

# Local Laws and Agricultural Districts: How Do They Relate?

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 brochure has been prepared by the New York State Department of Agriculture and Markets to assist municipalities in drafting and administering 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. The brochure also offers guidance to farmers and municipalities 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 farmer or municipality 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 operations are solved far more easily at the drafting stage than after the provision is in place. Municipalities are, therefore, encouraged to contact the Department, either by phone or in writing, in advance of enacting a law or ordinance which may restrict farming in an agricultural district. The Department will provide a response to such inquiries. Similarly, a farmer or other affected party in a district may seek the Department’s opinion on a proposed or existing law or ordinance without filing a complaint.

### Farmers

A request for review must be provided in writing and include at least the following information:

- the location of the farm operation and identification of the agricultural district in which it is situated;
- a description of the affected farm operation (e.g. size of farm, type of enterprise, years in operation);
- a description of the specific farm buildings, equipment 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).

Subsequent to receiving a request for review of a local law or ordinance, the Department will contact the municipality involved and provide them with an opportunity to respond.

### Municipalities

A request for review must be provided in writing and include at least the following information:

- the identification of the agricultural district(s) affected;
- a description of the specific law or proposed law and how farm buildings, equipment or practices are or may be 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).

### **ANALYSIS**

The Department 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, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a 'commercial horse boarding operation' as defined in subdivision thirteen of this section, 'timber processing' as defined in subdivision fourteen of this section and 'compost, mulch and other biomass crops' as defined in subdivision sixteen of this section. For purposes of this section, such farm operation shall also include the production, management and harvesting of 'farm woodland,' as defined in subdivision three of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.” The definition of “crops, livestock and livestock products” is found in Section 301(2).

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

**• Does the local law or ordinance unreasonably restrict or regulate?**

The evaluation of reasonableness consists of two parts: 1) whether the law or ordinance is unreasonably restrictive “on its face,” and 2) whether it is unreasonably restrictive 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 a farm operation.

An ordinance may also appear reasonable in the abstract, but may unreasonably restrict or regulate a particular farmer. 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 unreasonably restrictive if applied to a farm operation. For example, a farm operation’s barns, storage buildings and other facilities may already be located within a required setback, or the farm operation may need to locate new facilities within the setback to meet the farm operation’s needs. Also, adjoining land may consist of vacant land, woodland or farmland. 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 determines that a particular law or ordinance is unreasonably restrictive, it must also ask whether the public health or safety is threatened by the regulated activity. If so, it could withstand the limitations of Section 305-a.

**REMEDIES**

If the Department determines that a local law or ordinance unreasonably restricts or regulates farm operations in an agricultural district, it will notify the involved municipality to that effect and attempt to arrive at a mutually satisfactory resolution. In the case where a municipality rejects the Department’s attempts at remediation, the Commissioner of Agriculture and Markets is explicitly authorized by law to bring an action to enforce Section 305-a. Alternatively, the Commissioner may issue an Order to comply, pursuant to Section 36 of the Agriculture and Markets Law.

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

**Agricultural Districts Program Administrator, New York State Department of Agriculture and Markets, 10B Airline Drive Albany, NY 12235, Phone: (518) 457-2713**