

## CHAPTER 1

### PROTECTING THE RIGHT TO FARM

#### **SECTION 1**

##### **1.01 TITLE**

The name of this ordinance shall be known and cited as "Protecting the Right to Farm".

##### **1.02 PURPOSE**

The purpose of this ordinance is to protect the right to farm in the Town with the understanding that new development will occur in the Town which may initiate complaints about farming operations. This ordinance shall limit the remedies available to address complaints about farming operations unless the agricultural use or agricultural practice is a substantial threat to public health or safety.

##### **1.03 DEFINITIONS**

(1) "Agricultural practice" means any activity associated with an agricultural use.

(2) "Agricultural use" means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; participating in the milk production termination program under 7 USC 1446 (d); and vegetable raising.

##### **1.04 PROTECTION FROM NUISANCE ACTIONS**

(1) An agricultural use or an agricultural practice may not be found to be a nuisance if all of the following apply:

a. The agricultural use or agricultural practice alleged to be a nuisance is conducted on, or on a public right-of-way adjacent to, land that was in agricultural use without substantial interruption before anyone began the use of property that anyone alleges was interfered with by the agricultural use or agricultural practice.

b. The agricultural use or agricultural practice does not present a substantial threat to public health or safety. Paragraph (a) applies without regard to whether a change in agricultural use or agricultural practice is alleged to have contributed to the nuisance.

(2) In an action in which an agricultural use or an agricultural practice is found to be a nuisance, the following conditions apply:

a. The relief granted may not substantially restrict or regulate the agricultural use or agricultural practice, unless the agricultural use or agricultural practice is a substantial threat to public health or safety.

b. If the Town orders the property owner to take any action to mitigate the effects of the

agricultural use or agricultural practice found to be a nuisance, the Town shall do all of the following:

1. Request public agencies having expertise in agricultural matters to furnish the Town with suggestions for practices suitable to mitigate the effects of the agricultural use or agricultural practice found to be a nuisance.
2. Provide the property owner with a reasonable time to take the action directed in the Town's order. The time allowed for the defendant to take the action may not be less than one year after the date of the order unless the agricultural use or agricultural practice is a substantial threat to public health or safety.
3. If the Town orders the property owner to take any action to mitigate the effects of the agricultural use or agricultural practice found to be a nuisance, the Town may not order the property owner to take any action that substantially and adversely affects the economic viability of the agricultural use, unless the agricultural use or agricultural practice is a substantial threat to public health or safety.

#### **1.05 LIMITATIONS**

Anyone affected by this ordinance shall have the right to appeal any and all decisions of the Town Board directly to the courts. If an appeal is made to the courts the Town Board shall delay any and all actions it has taken until such time as the courts rule on the issue.

#### **1.06 VIOLATION**

Construction of other activities contrary to the approved plan, or in the absence of an approved plan, shall be a violation of this section.

#### **1.07 PENALTY**

Any person, firm or corporation who fails to comply with the provisions of this ordinance shall, upon conviction thereof, forfeit not more than two hundred dollars (\$200.00) and not less than fifty dollars (\$50.00) and cost of prosecution for each violation, and in default of payment of such forfeiture and costs shall be imprisoned in the county jail until payment thereof, but not exceeding thirty (30) days.

No damages shall be allowed for the taking by any Governmental agency, for street or highway purposes for any building erected in violation of this ordinance.

### **SECTION 2**

#### **1.08 VALIDITY**

If any provisions of this Ordinance are invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the above provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provision or its application.

### **SECTION 3**

#### **1.09 EFFECTIVE DATE**

This Ordinance shall become effective upon its passage and publication according to law