

Guidelines for Review of Local Laws Affecting Animal Control and On-Farm Fencing

Control of On-Farm Animals

Section 305-a of the Agriculture and Markets Law (AML) protects the on-farm production, preparation and marketing of livestock from unreasonable local restrictions. AML §301(2)(e) of the AML defines livestock and livestock products to include, but not be limited to, cattle; sheep; hogs; goats; horses; poultry; ratites, such as ostriches, emus, rheas, and kiwis; farmed deer; farmed buffalo; fur bearing animals; wool bearing animals, such as alpacas and llamas, milk; eggs and furs.

Other than livestock, farmers may require other on-farm animals for the successful operation of the farm. For example, guard dogs are commonly used to protect more vulnerable animals, such as sheep, from feral dogs, coyotes, birds of prey and other wild animals. These guard dogs usually bark when they sense a threat to their flock. In other instances, farmers use dogs to keep deer and geese away from their crops. The use of working dogs on the farm is a practice that contributes to the production, preparation, and marketing of livestock and is therefore protected from unreasonable local restrictions pursuant to AML §305-a.

Generally, farmers are responsible for the care, safety and confinement of on-farm livestock and other animals. Farm operations must provide adequate fencing and gates to confine livestock in a safe and reasonable manner. The public should be protected from animals that may cause bodily harm and/or property damage. Therefore, local animal control laws that require livestock to be confined and not “run at large” without restraint, confinement or supervision, are reasonable and help to protect public health and safety.

However, local animal control laws which include restrictions on dogs, may be problematic for farmers. Laws that affect dogs may be unreasonably restrictive since farmers often use working dogs to herd livestock and to protect livestock and/or crops. Therefore, local laws that restrict the number of dogs on a property, require that all dogs be leashed, or limit the noise made from a dog may be unreasonably restrictive if they affect a farmer’s ability to use working dogs.

On-Farm Fences

Farm operations routinely rely on fences to confine livestock, exclude wildlife, and/or reduce trespass. Most zoning codes contain requirements for fencing, such as property line setbacks, height limitations, type of materials used, aesthetic considerations and more. Generally, these local laws are meant to be applied to more suburban settings, however, they are usually applied equally across the municipality.

When such laws are applied to a farm operation located within a county adopted, State certified agricultural district, the farm may ask the Department to review the administration of such local laws pursuant to AML Section 305-a.

Section 101.2 of the 2020 Building Code of New York State (“2020 BCNYS”) states that *“agricultural buildings, including barns sheds, poultry houses and other buildings and equipment on the premises that are used directly and solely for agricultural purposes, shall not be subject to the construction-related provisions of this code.”* [underline added for emphasis]

Therefore, fences used directly and solely for agricultural purposes are considered “equipment” exempt from the 2020 BCNYS.

Boundary Line Fences

For fences built on the boundary line to distinguish two adjoining parcels of land owned by different individuals, it is generally not unreasonably restrictive to require the farm operation to apply for a building or zoning permit prior to construction. Boundary line fences and monuments should be installed in accordance with a new or existing survey as prepared by a licensed surveyor or engineer. If the surveyor pins are available, a landowner should be able to set the string line separating the parcels.

Interior Fences

For interior fences not located on a boundary line, and used directly and solely for agricultural purposes, municipalities should not require a building or zoning permit since such fences are considered to be on-farm equipment rather than a building or structure. Requiring a building or zoning permit can have significant adverse impacts on the management and operation of a farm operation as many farmers use rotational grazing or construct stationary paddocks where livestock are rotated to rest a confinement area. This often necessitates the frequent movement of temporary fencing within the confines of their property boundary. Such permits also inhibit farm operations from moving or constructing fences in order to respond to unforeseen or emergency circumstances.

The relevant officer charged with enforcement of the municipal code should verify that the fence is not located on the property line through the use of survey records, monumentation of the boundary line, or visual acceptance when the fence is clearly within the boundary of the parcel.

Height Limitations

A proposed fence, whether a boundary line or interior fence, which exceeds a municipality’s height limitations may be subject to an area variance. Upon a municipality’s denial of an area variance, the farm operation may request a review from the Department pursuant to AML §305-a (1). It may be necessary to exceed height restrictions depending

on the purpose of the fence, such as wildlife exclusion. Tall fences (usually 8 feet or more in height) are commonly used to exclude wildlife from properties.

Type of Fences and Fencing Material

Fences can be made from a variety of materials, including wood, steel and plastic. The type of fencing depends upon its purpose, such as minimizing trespass, livestock confinement or wildlife exclusion, or whether it is intended to be permanent or temporary. For example, wooden fences are commonly found on horse farms and high tensile wire or barbed wire are commonly found on livestock farms. Welded wire or small square polypropylene materials are used to exclude wildlife from properties growing high value crops, such as fruits and vegetables. Some fences are made from gates or pallets tied together to make a small livestock confinement. Fencing may also be electrified depending on its purpose. Therefore, it may be unreasonably restrictive for a municipality to require specific materials to be used at the exclusion of others.

Setbacks

Farm operations within an agricultural district should be allowed the maximum use of available land consistent with the need to protect the public health or safety. Generally, fences required to be set back from an adjoining property line has been found, on its face, to be unreasonably restrictive in violation of the AML. However, it may be reasonable to require a setback from a public highway. Fences should be allowed to be constructed on the edge of the highway rights-of-way, or if the fence will interfere with the line of site from points of ingress and egress, fences should be setback to protect public health or safety.