

TOWN OF GILBOA
LOCAL LAW NO. 1 - 2002

RIGHT OF FARM LAW

BE IT ENACTED by the Town Board of the Town of Gilboa as follows:

Section 1. Legislative Intent and Purpose

The Town Board recognizes farming is an essential enterprise and an important industry which enhances the economic base, natural environment and quality of life in the Town of Gilboa. The Town Board further declares that it shall be the policy of this Town to encourage agriculture and foster understanding by all residents of the necessary day to day operations involved in farming so as to encourage cooperation with those practices.

It is the general purpose and intent of this law 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 agribusinesses, 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 Gilboa, it is necessary to limit the circumstances under which farming may be deemed to be nuisance and to allow agricultural practices inherent to and necessary for the business of farming to proceed and be undertaken free of unreasonable and unwarranted interference or restriction.

Section 2. Definitions

1. "Farmland" shall mean land used in agricultural production, as defined in subdivision four of section 301 of Article 25AA of the State Agriculture and Markets Law.
2. "Farmer" shall mean any person, organization, entity, association, partnership, 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.
3. "Agricultural products" shall mean those products as defined in section 301(2) of Article 25AA of the State Agriculture and Markets Law, including but not limited to:
 - a. Field crops, including corn, wheat, rye, barley, 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. Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
 - e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, llamas, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, milk and milk products, eggs, furs, and poultry products.
 - f. Maple sap and sugar products.
 - g. Christmas trees derived from a managed Christmas tree operation 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 bioenergy.
 - j. Production and sale of woodland products, including but not limited to logs, lumber, posts and firewood.
4. "Agricultural practices" shall mean those practices necessary for the on-farm production, preparation and marketing of agricultural commodities. Examples of such practices include, but are not limited to, operation of farm equipment, proper use of agricultural chemicals and other crop production methods, and construction and use of farm structures.
5. "Farm operation" shall be defined in section 301 (11) in the State Agriculture and Markets Law.

Section 3. Right-to-Farm Declaration

Farmers, as well as those employed, retained, or otherwise authorized to act on behalf of farmers, may lawfully engage in agricultural practices within this Town at all times and all such locations as are reasonably necessary to conduct the business of agriculture. For any agricultural practice, in determining the reasonableness of the time, place, and methodology of such practice, 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.

Agricultural practices conducted on farmland shall not be found to be a public or private nuisance if such agricultural practices are:

1. Reasonable and necessary to the particular farm or farm operation,
2. Conducted in a manner which is not negligent or reckless,
3. Conducted in conformity with generally accepted and sound agricultural practices,
4. Conducted in conformity with all local state, and federal laws and regulations,
5. Conducted in a manner which does not constitute a threat to public health and safety or cause injury to health or safety of any person, and
6. Conducted in a manner which does not reasonably obstruct the free passage or use of navigable waters or public roadways.

Nothing in this local law shall be construed to prohibit an aggrieved party from recovering for damages for bodily injury or wrongful death due to a failure to follow sound agricultural practice, as outlined in this section.

Section 4. Notification of Real Estate Buyers

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 310 of Article 25-AA 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 community 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 the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors." This notice shall be provided to prospective purchasers of property within an agricultural district or on property with boundaries within 500 feet of a farm operation located in an agricultural district.

A copy of this notice shall included by the seller or seller's agent as an addendum to the purchase and sale contract at the time an offer to purchase is made.

Section 5. Resolution of Disputes

1. Should any controversy arise regarding any inconveniences or discomfort occasioned by agricultural operations which cannot be settled by direct negotiation between the parties

involved, either party may submit the controversy to a dispute resolution committee as set forth below in an attempt to resolve the matter prior to the filing of any court action and prior to a request for a determination by the Commission or Agriculture and Markets about whether the practice in question is sound pursuant to Section 308 of Article 25AA of the State Agriculture and Markets Law.

2. Any controversy between the parties shall be submitted to the committee within thirty (30) days of the last date of occurrence of the particular activity giving rise to the controversy or the date the party became aware of the occurrence.
3. The committee shall be composed of three (3) members from the Town selected by the Town Board, as the need arises, including one representative from the farm community, one person from Town government and one person mutually agreed upon by both parties involved in the dispute.
4. The effectiveness of the committee as a forum for the resolution of disputes is dependent upon full discussion and complete presentation of all pertinent facts concerning the dispute in order to eliminate any misunderstandings. The parties are encouraged to cooperate in the exchange of pertinent information concerning the controversy.
5. 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 twenty-five (25) days, hold a meeting at a mutually agreed place and time to consider the merits of the matter and within five (5) days of the meeting render a written decision to the parties. At the time of the meeting, both parties shall have an opportunity to present what each consider to be pertinent facts. No party bringing a complaint to the committee for settlement or resolution may be represented by counsel unless the opposing party is also represented by counsel. The time limits provided in this subsection for action by the committee may be extended upon the written stipulation of all parties in the dispute.
6. Any reasonable costs associated with the function of the committee process shall be borne by the participants.

Section 6. Severability Clause

If any part of this local law is for any reason held to be unconstitutional or invalid, such decision shall not effect the remainder of this Local Law. The Town 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 these sections, subsections, sentences, clauses or phrases may be declared

unconstitutional or invalid.

Section 7. Precedence

This Local Law and its provisions are in addition to all other applicable laws, rules and regulations. This Local Law supersedes all prior Right to Farm Laws enacted by the Town of Gilboa.

Section 8. Effective Date

This Local Law shall be effective immediately upon filing with the New York Secretary of State.

Enacted: February 4, 2002, by the Town Board of the Town of Gilboa.

(SEAL)

-*Mary C Wyckoff*

Town Clerk