a public health or safety threat, the Commissioner of Agriculture and Markets may bring an action in State Supreme Court to enforce Section 305-a. Alternatively, the Commissioner may issue an Order to comply, pursuant to Section 36 of the Agriculture and Markets Law.

CASE HISTORIES

The following summaries of selected recent cases addressed by the Department of Agriculture and Markets pursuant to Section 305-a, and its predecessor Section 305(2), are provided as examples of the review process in action:

- 1. Issue:** Whether an ordinance that restricts the number of mobile homes on a farm to one and requires that the mobile home be situated “as nearly as possible to the center of the farm’s operations” unduly restricts farming practices and structures.

Facts: The Department of Agriculture and Markets received a complaint from a farmer who had one mobile home on his property and wanted to add another to house a relief milker. He also wanted to choose the location of the mobile home. The local zoning ordinance restricted these activities as outlined above.

Department of Agriculture and Markets’s Response: The Department of Agriculture and Markets determined in this case that using mobile homes to house dairy farm workers is a common farming practice in New York State. On-farm housing in general is beneficial to both the farm worker and farmer. The farmer can attract farm labor to rural areas where rental housing is scarce. On-farm housing also accommodates the long farm workday. In this case, no facts were presented which indicated that the ordinance addressed a public health or safety issue. Therefore, this ordinance was judged to unreasonably restrict both farm structures and practices.

- 2. Issue:** Whether a 100-foot setback required for buildings constructed along state roads and a 75-foot setback for buildings constructed along county roads unreasonably restricts farm structures.

Facts: The Department of Agriculture and Markets received a complaint from a farmer generally opposing local setback requirements. The farmer did not cite any specific impact upon either his operation or any other farmer in the agricultural district. The setbacks required by the ordinance applied equally to farmland and land used for other purposes. The municipality justified the ordinance as an effort to “lessen congestion in the roads” and “facilitate adequate provision of transportation.”

Department of Agriculture and Markets’s Response: Upon information available, the ordinance did not unreasonably restrict or regulate farm structures.

- 3. Issue:** Whether a proposed local law prohibiting the disposal and landspreading of food processing waste, septage, sludge and composted sludge unreasonably restricts farming practices.

Facts: A town requested advice concerning a proposed local law which would prohibit disposal and landspreading of food processing waste, septage, sludge and composted sludge, except under strict permit conditions. The Department of Agriculture and Markets reviewed and commented on several drafts of the proposed local law.

Department of Agriculture and Markets's Response: The Department of Agriculture and Markets concluded that the proposed local law would place unreasonable restrictions on agricultural land use, nutrient management practices and on-farm composting. The spreading, storage and/or composting of food processing waste, sludge, septage and manure and products derived therefrom to support the production function of the farm, are agricultural practices. These materials have a beneficial use for the production of crops. The State Environmental Conservation Law and solid waste regulations (6 NYCRR Part 360) address disposal and landspreading of food processing waste, septage, sludge and composted sludge. The Department of Agriculture and Markets considers DEC standards and permitting requirements in evaluating whether restrictions on agricultural land use, nutrient management practices and on-farm composting are reasonable. The proposed local law was not consistent with DEC standards, and the town did not show a threat to the public health or safety was involved.

- 4. Issue:** Whether a proposed ordinance which would limit the size of a roadside stand to 150 square feet, require that agricultural commodities sold be limited to products raised solely on the premises and limit the zones in which roadside stands are permitted unreasonably restricts farm buildings.

Facts: The Department of Agriculture and Markets received a request from a farmer to review a proposed zoning law which impacts on agriculture by restricting roadside stands.

Department of Agriculture and Markets's Response: The Department did not find the proposed restrictions to be per se violative of Section 305-a and roadside stands are not exempt from local regulation. However, 150 square feet for a roadside stand may not be sufficient to meet the needs of existing and/or future farm operations; the zones in which stands are allowed may not encompass all of the land within the agricultural district; and some farmers need to import produce from other farms to sell at their stand to increase diversity of products offered to bridge periods of low supply of commodities produced on-farm. Application of the ordinance to particular roadside stands is critical in determining whether or not it is unduly restrictive.

These cases are offered for illustration only. Each of the responses relates to the specific factual situation involved and should not be interpreted as applicable to other cases in which the relevant facts may differ.

Requests for general information or assistance, and formal written complaints alleging violations of Section 305-a, should be directed to:

Agricultural Districts Program Administrator

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