

TOWN OF FORT EDWARD
LOCAL LAW NO. 1 OF 1992

A Local Law known as the
RIGHT TO FARM IN THE TOWN OF FORT EDWARD

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TOWN OF FORT EDWARD
Local Law No. 2 of 1992

A Local Law known as the
RIGHT OF FARM OF THE TOWN OF FORT EDWARD

Be it enacted by the Town Board of the Town of Fort Edward as follows:

SECTION 1 TITLE:

This local law shall be known as the Right to Farm of the Town of Fort Edward.

SECTION 2 DECLARATION OF POLICY AND PURPOSE:

It is the general purpose and intent of this Local Law to maintain and preserve the rural tradition and character of the Town of Fort Edward, to permit the continuation of the business of farming within the Town, to protect the existence and operation of farming businesses, consistent with the declared policy of the State of New York in Article XIV of the State Constitution and further enumerated in the Agriculture and Markets Law, Section 25AA and within this Local Law.

Town Board finds, declares, and determines that in order to maintain agriculture as the Town's and New York State's largest industry, farmers must be afforded protection allowing them the right to farm.

Since World War II, there has been a trend toward urban expansion into suburban and rural areas. Increased populations in rural areas often change the character of the community. Farming near other land uses may generate neighborhood conflicts. Generally accepted farming practices may aggravate those who do not understand agricultural methods. Neighbors may complain about odors, noise, dust, vibration, and the presence of slow-moving vehicles. In some cases, residents may file a nuisance suit against agricultural practices.

It shall be the declared policy of the Town of Fort Edward to ensure farmers of the right to conduct generally accepted farm practices in order to remain viable solvent.

In recognition of the fact that there are many practices and activities which are inherent to and necessary for the business of farming, it is the specific purpose and intent of this Local Law to attain the aforementioned goals and objectives by providing that such practices and activities may proceed and be undertaken free of unreasonable and unwarranted interference of restrictions. The Town Board further finds that the continued maintenance and growth of farming are essential elements in the economic stability of the Town of Fort Edward and so declares that agriculture is one of the preferred and dominate land use. An additional purpose is to promote a good neighbor policy between agricultural and nonagricultural residents of the Town and encourage farmers to be

considerate, responsible and careful with their practices so as to minimize the effect on others as much as possible.

It is the general purpose and intent of this Local Law to maintain and preserve the rural tradition and character of the Town of Fort Edward, to permit the continuation of the business of farming within the Town, to protect the existence and operation of established farms, and to encourage the initiation and expansion of farming businesses.

Currently, the Town of Fort Edward is located within the Agricultural Districts of Washington County and is committed to the continued practice of preserving as well as expanding Agricultural Districts and in general farming within the Town of Fort Edward, within or without Agricultural Districts.

SECTION 3 DEFINITIONS:

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

(b) As used in this Local Law, the following terms shall have the meaning indicated:

AGRICULTURAL DISTRICT -

FARMER - Any person, organization, entity, association, partnership or corporation engaged in the business of agriculture, whether for profit or otherwise, including but not limited to, the cultivation of land, the raising of crops, the raising of livestock, poultry, fur bearing animals or fish, the harvesting of timber, or the practicing of horticulture or apiculture.

FARMING PRACTICES - Any legal activity engaged in by a farmer in connection with the furtherance of the business of farming and shall include but not be limited to 1) the collection, transportation, distribution and storage of animal and plant wastes, 2) the storage, transportation and use of equipment for tillage, planting and harvesting, 3) the transportation, storage and use of legally permitted fertilizers and limes, insecticides, herbicides and pesticides in accordance with the manufacturer's instructions, and 4) the construction of farm structures, fences and facilities a permitted by local and state building code and regulations.

FARM PRODUCT - Those plants and animals useful to human beings and includes, but is not limited to, forages and sod crops, grains and seed crops, dairy and dairy products, poultry and poultry products, livestock, including breeding and grazing, fruits, vegetables, flowers, seeds, grasses, trees, fish, apiaries, equine or other similar products, or any other products which incorporate the use of food, feed, fiber, or fur.

GENERALLY ACCEPTED AGRICULTURAL BEST MANAGEMENT PRACTICES - Those practices, including but not limited to, operation of farm

equipment; production, processing and marketing for farm products; proper use of legal agricultural chemicals and other crop protection methods; and construction and use of farm structures, including such structures used for agricultural labor, as defined by the Commissioner of Agriculture and Markets after consultation and approval by the State Advisory Council on Agriculture. The Commissioner and the Council shall give due consideration to existing New York State Department of Agriculture and Markets information and written recommendations from the New York State College of Agriculture experiment station in cooperation with the United States Department of Agriculture Soil and Conservation Service and the Agricultural Stabilization and Conservation Service, the Department of Environmental Conservation, and other professional and industry organizations. Such practices may be defined on a case-by-case basis.

PERSON - An individual, corporation, partnership, association, or other legal entity.

TOWN - The Town of Fort Edward

SECTION 4 **RIGHT TO FARM:**

Farmers, as well as those employed or otherwise authorized to act on behalf of farmers, may lawfully engage in farming practices within the Town of Fort Edward at any and all such times and all locations as are reasonably necessary to conduct the business of farming.

For any activity or operation, in determining the reasonableness of the time, place and methodology of such operation, due weight and consideration shall be given to both traditional customs and procedures in the farming industry as well as to advance resulting from increased knowledge and improved technologies.

SECTION 5 **INTERFERENCE PROHIBITED**

The Town of Fort Edward, County of Washington, State of New York, and the U.S. Government shall not exercise any of its powers to enact local laws or ordinances within the Town of Fort Edward, both within Agricultural Districts and without Agricultural Districts, in a manner which would unreasonably restrict or regulate (farm structures or farming practices) generally accepted agricultural best management practice as defined by the commissioner after consultation and approval by the State Advisory Council on Agriculture and the State Soil and Water Conservation Committee in contravention of the purposes of the act unless such restrictions of regulations bear a direct relationship to the public health or safety.

No person, group, entity, association, partnership or corporation will engage in any conduct or 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 within the Town of Fort Edward, such actions may constitute an offence, punishable by law with a fine of not less than twenty-five

dollars (\$25.00) nor more than one hundred fifty dollars (\$150.00) for each day's violation or continuance of violation.

In addition, an action to restrain or enjoin any violation of the Local Law may be brought in a court of competent jurisdiction by any person and/or the Town of Fort Edward aggrieved by such violation.

A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural best management practices according to policy as determined by the Department of Agriculture and Markets. Generally accepted by the State Advisory Council on Agriculture and the State Soil and Water Conservation Committee and revised as considered necessary by the Department of Agriculture and Markets with the approval of the Advisory Council on Agriculture and the State Soil and Water Conservation Committee.

SECTION 6 CONVEYANCE OF ADJOINING PROPERTY NOTICE

Conveyance of real property adjoining lands eligible to receive an agricultural assessment within agricultural districts.

1. Prior to entering into a contractual agreement or as part of the contractual agreement purchase and sales agreement for the conveyance of any real property adjoining lands eligible to receive an agricultural assessment pursuant to (Article 25AA of the Agriculture and Markets Law) the prospective grantor shall deliver to the prospective grantee an affidavit which states the following:

"THIS PROPERTY IS ADJACENT TO PROPERTY USED FOR AGRICULTURAL PRODUCTION. IT IS THE POLICY OF THE TOWN OF FORT EDWARD OF AGRICULTURAL LAND FOR THE PRODUCTION OF FOOD, AND OTHER PRODUCTS, AND ALSO FOR ITS NATURAL AND ECOLOGICAL VALUE. FARMERS RETAIN THE LEGAL RIGHT TO CONDUCT GENERALLY ACCEPTED AGRICULTURAL BEST MANAGEMENT PRACTICES REGARDING THE OPERATION OF FARM EQUIPMENT; PRODUCTION, PROCESSING AND MARKETING OF FARM PRODUCTS; PROPER USE OF LEGAL AGRICULTURAL CHEMICALS AND OTHER CROP PROTECTION METHODS; AND CONSTRUCTION AND USE OF FARM STRUCTURES. THIS NOTICE IS TO INFORM PROSPECTIVE RESIDENTS THAT THESE AGRICULTURAL ACTIVITIES MAY GENERATE TEMPORARY DUST, NOISE, ODOR, AND VIBRATION."

2. If an adjoining parcel of property is currently farmed yet outside the Agricultural District, this notification requirement is recommended but not mandatory and Paragraph 3 within this section is not applicable.

3. Notwithstanding any provision of law to the contrary, a failure to comply with the provisions of subdivision one of this section shall, at the option of the prospective grantee, render any contractual agreement between the prospective grantee and the prospective grantor relative to such lands null and void, provided that the prospective grantee declares such contractual agreement null and void prior to the actual conveyance by deed of such lands

to grantee.

SECTION 7 SUPERSESSION AND CONSTRUCTION WITH OTHER LAWS

a) It is the intent of this Local Law pursuant to the powers of Municipal Home Rule Law, General Municipal Law, Town Law supersede any Washington County Law, New York State Law, or Federal Law and its rules and regulations when in conflict with the policy and statement regarding this Right to Farm Law.

Furthermore, it is the intent of this Local Law to preempt State land use and/or Federal land use legislation, regulations and policies when said legislation and policies and regulations conflict with the purposes, intent and objectives of this Local Law; specifically NYS DEC, and the United States Park Agency it's rules and regulations.

This Local Law does not intend to preempt or supersede the Federal Flood Plain and Storm Water regulations.

(b) Pursuant to the authority provided in Section 22 of the Municipal Home Rule, provisions of the NYS Public Health Law are hereby changed and superseded by this Local Law insofar as they apply to farming practices, as defined herein, within the Town of Fort Edward.

1. Public Health Law, Section 1300-a shall not apply;
2. Public Health Law, Section 1300-c shall be changed as follows:

Notwithstanding any other provisions of law, farming practices shall not be considered a public or private nuisance, provided such farming practices are consistent with the best management practices or generally accepted farming practices which are undertaken in conformity with federal, state and local laws, ordinances, rules or regulations which do not unreasonably restrict such practices in contravention of the purposes of this Local Law or the purposes of Article 25AA of the Agriculture and Markets Law.

(b) Except as provided in subsection "a", above, this Local Law and the proscriptions set forth herein are in addition to and not in lieu of all other applicable laws, rules and regulations which are therefore continued in full force and effect.

SECTION 8 REQUIREMENTS FOR INCLUSION WITHIN SUBDIVISION MOBILE HOME PARKS AND SITE PLAN PROJECTS

The Town of Fort Edward will require the Fort Edward Planning Board to record the following notation on all plats/mylars on any subdivision project (minor or major), mobile home park and site plan projects approved by the Planning Board within the Town of Fort Edward. Furthermore, the Town of Fort Edward will require the grantor within approved subdivision, approved site plan, approved mobile home park to incorporate this language in any subsequent conveyances by deed or other means.

"THIS PROPERTY IS WITHIN THE TOWN OF FORT EDWARD. IT IS THE POLICY OF THE TOWN TO CONSERVE, PROTECT AND ENCOURAGE THE DEVELOPMENT AND IMPROVEMENT OF FARM OPERATIONS WITHIN OUR BORDERS FOR THE PRODUCTION OF FOOD AND OTHER PRODUCTS AND ONE SHOULD BE AWARE OF THE INHERENT POTENTIAL CONDITIONS ASSOCIATED WITH SUCH PURCHASES OR RESIDENCE."

"SUCH CONDITIONS MAY INCLUDE BUT ARE NOT LIMITED TO, NOISE, ODORS, FUMES, DUST, SMOKE, INSECTS, OPERATION OF MACHINERY DURING ANY HOUR, DAY OR NIGHT."

"STORAGE AND DISPOSAL OF PLANT AND ANIMAL WASTE PRODUCTS AND THE APPLICATION OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES BY GROUND OR AERIAL SPRAYING OR OTHER METHODS. OCCUPYING LAND WITHIN THE TOWN OF FORT EDWARD MEANS THAT ONE SHOULD EXPECT AND ACCEPT SUCH CONDITIONS AS A NORMAL AND NECESSARY ASPECT OF LIVING IN SUCH AN AREA."

SECTION 9 SEVERABILITY CLAUSE

If any part of this Local Law if for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this Local Law. The Town Board of the Town of Fort Edward 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 those sections, subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

SECTION 10 RESOLUTION OF DISPUTES BY GRIEVANCE COMMITTEE

Any issue or controversy that arises which cannot be resolved directly between the parties involved and is not addressed by other laws or regulations, may be promptly and inexpensively resolved by referral to the local Grievance Committee.

(a) The Grievance Committee shall be appointed by the Town Board and will consist of five (5) members. At least three (3) of these members shall be residents of the Town of Fort Edward, two of the three will be from an agricultural related business and the other from a nonagricultural related background. Selection of the two members may be at-large from within Washington County, such as a County Extension Agent or other county official. The original appointments shall have terms of two for one year, two for two years and one for three years. Thereafter members will be appointed annually for a three year term.

(b) Any controversy between the parties shall be submitted to the Grievance Committee within thirty (30) days of the date of the occurrence of the particular activity giving rise to the controversy or of the date a party becomes aware of the occurrence.

(c) The parties recognize the value and importance of full discussion and complete presentation and agreement concerning all pertinent facts in order to eliminate any misunderstandings. The parties will cooperate in the exchange of pertinent information concerning the controversy.

(d) The controversy shall be presented to the Committee by written request of one of the parties within the time limits specified. Thereafter the Committee may investigate the facts of the controversy but must, within thirty (30) days, hold a meeting to consider the merits of the matter and within ten (10) days of the meeting render a written decision to the parties. At the time of the meeting both parties shall have the opportunity to present what each considers to be pertinent facts.

(e) The decision of the Committee shall not be binding. If one of the parties is not satisfied with the Committee's decision, upon agreement of both parties, the matter may be submitted to the Town Board according to the procedures set forth in subsection "f" below.

(f) Town Board Procedures:

1. The controversy between the parties shall be submitted to the Town Board upon written agreement of both parties.

2. The Town Board shall review the controversy with a report submitted from the proceedings of the Grievance Committee. Within twenty (20) days of the written request the Town Board shall render a written decision to the parties.

SECTION 11 EFFECTIVE DATE

This Local Law shall be effective immediately upon filing pursuant to Section 27 of the Municipal Home Rule Law.