

A local law to be known as:

THE RIGHT TO FARM IN THE TOWN OF FAYETTE

Be it enacted by the Town Board of the Town of Fayette as follows:

Section 1. Legislative Intent and Purpose

A. The Fayette Town Board finds, declares and determines that agriculture is vital to the Town of Fayette, New York, because it is a livelihood and provides employment for agriservice; provides locally produced, fresh commodities; agricultural diversity; promotes economic stability; agriculture maintains open space and promotes environmental quality; and agricultural land does not increase the demand for services provided by local governments. In order to maintain a viable farming economy in the Town of Fayette, farmers must be afforded protection allowing them the right to farm. When nonagricultural land uses extend into agricultural areas, agricultural operations may become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operation or are discouraged from making investments in, agricultural improvements.

B. It is the general purpose and intent of this law to maintain and preserve the rural traditions and character of the Town of Fayette, to permit the continuation of agricultural practices, to protect the existence and operation of farms, to encourage the initiation and expansion of farms and agribusinesses, and to promote new ways to resolve disputes concerning agricultural practices and farm operations. In order to maintain a viable farming economy in the Town of Fayette, it is necessary to limit the circumstances under which farming may be deemed to be 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. *The Towns of Fayette and Varick Comprehensive Plan* clearly supports this view and recommends the adoption of this legislation as a primary goal of its implementation.

Section 2. Definitions

A. As used in this section, the following terms shall have the meanings indicated:

Agricultural Advisory Committee – shall mean a committee formally appointed by the Fayette Town Board for the purpose of resolving right to farm disputes as provided hereunder as well as other issues as the Fayette Town Board deems appropriate. Such a committee shall be appointed on an annual basis with five members. Those members shall be:

1. A resident of the Town of Fayette not associated with a farm operation,
2. A member of the Town of Fayette Planning Board, designated by the Town of Fayette Planning Board,
3. A member of the Town of Fayette Zoning Board of Appeals, designated by the Town of Fayette Zoning Board of Appeals,

4. A member of the Seneca County Agricultural Enhancement Board who resides in the Town of Fayette, designated by the Seneca County Agricultural Enhancement Board; if there is not a Town of Fayette resident on the Seneca County Agricultural Enhancement Board the Town of Fayette shall appoint a Town of Fayette resident actively participating in a farm operation,
5. Either the Seneca County Cooperative Extension Executive Director, the Seneca County Soil & Water Conservation District Manager, or their designee with approval of the Fayette Town Board.

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 production methods, and construction and use of farm structures.

Agricultural products - shall mean those products as defined in AML section 301(2).

Farm operation - as defined in Agriculture an Markets Law (AML) section 301 (11).

Farmer - shall mean any person, organization, entity, association, partnership, limited liability company, or corporation engaged in the production, preparation, and marketing of agricultural products as a commercial enterprise including but not limited to the cultivation of land, the raising of crops, or the raising of livestock.

Generally accepted agricultural practices - Those practices which are feasible, lawful, inherent, customary, necessary, reasonable, normal, safe and typical to the industry or unique to the commodity as they pertain to the practices listed in the definition of "agricultural practices."

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 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, research and improved technologies.

Agricultural practices conducted by farm operations shall not constitute 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 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 a manner which does not reasonably 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 generally accepted agricultural practices, as outlined in this section.

Section 4. Notification of Real Estate Buyers

In order to promote harmony between farmers and their neighbors, the Town requires land holders and/or their agents and assigns to comply with Agriculture and Markets Law Section 310 and provide notice to prospective purchasers and occupants that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district.

Section 5. Consideration of Impact on Certain Applications

The legislative intent and purposes of this section shall be taken into consideration by each Town officer and/or board in processing any application requesting rezoning, subdivision approval, temporary conditional permit approval, site plan approval and/or special use permit approval when the property which is the subject of such application is located within one mile of an existing farm. Such, Town officer and/or board shall, as part of its review of such application, determine whether appropriate and reasonable conditions may be prescribed or required which would further the purposes and intent of this section as part of approval of the application. Such appropriate and reasonable conditions shall be determined on a case-by-case basis and may include, but not be limited to, requiring declaration, deed restrictions and/or covenants which run with the land, which would notify future purchasers and owners of the subject property that owning and occupying such property might expose them to certain discomforts or inconveniences resulting from the conditions associated with agricultural practices and operations in the Town.

Section 6. Resolution of Disputes

1. 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 the Agricultural Advisory 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 State Commissioner of Agriculture and Markets about whether the practice in question is sound pursuant to Agriculture and Markets Law Section 308.

2. Any controversy between the parties shall be submitted to the Agricultural Advisory 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.

3. The effectiveness of the Agricultural Advisory 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.

4. The controversy shall be presented to the Agricultural Advisory Committee by written request of one of the parties within the time limits specified. Therefore after, the committee may investigate the facts of the controversy but must, within twenty-five (25) days, hold a meeting at a mutually agreed 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 consider 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 the written stipulation of all parties in the dispute.

5. Any reasonable costs associated with the function of the Agricultural Advisory Committee process shall be borne by the participants.

Section 7. 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. The Town hereby declares that it would have passed this local law and each section and subsection thereof, irrespective of the fact that any one or more of these sections, subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

Section 8. Precedence

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

Section 9. Effective Date

This Local Law shall be effective immediately upon filing with the New York Secretary of State.