

Town of Berkshire
Right to Farm Local Law

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Town of Berkshire “Right To Farm” Local Law

SECTION I – Purpose and Intent

Be it enacted by the Town Board of The **Town of Berkshire**, in the County of Tioga, to declare its intent to protect the welfare of our citizens, and support our farming community by standing strong for the “Right to Farm” by administering and enforcing the New York State Department of Agriculture and Markets Laws and as described in this local law:

The Town Board recognizes that farming is an essential enterprise and an important industry that enhances the economic base, natural environment, and quality of life in the Town of **Berkshire, New York**. The Board, therefore, declares that this Town encourages its agriculture and urges understanding of and cooperation with the necessary day-to-day operations involved in farming.

It is the general purpose and intent of this law to maintain and preserve the rural traditions and character of the Town by:

- permitting the continuation of sound agricultural practices;
- protecting the existence and operation of farms;
- encouraging the initiation and expansion of farms and agribusiness;
- protecting farmland against encroachment for nonagricultural practices;
- promoting new ways to resolve controversies concerning agricultural practices and farming operations.

In order to maintain a viable farming economy in the **Town of Berkshire** 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 to proceed and be undertaken free of unreasonable and unwarranted interference or undue restrictions by any town legislative actions.

SECTION II – Definitions

“Agribusiness” is the farming and harvesting of agricultural products. It can include livestock production, forestry, horticulture, agro-processing, and agro-trade. The main components of agribusiness include Growers (farmers or ranchers), Processors (food manufacturers or food processing companies), and Marketers (distributors or retailers). The primary goal of agribusiness is to maximize profit while satisfying the needs of consumers for products related to natural resources such as biotechnology, farms, food, forestry, fisheries, fuel, and fiber.

“Agriculture” is the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products.

“Agriculture Districts” is viable agricultural land of at least 250 acres that is separately designated to encourage the continued use of farmland for agricultural production. Enrollment of viable agricultural lands into a certified Agricultural District provides protection of accepted agricultural practices. It reduces property taxes for farmers by allowing assessment of farmland based on its agricultural production value rather than its development value. Reassessment will be done every 8 years.

"Agricultural Practices" shall mean those sound 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 protection methods, manure application, and construction and use of farm structures and fences.

"Agricultural Products" shall mean production processes that are used or have commodities from the operations of a farm. (See section III for examples.)

"Farmer" shall include, but not limited to, 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.

"Farming" is to describe the lifestyle and work of people whose jobs are in the agriculture industry.

"Farmland" shall mean land used in agricultural production as defined in the State Agricultural and Markets Law under definitions and referred to as "Land Used in Agricultural Production."

Land Used in Agricultural Production shall mean land used in agricultural production, not less than seven acres of land used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of ten thousand dollars or more; or, not less than seven acres of land used in the preceding two years to support a commercial horse boarding operation or a commercial equine operation with annual gross receipts of ten thousand dollars or more. Land used in agricultural production shall not include land or portions thereof used for processing or retail merchandising of such crops, livestock, or livestock products.

"Farm Operation" shall mean 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, a timber operation, compost, mulch or other biomass crops, and a commercial equine operation. 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.

"Farm woodland" includes land used for production and sale of woodland products, including, but not limited to logs, lumber, posts, and firewood.

SECTION III – Administration

The Right to Farm is declared by the Town of Berkshire Town Board that gives Farmers, as well as those employed, retained, or otherwise authorized to act on behalf of farmers, to lawfully engage in sound agricultural practices within the **Town of Berkshire** at all times, and all such locations, as are reasonably necessary to conduct the business of agriculture. The county designate properties that qualify for farm operations and agricultural practices as farmland and identified separately as agricultural districts. These properties are protected from encroachment by procedures set aside to review land use in boundaries bordering such land.

Farm operations may involve many agricultural products as defined in 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, farmed deer, farmed buffalo, fur bearing animals, milk, eggs, and furs;
- f. Woodland products, including maple sap, logs, lumber, posts, and firewood;
- 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. Woody biomass, which means short rotation woody crops raised for bioenergy, and shall not include farm woodland;
- j. Apiary products, including honey, beeswax, royal jelly, bee pollen, propolis, package bees, nucs and queens. For the purposes of this paragraph, "nucs" shall mean small honey bee colonies created from larger colonies including the nuc box, which is a smaller version of a beehive, designed to hold up to five frames from an existing colony;
- k. Actively managed log-grown woodland mushrooms;
- l. Industrial hemp.

The Town encourages cooperation between farmers and their neighbors. Most farm operations are sensitive to things like weather conditions and times of the year. Farmers should be sensitive to the rest of the community and consider the impact of actions such as traffic, noise, odors, livestock control. In turn, the community must be aware of challenges the farming community has in their operations and not be unreasonable in their expectations. For concerns about the reasonableness of the time, place, and method of an agricultural practice, the Town and its residents shall consider both the traditional practices of that farming industry, as well as current best practices resulting from increased knowledge and improved technologies.

Sound 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 a particular farm or farm operation;
2. Conducted in a manner that 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 that does not unreasonably obstruct the free passage or use of navigable waters or public roadways.

Special Note: 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 practices, as outlined in this section.

In order to promote harmony between farmers and their neighbors, the Town requires land holders and/or their agents to comply with 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 disclosure 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."

A copy of this notice shall be included as an addendum to the purchase and sale contract at the time an offer to purchase is made.

SECTION IV – Resolution of Disputes

1. Should any controversy arise regarding inconveniences or disturbances occasioned by agricultural operations, which cannot be settled by direct negotiation between the parties involved, either party may submit a written statement to the Berkshire Town Board explaining the controversy and ask for support in resolving the issues prior to legal actions.
2. The Town Board will refer each party to the "Right to Farm" local law and set up a meeting with the involved parties to try and reach a settlement. The parties will present all pertinent facts regarding the case and cooperate fully.
3. The Town may work with Agricultural experts and/or Cooperative Extension for additional support.
4. If the parties cannot agree on a means to prevent further actions, the controversy shall be referred to the NYS Commissioner of Agriculture and Markets for determination about whether the practice in question is a sound agricultural practice pursuant to Section 308 of Article 25AA of the New York State Agriculture and Markets Law.

SECTION V – References

New York State Department of Agriculture and Markets Chapter 69 - <https://www.nysenate.gov/legislation/laws/AGM/-CH69>

Chapter 69-Article 25AA

SECTION VI – Severability

Should any section or portion of this Local Law be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Local Law which shall remain in full force and effect.

SECTION VII – Effective Date

This Local Law shall be effective immediately upon filing with the New York State Department of State pursuant to Section 27 of Municipal Home Rule Law.