

## **Guidelines for Review of Local Laws Affecting Direct Farm Marketing Activities**

Typically, “direct farm marketing” encompasses roadside stands, farm markets, farmers’ markets, and “u-pick” or “pick your own operations.” However, the Agriculture and Markets Law (AML) definition of “farm operation” [§301(11)] has been amended in recent years to include “commercial horse boarding operation,” “compost, mulch or other organic biomass crops” and “timber operation.” Each of these activities may require an on-farm marketing component that may differ from the typical direct farm market. Additionally, greenhouse and nursery operations may also market agricultural products produced on their farms directly to the public.<sup>1</sup>

Direct farm marketing should be allowed in all areas within a county-adopted, State certified agricultural district. The degree of regulation of the various forms of direct farm marketing that is considered unreasonable, however, depends on the nature of the proposed activities and the size and complexity of the proposed structure. A requirement to apply for a permit is generally not unreasonable. Depending upon the size and scope of the retail facility or activity, greater regulation, such as site plan review, may be reasonable.<sup>2</sup> The Department urges local governments to take into account the size and nature of the particular farm market or activity when setting and administering such requirements. For example, to require a small farm market, which sells only a minimal amount of off-farm product, to obtain site plan approval may be unreasonably restrictive.

In some cases farmers should exhaust their local administrative remedies and seek, for example, certain permits, exemptions available under a local law or area variances, before the Department reviews a local law or its administration. However, an administrative requirement/process may, itself, be unreasonably restrictive. The Department evaluates the reasonableness of the specific requirement/process, as well as the substantive requirements imposed on the farm operation. Local laws that the Department has found not to be unreasonably restrictive include those which regulate the health and safety aspects of the construction of farm buildings through provisions to meet local building codes or the State Uniform Fire Prevention and Building Code [(“Uniform Code”) [unless exempt from the Uniform Code under Building Code §101.2(2) and Fire Code §102.1(5)] and Health Department requirements (e.g., for concessions, sanitary facilities, drinking water, etc.). Requirements for local building permits and certificates of occupancy to ensure that health and safety requirements are met and a review of a site’s ingress and egress as well as parking requirements are also generally not unreasonably restrictive. Noise may also become an issue. Farmers need to work with the municipality and neighbors to mitigate noise impacts and/or place reasonable limits on the hours of operation.

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<sup>1</sup> Please see *Guidelines for Review of Local Laws Affecting Temporary Greenhouses and Review of Local Laws Affecting Nursery Operations*.

<sup>2</sup> Please see *Guidelines for Review of Local Zoning and Planning Laws* for discussion of Site Plan Review and State Building Code.

The following are some of the specific matters that the Department considers when reviewing a local law that affects direct farm marketing:

A. Maximum Dimensions:

Generally the Department will consider whether maximum dimensions imposed by a local law are sufficient to meet existing and/or future farm needs. For example, many roadside stands are located within existing garages, barns, and outbuildings that may have dimensions greater than those set by a local ordinance. Buildings specifically designed and constructed to accommodate the sale of farm products may also not meet the local requirements. The size and scope of the farm operation is also considered. Larger farms, for example, cannot effectively market their produce through a traditional roadside stand.

B. Sign Limitations:

Whether or not a limitation on the size and/or number of signs that may be used to advertise a roadside stand is unreasonable depends upon the location of the stand and the type of produce sold. A farmer who is located on a principally traveled road probably will not need as many signs as one who is located on a less traveled road and may need directional signs to direct the public to their stand. The size of a sign needed may depend on whether the farmer needs to advertise the availability of several different types of produce or just one or two products.

C. Product Origin:

Some farmers import produce from other farms to sell at their stands to increase the diversity of products offered or to bridge periods of low supply of commodities produced on-farm. Product diversity may attract potential customers to a roadside stand or farm market. The Department believes the sale of some agricultural products grown off the farm should be allowed, but has not established a percentage of on-farm versus off-farm products for that purpose. The Department considers the facts of a particular case in making a determination whether a local law is unreasonably restrictive, but generally would view requiring a predominance of on-farm products as reasonable. The needs of “start-up” farm operations should also be considered. These farms often start out selling a large percentage of agricultural products grown off the farm in order to develop a customer base and maintain income while their farms are growing. If a percentage of on-farm products were required by a locality, allowing such farms a reasonable period of time to meet the percentage would be reasonable.

The Department considers agricultural commodities produced “on-farm” to include any products that may have been produced by a farmer on their “farm operation,” which could include a number of parcels owned or leased by that farmer throughout a town, county, or the State. The Department considers all such land, when it is located in a State certified agricultural district, as part of the farm operation.

#### D. On-farm preparation of processed foods:

Some of the larger farm markets may have facilities for the on-site preparation of processed foods (e.g. a kitchen, bakeshop, etc.), as well as facilities for consumption of foods (e.g., a café). The Department considers these practices as part of the farm operation as long as the products that are prepared are composed primarily of ingredients produced on the farm. It would not be unreasonable to have a farmer provide the municipality with proof that their facilities are in compliance with local Health Department and/or Federal, State or local law requirements.

#### E. Ag-tourism/recreational activities:

Many farm markets offer some form of on-farm recreational activity such as hayrides, a petting zoo, or a cornfield maze. These activities are often an important component of farm markets since they are a useful tool to attract customers. If it can be shown, on a case by case basis, that an activity will "...*contribute* to the production, preparation and marketing of crops, livestock, or livestock products..." [AML §301(11), emphasis added] it may be considered by the Department to be part of the farm operation. However, the activity, e.g., hayrides, a petting zoo, or a cornfield maze, must be used as part of the direct marketing strategy of the farm operation and the primary purpose of the activity must be to sell the farm's products/services, not to serve as a recreational use of the land. Crops, livestock or livestock products must be grown or raised and sold through direct marketing to the public at the time the activity is in use since these activities are designed to attract potential customers to the property so they may purchase crops, livestock or livestock products.<sup>3</sup>

Similarly, the Department has concluded that on-farm special events, such as harvest festivals, help market the farm operation's crops, livestock and livestock products. These activities, as well as on-farm recreational activities, are evaluated on a case-by-case basis to determine whether they are protected as part of the farm operation. The Department interprets AML §301(11) to include such activities as part of a farm operation under certain conditions. In cases where a farm is charging admission, facility rental and/or vendor fees for such activities or for the use of its facilities, the annual sales of the farm's crops, livestock and livestock products as a result of such activities must exceed the admission, facility rental and/or vendor fees charged, less the farm's actual cost to offer the activity/hold the event, so that the primary purpose of the activities is to sell the farm's agricultural commodities and not to gain admission fees or rental income. **Farmers must keep sufficient records to prove that this requirement is met.**

In cases where the farm operation offers a recreational activity or holds a special event, including charitable events, as part of its overall marketing strategy, the event is open to

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<sup>3</sup> Horse boarding services would be marketed for a "commercial horse boarding operation"; woodland products for a "timber operation"; and "compost, mulch or other biomass crops" for farms removing excess agricultural waste. This guidance document applies to these services/products as well as to "crops, livestock and livestock products."

the general public, the farm's agricultural products/services are sold at the event and no admission, facility rental and/or vendor fees<sup>4</sup> are involved, these activities are part of the farm operation and an evaluation of fees versus farm product sales would be unnecessary. The primary purpose of the events must still be to market the farm's agricultural commodities and the events must be sufficiently related to the farm operation.

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<sup>4</sup> Admission fees or minimum donations which are donated to a charity are, of course, not subject to this condition. Further, the fact that admission fees or all, or a portion of sales, from the event are donated to a charity does not mean that the primary purpose is not to market the farm's agricultural products. The Department evaluates all AML §305-a matters on a case-by-case basis. Therefore, if necessary, the Department would examine the specific event(s) to determine whether it is part of the farm operation.