

# Local Laws and Agricultural Districts: Guidance for Local Governments and Farmers

Article XIV, Section 4 of the New York State Constitution, added in 1970, provides that the policy of the State shall be to encourage the development and improvement of its agricultural lands for the production of food and other agricultural products and states that the legislature, in implementing this policy, shall include adequate provision for the protection of agricultural lands. Shortly thereafter, in 1971, the Agricultural Districts Law, Agriculture and Markets Law (AML) Article 25-AA, was enacted implementing that policy. Section 305-a of Article 25-AA contains the following mandate:

“Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article [*Article 25-AA of the Agriculture and Markets Law*], and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened.”

For purposes of AML §305-a, subd. 1, “Farm operation” means: “...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’ as defined in subdivision thirteen of this section, ‘timber operation’ as defined in subdivision fourteen of this section, ‘compost, mulch or other biomass crops’ as defined in subdivision sixteen of this section and ‘commercial equine operation’ as defined in subdivision seventeen of this section. 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.”

The brochure *Local Laws and Agricultural Districts: How Do They Relate?* was prepared by the Department to assist municipalities in drafting and administering local laws and ordinances which may affect farming in an agricultural district. The brochure also offers guidance to farmers on the application of AML §305-a. Local governments and farmers are encouraged to review that document for information on the procedure for requesting Department assistance as well as general discussion of the law. The following guidelines provide more details on the application of AML §305-a to several common agricultural topics. However, they should not be substituted for legal advice from a municipality’s attorney. The Department hopes that this information will assist local governments and farmers in resolving issues that may impact farm operations within their communities.<sup>1</sup>

## GENERAL INFORMATION

In examining whether a local law is unreasonably restrictive, the Department of Agriculture and Markets considers several factors, including, but not limited to: whether the requirements adversely affect the farm operator’s ability to manage the farm operation effectively and efficiently; whether the requirements restrict production options which could affect the economic viability of the farm; whether the requirements will cause a lengthy delay in the construction of a farm building or implementation of a practice; the cost of compliance for the farm operation

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<sup>1</sup> Local laws and their administration are reviewed on a case-by-case basis. These guidance documents are intended to inform local governments and farmers generally of how the Department interprets and applies AML §305-a. The facts and circumstances of each particular matter are addressed uniformly and in accordance with applicable statutory requirements.

affected; and the availability of less onerous means to achieve the locality's objective. The Department also takes into account any relevant standards established under State law and regulations. Where local standards have exceeded the State standards, the Department has, in many instances, found the local laws to be unreasonably restrictive. Each law, however, is examined on its own merits. If a local government believes that local conditions warrant standards that differ from the State's, the Department considers those conditions in evaluating whether the local standards are unreasonably restrictive.

The Department recognizes and encourages the efforts of some local governments to comply with AML §305-a by providing a Right to Farm exemption, for example, stating that "[n]othing contained herein shall be deemed to limit the right to farm as set forth in Article 25-AA of the NYS Agriculture & Markets Law...." Such local laws often further provide that no "sound agricultural practice" as defined in Article 25-AA shall be deemed prohibited under the ordinance or subject to its permit requirements. This provision could be problematic for both the local government and farm operations. AML §308 (New York's Right to Farm law) does not define "sound agricultural practices." The Department does not make prospective judgments on agricultural practices and has not defined what constitutes a sound agricultural practice. Section 308 requires that agricultural practices be evaluated on a case-by-case basis. Department staff review each practice, for which an opinion is requested, on its own merit and a Commissioner's Opinion only examines the condition and management of the practice in effect at the time of the review. Further, the absence of an opinion from the Commissioner does not mean that a particular practice is unsound.

Under the procedures followed by the Department in conducting sound agricultural practice reviews, generally staff consult the landowner, neighbors, State and local agencies, pertinent literature and experts in the particular field of interest. The landowner whose practice is under review generally needs to be a willing participant for the Department to fully evaluate a practice and reach a valid conclusion as to its soundness. Information regarding management of the practice and grant of access to the farm premises is usually needed from the farmer. The review process is time consuming and generally takes from six to twelve months before an opinion is issued. To require a farmer to obtain an opinion to avoid prosecution or permitting under the local law would be unduly burdensome and, generally, unreasonably restrictive.

## **AVAILABLE GUIDANCE DOCUMENTS**

1. Application to Request a Review Pursuant to Section 305-a of the AML
2. Start-up Farm Operations must also Complete and Submit this Questionnaire
3. Brochure entitled *Local Laws and Agricultural Districts: How Do They Relate?*
4. Guideline for Review of Local Laws Affecting Farm Worker Housing
5. Guideline for Review of Local Laws Affecting Nutrient Management Practices (i.e. Land Application of Animal Waste, Recognizable and Non-recognizable Food Waste, Sewage Sludge and Septage, Animal Waste Storage/Management)
6. Guideline for Review of Local Laws Affecting the Control of Farm Animals
7. Guideline for Review of Local Laws Affecting Farm Operations' Use of Wetlands
8. Guideline for Review of Local Laws Affecting Direct Farm Marketing Activities
9. Guideline for Review of Local Laws Affecting On-Farm Composting Facilities
10. Guideline for Review of Local Laws Affecting Temporary Greenhouses
11. Guideline for Review of Local Zoning and Planning Laws
12. Guideline for Review of Local Laws Affecting Commercial Horse Boarding Operations and Commercial Equine Operations
13. Guideline for Review of Local Laws Affecting Junk and Junkyards

14. Guideline for Review of Local Laws Affecting Small Wind Energy Production Facilities and Solar Devices
15. Guideline for Review of Local Laws Affecting Nursery Operations
16. Guideline for Review of Local Laws Affecting On-Farm Open Burning
17. Guideline for Review of Local Laws Affecting Farm Distilleries, Breweries and Wineries