

Guidelines for Review of Local Laws Affecting Farm Worker Housing

Farm worker housing, including mobile homes (also known as “manufactured homes”), is an integral part of numerous farm operations. Farmers often provide on-farm housing for their farm laborers to, among other things, accommodate the long workday, meet seasonal housing needs and address the shortage of nearby rental housing in rural areas. The use of manufactured or mobile homes for farm worker housing is a common farm practice. Manufactured or mobile homes provide a practical and cost effective means for farmers to meet their farm labor housing needs. The term “on-farm buildings” includes farm labor housing, including manufactured housing, used for the on-farm housing of permanent and seasonal employees, and is therefore subject to the protection of Agriculture and Markets Law (AML) §305-a.¹

Generally, in evaluating the use of farm labor housing under §305-a, the Department considers whether the housing is used for year-round and/or seasonal full-time employees and their families; is provided by the farm operator (irrespective of whether the operator owns or rents the farm for the production of agricultural products); whether the employee to be housed is engaged in the production function(s) of the farm operation and is not a partner or owner of the farm operation. The Department does not consider the primary residence of the owner or partner of the farm operation to be protected under §305-a.

The degree of regulation of farm worker housing that is considered unreasonable depends on the number of units, size of the structure(s) and the complexity of the housing to be provided. A requirement to apply for a permit is generally not unreasonable. Depending upon the size and complexity of the structure(s) to be built or the number of units to be sited on a farm, a streamlined site plan review requirement may also be reasonable (see the Department’s “Guidelines for Review of Local Zoning and Planning Laws” for a discussion on streamlined site plan review). The Department urges local governments to take into account the size, complexity and number of units of housing required by the farm operation when setting and administering such requirements. For example, the Department has not considered the need to undergo a streamlined site plan review, where more than two mobile homes are sited on the same farm complex, to be unreasonable. However, conditions placed upon the issuance of a permit and/or the cost and time involved to complete site plan review requirements may be unreasonable.

In most cases farmers should exhaust their local administrative remedies and seek, for example, certain permits, exemptions available under a local law or area variances, before the Department reviews the administration of a local law. However, an administrative requirement/process may, itself, be unreasonably restrictive. The Department evaluates the reasonableness of the specific requirement/process, as well as the substantive requirements imposed on the farm operation. Local laws that the Department has found not to be unreasonably restrictive include those which regulate the health and safety aspects of the construction of farm buildings through provisions to meet local building codes or the State Uniform Fire Prevention and Building Code (“Uniform Code”) [unless exempt from the Uniform Code under Building Code §101.2(2) and Fire Code §102.1(5)] and Health Department requirements for potable water and sewage disposal. Requirements for local building permits and certificates of occupancy to ensure that health and safety requirements are met are also generally not unreasonably restrictive.

¹ The Department’s interpretation was upheld in *Town of Lysander v. Hafner*, New York Court of Appeals, 96 N.Y.2d 558 (October 18, 2001).

Some municipalities have developed reasonable requirements to ensure that farm labor housing is used only for legitimate farm employees; is removed if it is not used for its intended purpose; and is periodically reviewed for compliance.

The following are some of the specific matters that the Department considers when reviewing a local law that affects farm worker housing:

A. Minimum Dimensions

Establishing minimum square foot dimensions and/or floor space has been determined to be unreasonably restrictive in certain instances. Many mobile homes used for farm labor housing have outside dimensions of 14 feet by 70 feet (i.e., 980 square feet). Older model manufactured housing may have lesser square foot dimensions, however. To address this concern, a municipality may elect to not establish a minimum square foot requirement for farm worker housing on a farm operation within a State certified agricultural district.

B. Lot Size

Requiring a minimum lot size exceeding 10,000 to 15,000 square feet may be unreasonably restrictive. A farmer may be unable to meet such a minimum lot size due to the configuration of the land used for production or lying fallow as part of a conservation reserve program. The need to be proximate to a water supply, sewage disposal and other utilities is also essential. Farm worker housing is usually located on the same property which supports other farm structures. Siting farm labor housing very near other farm structures, such as a barn or milking parlor, is important for ease of access and for security purposes. Presumably, minimum lot size requirements are adopted to prevent over concentration of residences and to assure an adequate area to install a properly engineered well and waste disposal system. Farm worker housing should be allowed to be sited on the same lot as other agricultural use structures and not be required to be sited on a separate, subdivided lot, as long as requirements for adequate water and sewage disposal facilities and minimum setbacks between structures are met.

C. Setbacks

Minimum setbacks from front, back and side yards have not been viewed as unreasonable unless a setback distance is unusually long. Setbacks that coincide with those required for other residential structures have, in general, been viewed by the Department as reasonable.

D. Screening

A requirement to screen farm labor housing from view has been found by the Department to be unreasonable. Screening requirements suggest that farm worker housing is, in some way, objectionable or different from other forms of residential housing that do not have to be screened. Farmers should not be required to bear the extra costs to provide screening unless screening is required to address a threat to the public health or safety or is shown to be necessary due to special local conditions.

E. Compliance with HUD Standards

A requirement that mobile homes constructed before June 1976 comply with HUD construction and safety standards may be unreasonably restrictive. Manufactured homes do not need to meet current HUD standards to be safe and fit for human occupancy. The adoption of the federal standards does not mean that manufactured homes constructed prior to their promulgation (June 1976) are unsafe or unfit for human occupancy, any more than a conventional unit built prior to the application of a local building code or the State Uniform Fire Prevention and Building Code can be considered unsafe. The Uniform Code provides that manufactured homes constructed before June 15, 1976 need not be built in accordance with HUD standards and have a certifying label and data plate if they have been inspected to determine that they are structurally sound and free of heating and electrical system hazards [Residential Code of New York State, AE 102.6]. Manufactured homes as part of a farm operation should be allowed to meet either the HUD standards or pass inspection as provided in Residential Code, AE 102.6.

F. Removal of Farm Labor Housing if Unoccupied

Requiring farm labor housing be immediately removed from a site upon cessation of its use by the farm operation or if a farm operation stops producing an agricultural crop may be unreasonable. Housing may be used only seasonally. In addition, unforeseen circumstances, such as a change in a farm operation due to a death in the family or a change in ownership, may prevent such housing from being used within a given year. Some municipalities require the removal of farm labor housing if it has not been used for such purposes for three years. Such a requirement is reasonable and takes into account changes in farm circumstances.

G. Sharing of Farm Labor and Housing

Farmers may, under certain circumstances, share farm labor and housing to provide full employment to farm workers throughout the growing season. This helps ensure that labor needs are met and workers do not leave the area for other employment opportunities. There should be some flexibility in a local law to accommodate the sharing of farm labor and/or housing. The Department considers the facts of a particular case in making a determination whether a local law is unreasonably restrictive, but generally would view a requirement that workers be employed or used more than 51 percent of the time by the farm operation where the housing is located as reasonable.

H. Full-time Employees

The Department has determined that a farm worker that works thirty or more hours of work per week on the farm, and both the hours worked *and* income earned by the farm worker are predominantly from on-farm employment, is considered a full-time farm employee for purposes of AML §305-a protection for farm worker housing.

The Department supports language used in Real Property Tax Law (RPTL) §483 (Exemption from taxation of structures and buildings essential to the operation of agricultural and horticultural lands), as interpreted by the Department of Taxation and Finance, Office of Real Property Tax Services (ORPTS), concerning the application of the law to farm worker housing. RPTL §483 provides that the exemption applies to buildings "... used to provide housing for regular and essential employees and their immediate families who are primarily employed in connection with the operation of lands actively devoted to agricultural and horticultural use." The Department uses a similar standard, requiring that housing eligible for

protection under AML §305-a be used for full-time seasonal farm employees and/or full-time year round employees and their immediate family. (The qualifying farm employee's immediate family that resides in the farm worker housing does not have to be employed on the farm.)

To qualify as a "full-time employee" where farm worker housing is provided, the Department of Agriculture and Markets requires that both the hours worked *and* income earned must be predominantly from on-farm employment. Therefore, for **example**, if a farm worker's total hours worked on-farm is 35 hours in a given week and he/she earned \$350.00 from that work; hours worked off-farm could not exceed 34 hours and income from such work could not exceed \$349.00. Further, the farm worker housing must be provided by the farm employer; unless there is a sharing of farm labor or housing arrangement as described above.

I. Wage Determination and Documentation

The New York State Department of Labor's (NYSDOL) "Minimum Wage Order for Farm Workers" [12 NYCRR 190] applies to every farm employer if during the preceding calendar year the farm employer paid \$3,000 or more in the aggregate to all persons employed on the farm. Employees include individuals that work on the farm except the "parent, spouse, child or other member of the employer's immediate family..." The NYSDOL has interpreted that only blood relatives are considered "immediate family." Consequently, the employment of non-blood relatives requires compliance with the Minimum Wage Order. The farm owner must provide documentation of compensation provided to the farm worker including value of housing and any other additional income; and such income must be reported to appropriate Federal and NYS taxing authorities. The value of housing provided is limited to \$8.00 per day pursuant to NYSDOL "Minimum Wage Order for Farm Workers," 12 NYCRR Part 190, Subpart 190-3.1(b).

While employment of immediate family members does not require compliance with the Minimum Wage Order, for the purposes of AML §305-a protection, the farm owner must provide documentation of job duties performed and hours worked (at least 30/week) to establish an employer/employee relationship. The farm owner must also provide documentation of compensation provided to the farm worker including value of housing and any other additional income; and such income must be reported to appropriate Federal and NYS taxing authorities. Further, whether the farm employee is a blood relative who may not be paid a specific wage *or* a farm employee who is paid a specific wage, both the hours worked *and* income earned must be predominantly from on-farm employment as described above.

We remind local governments that if they require income tax return information to document hours worked and/or income, they must treat it as confidential material and do their utmost to protect it from unauthorized disclosure.