

TOWN OF HORNBY
LOCAL LAW NO. 2 FOR THE YEAR 2011

A local law establishing the Right-to-Farm law of the Town of Hornby

Be it enacted by the Hornby Town Board as follows:

RIGHT-TO-FARM LAW OF THE TOWN OF HORNBY

Table of Contents

Section 1	Title
Section 2	Declaration of Policy and Purpose
Section 3	Definitions
Section 4	Right to Farm
Section 5	Nuisance
Section 6	Interference Prohibited
Section 7	Civil Enforcement
Section 8	Alternative Resolution of Disputes: Voluntary Mediation Program
Section 9	Notice to Prospective Neighbors/Notice of Farm Use
Section 10	Conflict Clause
Section 11	Severability
Section 12	Effective Date

Section 1: Title

This Local Law shall be known as the “Right to Farm Law for the Town of Hornby.”

Section 2: Declaration of Policy and Purpose

The Town Board of the Town of Hornby recognizes farming is an essential enterprise and an important industry that enhances the economic base, natural environment, and quality of life in the Town of Hornby. The Town Board further declares that it shall be the policy of the Town to encourage agriculture and foster an understanding by all of the

residents of the necessary day-to-day operations involved in farming so as to encourage cooperation with these practices.

It is the general purpose and intent of this law to support the Town's Comprehensive Plan; to maintain and preserve the rural traditions and character of the Town; to permit the continuation of agricultural practices; to protect the existence and operation of farms; to encourage the initiation and expansion of farms and agri-businesses; 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 Hornby, it is necessary to limit the circumstances under which farming may be deemed to be a nuisance and to allow sound agricultural practices inherent to and necessary for the business of farming, which do not threaten public health and/or safety, to proceed and be undertaken free of unreasonable interference and restrictions.

The Hornby Town Board, in an effort to promote and foster a harmonious relationship between the residents of the Town of Hornby, and to conserve, protect and encourage the development and improvement of agricultural land for the production of food and other products, hereby also declares that it shall be the policy of the Town of Hornby to provide reasonable notice to prospective landowners that farming activities may occur on neighboring lands.

This law will apply to all farmland within the boundaries of the Town of Hornby used for agriculture as currently defined in Subdivision 4, Section 301, Article 25AA of the State Agriculture and Markets Law.

Section 3: Definitions

Unless specifically defined below, words or phrases used in the Local Law shall be interpreted to as to give them the meaning they have in common usage and to give this Local Law its most reasonable and effective application.

As used in this Local Law the following terms shall have the meaning indicated.

Farmland: shall mean land used in agricultural production, as defined in Section 301 (4) of Article 25AA of the State Agriculture and Markets Law.

Farmer: shall mean any person, organization, entity, association, limited liability company, or corporation engaged in the business of agriculture, whether for profit or otherwise, including the cultivation of land, the raising of crops, or the raising of livestock as defined in Section 301(2) of the Article 25AA of the State Agriculture and Markets Law.

Agricultural products: shall mean those products as defined in Section 301(2) of the Article 25AA of the State Agriculture and Markets Law, including, but not limited to:

- a. Field crops including corn, wheat, oats, rye, barley, buckwheat, 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. Horticulture specialties, including nursery stock, ornamental shrubs, ornamental trees, and flowers.
- e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, rarities such as ostriches and emus, farmed deer, farmed buffalo, fur bearing animals, wool bearing animals such as alpacas and llamas, milk, eggs and furs.
- f. Maple sap.
- g. Christmas trees derived from managed Christmas tree operations whether dug for transplanting or cut from the stump.
- h. Aquaculture products, including fish, fish products, water plants and shellfish.
- i. Short rotation woody crops raised for bio-energy.
- j. Woodland products including logs, lumber, posts, and firewood.
- k. Apiary products including honey, beeswax, royal jelly, bee pollen, propolis, package bees, nucs and queens.

Sound agricultural practices: shall mean the practices necessary for the on-farm production, preparation, and marketing of agricultural commodities as defined and set forth in the New York State Agriculture and Markets Law, Section 308(1), as may be amended from time to time by the State of New York. Examples of such practices shall include, but not be limited to, operation of farm equipment, proper use of agricultural chemicals, the construction and use of farm structures, manure application, and other crop production methods. Accepted sound agricultural practices include, but are not limited to, all agricultural practices that are:

- a. Reasonable and necessary to the particular farm or farm operation.
- b. Conducted in a manner that is not negligent or reckless.
- c. Conducted in conformity with all state and federal laws and regulations.
- d. Conducted in a manner that does not constitute a threat to the general public's health and safety.
- e. Conducted in a manner which does not unreasonably obstruct the free passage of use of navigable waters, or public roadways.

Farm operation: shall be as defined in Section 301(11) in the State Agriculture and Markets Law.

Nothing herein shall be construed to broaden or otherwise redefine the terms (1) farm; (2) farm operation; (3) farming; (4) livestock; (5) livestock products; and/or (6) sound agricultural practices, to include dogs or cats thereunder or to otherwise provide protection to on-farm dog or cat breeding.

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 failure to follow sound agricultural purposes, as outlined in this section.

In the event of any discrepancies in interpretation, or in the event that a definition is missing or deemed incomplete, or is the cause of confusion within this section of the Town of Hornby Right to Farm Law, the definitions listed in Section 301 of the Article 25AA of the State Agriculture and Markets Law will take precedence.

Section 4: Right to Farm

For the purpose of the Town of Hornby Right to Farm Law, this law encompasses any land in an agricultural district created pursuant to Section 303 of the New York State Agriculture and Markets Law, or land used in agricultural production subject to an agricultural assessment pursuant to Section 306 of the New York State Agriculture and Markets Law.

A farmer, as well as those employed, retained, and otherwise authorized to act on behalf of a farmer, may lawfully engage in sound agricultural practices with the Town of Hornby at all times and in all such locations as are reasonable necessary to conduct the business of agriculture. For any sound agricultural practice, in determining the reasonableness of time, place and methodology of such practices, 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.

Section 5: Nuisance

No agricultural practice or associated activity, conducted or maintained on a sound basis, in a manner consistent with management practices, such as those recommended by State and Federal agencies in conjunction with educational programs for farmers, or other agricultural practice herein and hereafter referred to as the accepted custom and standard in the agricultural industry shall be considered a public or private nuisance.

Section 6: Interference Prohibited

No person, group, entity, association, partnership, or corporation shall engage in any conduct of act in any manner so as to unreasonably, intentionally, knowingly, and/or deliberately interfere with, prevent, or in any way deter the practice of farming with the Town of Hornby. No persons shall maintain a frivolous lawsuit for the within purposes.

Section 7: Civil Enforcement

An action to restrain or enjoin any violation of this Local Law may be brought in a court of competent jurisdiction by any aggrieved person and/or the Town of Hornby.

Section 8: Alternative Resolution of Disputes: Voluntary Mediation Program

Should any dispute arise regarding any agricultural operation, which cannot be settled by direct negotiation between the parties involved, the parties may by mutual agreement submit the matter to the committee as a request for mediation, to attempt a resolution of the matter prior to, or alternatively to the filing of any court action or submission of the dispute to the Commissioner of Agriculture and Markets. In the event that a controversy arises, one of the direct participants involved in the matter shall submit a notice of dispute to the Town Clerk in writing within thirty (30) days of either: a) the last date of the particular occurrence giving rise to the controversy or b) the date the party became aware of the occurrence that requires action by the committee. The Town Clerk shall notify the Town Board, that a dispute has been filed.

The Town Board should proceed to form a committee which shall be composed of three (3) members, one (1) person selected from the County Agricultural and Farmlands Protection Board, one (1) Town of Hornby resident actively participating in a farm operation and one (1) Town of Hornby resident not associated with a farm operation. All committee members to be selected by the Town Board.

The committee shall schedule mediation at the earliest time convenient to the parties seeking mediation and the committee, and in any event within sixty (60) days from the receipt of a request for mediation. Upon the conclusion of such mediation the committee shall reduce the results of same to writing, shall file the same with the Town Clerk, and provide copies of same to the parties to mediation within fourteen (14) day of such conclusion.

The time limits provided in this section for action by the committee may be extended upon the written stipulation of all parties of the dispute.

The effectiveness of the mediation program offered by the committee is dependent upon direct, full, frank conversations and presentation of all pertinent facts concerning the dispute under the guidance of the mediators. The parties are encouraged in the exchange of information concerning the controversy, and each party shall have an opportunity to present what each considers to be the pertinent facts. Inasmuch as mediation dispenses with formal rules of procedure and rules of evidence, direct participation by the disputants, without the intervention of counsel is strongly encouraged; but the right of any party to representation, at his or her option and expense, shall not be impaired. Any party electing to have counsel at the mediation shall notify the committee and the other party at least thirty (30) days prior to the mediation. Participation in mediation is a matter in the discretion of each party, and no party shall be compelled to participate in mediation when he or she has elected not to have counsel and opposite party is represented by counsel.

To encourage the use of voluntary, local mediation, the parties requesting mediation shall stipulate, in writing, that the statements made in mediation shall be deemed to be in the nature of settlement discussions, and that such statements and any agreement reached in mediation, shall not be used for evidentiary purposes in any other action or proceeding.

The party responsible for filing a dispute with the dispute resolution committee shall be responsible for the payment of an established filing fee determined and promulgated by the Town Board. Each party is responsible for its own attorney's fees, should attorneys be retained.

Section 9: Notice to Prospective Neighbors/Notice of Farm Use

In order to promote harmony between farmers and their neighbors, the Town requires land holders and/or their agents and assigns to comply with Section 301 of Article 25AA of the State Agriculture and Markets Law and provide notice to prospective purchasers and occupants as follows:

“It is the policy of this State and this Town to conserve, protect, and encourage the development and improvement of agricultural land for the production of food, and other products and also for its natural and ecological value. This notice is to inform prospective residents that farming activities occur within the Town. Such farming activities may include, but are not limited to, activities that cause noise, dust, smoke and odors.”

This notice shall be included in building permits and on plats of subdivision submitted for approval to the Town Planning Board pursuant to the Town Zoning Ordinance Article 17.

Section 10: Conflict Clause

Insofar as the provisions of this Local Law are inconsistent with the provisions of any other local law, rule or ordinance, the provisions of this Local Law shall supersede those found inconsistent and prevail.

Section 11: Severability

If any section or provision 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.

Section 12: Effective Date

This Local Law shall take effect immediately upon filing with the Secretary of State, pursuant to Section 27 of the Municipal Home Rule Law. Further, this Local Law shall be filed with the New York State Department of Agriculture and Markets.