

This draft is for information only. Each community considering adopting a Right to Farm ordinance should consult with its municipal attorney regarding ordinance language and process for adoption.

RIGHT TO FARM ORDINANCE

_____, Maine

Section 1. Legislative Purpose and Intent

The purpose and intent of this Ordinance is to state with emphasis the Right to Farm accorded to all citizens of the State of Maine under the Constitution, and all state statutes and regulations including but not limited to M.R.S.A. 7 §151 et seq.

We the citizens of _____ restate and republish these rights pursuant to the Town's Home Rule authority conferred by Article 8 of the Maine Constitution.

This Ordinance encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the Town by allowing agricultural uses and related activities to function with minimal conflict with abutters and municipal officials. This Ordinance shall apply to all jurisdictional areas within the Town where agricultural activities are permitted.

Section 2. Definitions

The following terms have the following meanings.

1. "Agricultural composting operation" means composting that takes place on a farm. "Agricultural composting operation" does not include an operation that involves nonorganic municipal solid waste or that composts municipal sludge, septage, industrial solid waste or industrial sludge. "Agricultural composting operation" does not include an operation that composts materials with a moderate or high risk of contamination from heavy metals, volatile and semivolatile organic compounds, polychlorinated biphenyls or dioxin.
2. "Agricultural products" means those plants and animals and their products that are useful to humans and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, bees and bees' products, livestock and livestock products and fruits, berries, vegetables, flowers, seeds, grasses and other similar products, or any other plant, animal or plant or animal products that supply humans with food, feed, fiber or fur. "Agricultural products" does not include trees grown and harvested for forest products.
3. "Agricultural support services" means the aerial or surface application of seed, fertilizer, pesticides or soil amendments and custom harvesting.

4. "Composting" means the controlled aerobic decomposition of organic materials to produce a soil-like product beneficial to plant growth and suitable for agronomic use.
5. "Farm" means the land, plants, animals, buildings, structures, ponds and machinery used in the commercial production of agricultural products.
6. "Farm operation" means a condition or activity that occurs on a farm in connection with the commercial production of agricultural products and includes, but is not limited to, operations giving rise to noise, odors, dust, insects and fumes; operation of machinery and irrigation pumps; disposal of manure; agricultural support services; and the employment and use of labor. The word "farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of commercial agriculture, or accessory thereto.

Section 3. Right to Farm Declaration

The Right to Farm is hereby recognized to exist within the Town of _____.

Agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust and fumes associated with normally accepted agricultural practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the neighborhood, community, and society in general.

The benefits and protections of this Ordinance are intended to apply to those commercial agricultural and farming operations and activities conducted in accordance with and in compliance with applicable state and federal laws, rules and regulations. A method of operation used by a farm or farm operation located in an area where agricultural activities are permitted may not be considered a violation of a municipal ordinance if the method of operation and the farm, farm operation or agricultural composting operation conforms to best management practices, as determined by the Commissioner of the Maine Department of Agriculture, Food, and Rural Resources in accordance with Title 5, chapter 375.

Moreover, nothing in this Right to Farm Ordinance shall be deemed as acquiring any interest in land, or as imposing any land used regulation, which is properly the subject of state statute, regulation, or local ordinance.

Section 4. Disclosure Notification

Not later than 21 days after a purchase and sale contract is entered into, or prior to the sale or exchange of real property (if no purchase or sale agreement exists), for the purchase or exchange of real property, or prior to the acquisition of a leasehold interest or other possessory interest in real property, located within the Town of _____, the current landowner shall present the buyer or occupant with a disclosure notification which states the following:

“It is the policy of this community to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food, and other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers or occupants that the property they are about to acquire or occupy lies within a town where farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors. Buyers or occupants are also informed that the location of property within the Town may be impacted by commercial and other agricultural operations.”

A copy of the disclosure notification shall be given on a form prepared by the Town and shall be signed by the landowner prior to the sale, purchase, exchange or occupancy of such real property. A copy of the disclosure notification must be filed with the Board of Selectmen or its designee prior to the sale, purchase, exchange or occupancy of such real property.

In addition to the above, a copy of this disclosure notification shall be provided by the Town to landowners each fiscal year by mail.

Section 5. Resolution of Disputes

Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a grievance with the appropriate Town Authority (such as the Select Board, the Code Enforcement Officer, Local Health Officer, or others) depending upon the nature of the grievance. Notice of any such grievance shall be forwarded to the Commissioner of Agriculture, Food, and Rural Resources within two (2) business days of receipt by the municipal official.

The filing of the grievance does not suspend the time within which to pursue any other available remedies that the aggrieved may have. Except in cases of imminent danger or public health risk, all such grievances shall be reviewed by the Select Board and the Select Board shall facilitate the resolution of the grievance. The Select Board shall give the findings of the initial investigation and subsequent investigations and any determination of compliance to the complainant and person responsible.

The Maine Rules of Civil Procedure, Rule 11 applies in any private action filed against the owner or operator of a farm, farm operation or agricultural composting operation in which it is alleged that the farm, farm operation or agricultural composting operation constitutes a nuisance if it is determined that the action was not brought in good faith and was frivolous or intended for harassment only.

Section 6. Severability Clause

If any part of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this Ordinance. The Town of _____ hereby declares the provisions of this Ordinance to be severable.

Section 7. Notice to State

The Town Clerk shall submit a copy of any proposed amendments to this ordinance to the Commissioner of Agriculture, Food and Rural Resources at least 90 days prior to the meeting of the legislative body or public hearing at which amendment of the ordinance will be considered. This Ordinance does not affect the application of state and federal laws.