

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County

~~CITY~~

~~TOWN~~

~~VILLAGE~~

of Niagara

Local Law No. 7 of the year 20..07..

A local law Establishing the Right-To-Farm Law of Niagara County
(Insert Title)

Be it enacted by the Legislature of the
(Name of Legislative Body)

County

~~CITY~~

~~TOWN~~

~~VILLAGE~~

of Niagara as follows:

Section 1. Title

This Local Law shall be known as the "Right-to-Farm Law of Niagara County."

Section 2. Declaration of Policy and Purpose

It is hereby found and declared by the Legislature of the County of Niagara that agricultural lands are irreplaceable assets and that farming is an essential activity. Farming, as defined in this Right-to-Farm Law and by New York State Department of Agriculture and Markets, reinforces the special quality of life enjoyed by citizens, provides the visual benefits of open space and generates economic benefits and social well being within the community. Therefore, Niagara County encourages sound agricultural practices and adopts this Law with the goal of promoting understanding and acceptance of the necessary day-to-day activities connected with agriculture.

It is the general purpose and intent of this Local Law to maintain and preserve rural tradition and character of Niagara County, to permit this continuation of agricultural practices and the business of farming and initiation, and expansion of farms, and agricultural businesses. In recognition of the fact that there are many practices and activities which are inherent to and necessary for the business of farming, it is the specific purpose and intent of this Local Law to attain the aforementioned goals and objectives by providing that such practices and activities may proceed and be undertaken free of unreasonable and unwarranted interference or restrictions.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

The Legislature, in an effort to promote and foster a harmonious relationship between the residents of Niagara County, and to conserve, protect and encourage the development and improvement of agricultural land for the production of food and other products, hereby also declares that it shall be the policy of Niagara County to provide reasonable notice to prospective landowners that farming activities may occur on neighboring lands.

Section 3. Definitions

Unless specifically defined below, words or phrases used in this Local Law shall be interpreted so as to give them meaning they have in common usage and to give this Local Law its most reasonable and effective application.

As used in this Local Law, the following terms shall have the meaning indicated:

Agricultural and Farmland Protection Board – Shall mean a board formally appointed by the County Legislature pursuant to Article 25AA, Section 302 of New York State Agriculture and Markets Law.

Agricultural Land – Shall mean any single or multiple, contiguous or non-contiguous tax parcel or parcels that, together, represent all that real property within the boundaries of Niagara County currently used for agricultural farm operations or upon which agricultural farm operations or upon which agricultural practices are being utilized or upon which agricultural farm operations or agricultural practices may in the future be established or utilized.

Agricultural Farm Operations – Shall mean any person, organization, entity, association, partnership, limited liability corporation or corporation engaged in the business of agriculture or farming or agricultural practices whether for profit or otherwise.

Agricultural Practices – Shall mean any activity connected with the raising of crops, livestock or livestock products as defined in Agriculture and Markets Law Section 301, subdivision 2, including but not limited to the following:

- a. Field crops, including corn, wheat, oats, 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, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, milk, eggs and furs.
- f. Maple sap.
- 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 bio-energy.

Should there be a conflict between the definitions employed by New York State and those contained herein, such conflict shall be resolved in favor of the agricultural producer so as to include the enterprise as an agricultural practice.

Further agricultural practices shall include any activity now permitted by law, engaged in by or on behalf of a farmer in connection with and furtherance of the business of agriculture or farming and shall include without limitation, the collection, transportation, distribution, composting and storage of animal and poultry waste; storage, transportation and use of equipment for tillage, planting, harvesting and marketing; transportation, storage and use of legally permitted fertilizers and limes and insecticides, herbicides and fungicides, all in accordance with local, state and federal law and in accordance with the manufacturer's instructions and warnings; construction of farm structures and facilities, including farm wineries and other on-farm food processing, as permitted by local and State building code regulation; construction and maintenance of fences and other enclosures; and the use and/or maintenance of fences and other enclosures; and the use and/or maintenance of related pastures, idle or fallow land, woodland, wetland, farm ponds, farm roads and certain farm buildings and other structures related to the agricultural practices.

The following examples are intended to be illustrative of common agricultural practices covered within this definition, but are not inclusive:

1. Providing for the processing, wholesale and retail marketing, including U-pick marketing, and sales of the agricultural output of the farm and related products that contribute to farm income, including the sale at the owner's farm stand/market of agricultural products so long as fifty percent (50%) of the gross sales of the farm stand/market have been from products grown on said farm.
2. Replenishing soil nutrients, including but not limited to the spreading of manure, compost, and applying approved chemical and organic fertilizers.
3. Using state and federally approved products and methods, in accordance with label instructions, as recommended by Cornell University and the New York Agricultural Experiment Station as controlled by state and federal regulatory for the control of disease, weed, insect and arachnid pests, as well as nuisance wildlife affecting plants and livestock.
4. Transporting large, slow-moving equipment over roads within the County, in accordance with local, state and federal law and regulations.
5. Clearing of woods using accepted techniques, installing and maintaining vegetative and terrain alterations, and other physical facilities for water and soil conservation and surface water control.

The foregoing uses, activities and rights, when reasonable and necessary for agricultural or horticultural production and when conducted in accordance with generally accepted agricultural practices, may occur on holidays, Sundays and weekends, by day or night.

Farmer – Shall mean any person, organization, entity, association, partnership or corporation engaged in the agricultural farm operation or agricultural practices as defined herein.

Farming – Shall mean the act of engaging in an agricultural farm operation and/or agricultural practices as defined herein.

Town Agricultural Advisory Committee – Shall mean a committee, formally appointed by the town board of any town in Niagara County, for the purpose of resolving right-to-farm disputes as provided hereunder. Such a committee shall be appointed on either an annual or *ad hoc* basis (or an existing committee can be designated to serve in that capacity) with such numbers of members as the town board shall determine, providing there are no less than three with at least one representative each from the farm and non-farm communities. All members, however, shall be knowledgeable regarding agricultural practices common to the town. The decision to form such a committee shall be at the sole discretion of the town board. The “town agricultural advisory committee” may be variously named including such names as “grievance” or “resolution” committee.

Section 4. Right-to-Farm

Farmers, as well as those employed or otherwise authorized to act on behalf of farmers, may lawfully engage in agricultural practices on any agricultural farm operation within Niagara County at all such times and all such locations as are reasonably necessary to carry on an agricultural farm operation or agricultural practice. For any agricultural practice, in determining the reasonableness of the time, place and methodology of such practice, due weight and consideration shall be given both to traditional customs and procedures in the farming industry as well as to advances resulting from increased knowledge and improved technologies.

Agricultural practices conducted on farmland shall not violate the public policy of Niagara County if such agricultural practices are: (i) reasonable and necessary to the particular farm or farm operation; (ii) conducted in a manner which is not negligent or reckless; (iii) conducted in conformity with generally accepted agricultural practices; (iv) conducted in conformity with all local, state and federal laws, ordinances and regulations; (v) conducted in a manner which does not constitute a threat to public health and safety or cause injury to health and safety of any person; and (vi) conducted in a manner which does not unreasonably obstruct the free passage or use of navigable waters or public roadways.

Nothing in this Local Law shall be construed to prohibit an aggrieved party from recovering damages for bodily injury or wrongful death due to negligence or recklessness.

Section 5. Nuisance

No agricultural practice or associated activity, conducted or maintained on a sound basis, in a manner consistent with best management practices, such as those recommended by state and federal agencies in conjunction with educational programs for farmers, or other agricultural

practice, herein and hereafter referred to as the accepted custom and standard in the agricultural industry, shall be considered a public or private nuisance so long as the activity is conducted in a reasonable and prudent manner.

Section 6. Interference Prohibited

No person, group, entity, association, partnership, or corporation shall engage in any conduct or act in any manner so as to unreasonably, intentionally, knowingly, and/or deliberately interfere with, prevent, or in any way deter the practice of farming within Niagara County.

Section 7. Penalties

An action to restrain or enjoin any violation of this Local Law may be brought in a court of competent jurisdiction by any aggrieved entity and/or Niagara County. Recovery of reasonable attorneys fees, costs and expenses against the violating party is specifically allowed under this law.

Section 8. Local Government Advice and Dispute Resolution

In offering local government advice and dispute resolution, the Niagara County Agricultural and Farmland Protection Board is available to provide support for or work with local agricultural advisory committees in such way, as the local committee shall deem appropriate. In the event a municipality does not have an agricultural advisory committee, that municipality may call on the Niagara County Agricultural and Farmland Protection Board for agriculturally related advice and/or assistance in the resolution of disputes. In this capacity, the Niagara County Agricultural and Farmland Protection Board may seek outside expertise as necessary to address the issues or concerns presented.

Section 8-a. Resolution of Disputes

Should any controversy arise regarding any inconveniences or discomfort occasioned by any agricultural operations or agricultural practices, as defined in Section 3 of this Local Law, the parties may submit the controversy to the town's agricultural advisory committee or, in the absence of a local committee, the Niagara County Agricultural and Farmland Protection Board, as set forth below in an attempt to resolve the matter prior to the filing of any court action or submission to the New York State Department of Agriculture and Markets pursuant to Section 308 of the Agriculture and Markets Law.

Any controversy between the parties may be submitted to the town agricultural advisory committee, or in the absence of a local committee, the Niagara County Agricultural and Farmland Protection Board, whose decision shall be advisory only, within sixty (60) days of the date of the occurrence of the particular activity giving rise to the controversy or of the date a party writes to formally request a review.

The effectiveness of the town agricultural advisory committee and the Niagara County Agricultural and Farmland Protection Board as a forum for the resolution of disputes is

dependent upon full discussion and complete presentation of all pertinent facts concerning the dispute in order to eliminate any misunderstandings. The parties are encouraged to cooperate in the exchange of pertinent information concerning the controversy.

The controversy shall be presented to the town agricultural advisory committee or, in the absence of a local committee, the Niagara County Agricultural and Farmland Protection Board, by written consent of one of the parties within the time specified herein. Thereafter, the committee or Board may investigate the facts of the controversy, but must, within thirty (30) days, hold a public meeting pursuant to public notice to consider the merits of the matter and within twenty (20) days of the meeting, render a written opinion to the parties. At the time of the meeting, both parties shall have an opportunity to present what each considers pertinent facts.

The decision of the town agricultural advisory committee or the Niagara County Agricultural and Farmland Protection Board shall not be binding.

Section 8-b. Local Government Advisory Support

Upon reviewing referrals, the Niagara County Planning Board will take into consideration the Niagara County Right-to-Farm Law as applicable. Comments from the Niagara County Agricultural and Farmland Protection Board could be used by local governments to prevent ordinances from conflicting with normal farming practices as prescribed by Agriculture and Markets Law Article 25AA, Section 305-a.

Section 9. Notice to Prospective Neighbors/Notice of Farm Use

Agricultural Data Statement: Niagara County will encourage and support local adoption of the agricultural data statement requirements as prescribed in NYS Agriculture and Markets Law, Section 305-a, Subdivisions 2-4.

Agricultural Disclosure New Residential Development: For the purpose of giving due notice of nearby farming uses to proposed new residential areas adjacent to open land being farmed or suitable therefore, Niagara County will require that local planning boards mandate that any applicant for an adjacent major or minor subdivision, as a condition of approval of such application, include a provision in each and every deed conveying all or any portion of the lands thereby subdivided, as well as on filed final subdivision maps, the following record notice to and waiver by grantees of such present or future proximate farming uses, which provision shall be made to run with the land:

“The grantee hereby acknowledges notice that agricultural operations exist throughout the town and that there are presently or may in the future be farm uses adjacent or in proximity to the within described premises. The grantee acknowledges that farmers have the right to undertake farm practices which may generate dust, odor, fumes, noise, and vibrations associated with agricultural practices, and that these practices are permitted under the town or in the absence of a local right-to-farm law. Niagara County’s Right-to-Farm Law, and, by acceptance of this conveyance, the grantee does hereby waive objection to such

activities. Furthermore, changes in economic conditions may cause agricultural operations to shift enterprises and produce different products than in the past.”

The risk of any impact of these agricultural uses on the purchase of property is specifically to be borne by the purchaser of that property.

Agricultural Disclosure at Time of Property Transfer: Niagara County will implement and encourage local implementation of the agriculture disclosure requirement as prescribed in New York State Agriculture and Markets Law Article 25AA, Section 310.

Section 10. Conflict Clause

This Local Law and its provisions are in addition to all other applicable laws, rules and regulations. Local governments are encouraged to issue their zoning ordinances in conformity with the Right-to-Farm Law.

Section 11. Severability

If any part of this Local Law is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this Local Law.

Section 12. Effective Date

This Local Law shall take effect immediately upon filing with the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 7 of 2007 of the ~~(County)(City)(Town)(Village)~~ of Niagara was duly passed by the Niagara County Legislature on November 7 2007, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the ~~(County)(City)(Town)(Village)~~ of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the ~~(County)(City)(Town)(Village)~~ of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 20____. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the ~~(County)(City)(Town)(Village)~~ of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer)*

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

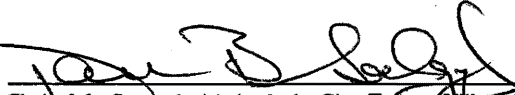
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20_____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20_____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____, above.



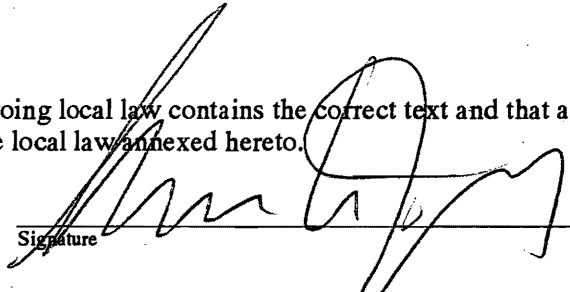
Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body
Date: NOVEMBER 14th 2007

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF NIAGARA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.



Signature
Niagara County Attorney
Title

County
~~CHXX~~ of Niagara
~~TOWXX~~
~~VILLAGE~~

Date: 11/13/07