

Act No. 184-95

by Mr. Winship
and Mr. Felton, Mr. Fitzpatrick, Mr. Gowan,
Mr. Haberer, Mr. Hall, Mr. Reynolds,
Mr. Walgus, Mrs. Wyllie, Mr. Zimbardi,
Mr. Zollinger, Mr. Augustini, Ms. Bernstein,
Mrs. Kramer, Mr. Mack, Mr. McClune,
Mrs. McLaughlin and Mr. McLean

LOCAL LAW NUMBER 1-1995
COUNTY OF CATTARAUGUS, NEW YORK

Pursuant to Section 10 of the Municipal Home Rule Law

A LOCAL LAW ESTABLISHING THE RIGHT-TO-FARM

BE IT ENACTED, by the Legislature of the County of Cattaraugus as follows:

SECTION 1. Legislative Intent. The Cattaraugus County Legislature finds, declares, and determines that farming is important to Cattaraugus County because it is a livelihood and provides employment for agriservices; provides locally produced, fresh commodities; agricultural diversity promotes economic stability; agriculture maintains open space and promotes environmental quality; an agricultural landscape constitutes agricultural beauty; and agricultural land does not increase the demand for services provided by local governments. In order to maintain a viable farming economy in Cattaraugus County, farmers must be afforded protection allowing them the right to farm. When non-agricultural land uses extend into agricultural areas, agricultural operations may become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations or are discouraged from making investments in farm improvements.

It is the purpose of this law to reduce the loss to the County of Cattaraugus of its agricultural resources by limiting the circumstances under which farming may be deemed to be a nuisance and to allow agricultural practices inherent to, and necessary for, the business of farming to proceed and be undertaken free of unreasonable and unwarranted interference or restriction.

The County Legislature further finds, declares, and determines that Chapter 797 of the Laws of 1992 provides an important foundation for achieving the right-to-farm protection sought in Cattaraugus County and that in order to address the unique circumstances facing agriculture in Cattaraugus County, it is necessary to provide for more comprehensive local right-to-farm protection.

SECTION 2. Definitions.

A. "Agricultural practices" shall mean all activities conducted by a farmer on a farm to produce agricultural products and which are inherent and necessary to the operation of a farm including, but not limited to, the collection, transportation, distribution, storage, and land application of animal wastes; storage, transportation and use of equipment for tillage, planting, harvesting, irrigation, fertilization, and pesticide application; storage and use of legally permitted fertilizers, limes, and pesticides all in accordance with local, state, and federal law and regulations and in accordance with manufacturer's instructions and warnings; storage, use and application of animal feed and foodstuffs; construction and use of farm structures and facilities for the storage of animal wastes, farm equipment, pesticides, fertilizers, agricultural products, and livestock, for the processing of animal wastes and agricultural products, for the sale of agricultural products, and for the use of farm labor, as permitted by local and state building codes and regulations; including construction and maintenance of fences.

B. "Agricultural products" shall mean those products as defined in Section 301(2) of the Agriculture and Markets Law.

C. "Farm" shall mean the land, buildings, and machinery used in the production, whether for profit or otherwise, of agricultural products.

D. "Farmer" shall mean any person, organization, entity, association, partnership or corporation engaged in the business of agriculture, whether for profit or otherwise, including the cultivation of land, the raising of crops, or the raising of livestock.

E. "Generally accepted agricultural practices" shall mean those practices which are feasible, lawful, inherent, customary, necessary, reasonable, normal, safe, and typical to the industry or unique to the commodity as they pertain to agricultural practices.

SECTION 3. Right To Farm Declaration. Farmers, as well as those employed, retained, or otherwise authorized to act on behalf of farmers, may lawfully engage in agricultural practices within Cattaraugus County at all such times and all such locations as are reasonably necessary to conduct the business of agriculture. For any agricultural practice, in determining the reasonableness of the time, place, and methodology of such practice, due weight and consideration shall be given to both 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 be found to be a public or private nuisance if such agricultural practices are:

- 1) reasonable and necessary to the particular farm or farm operation,
- 2) conducted in a manner which is not negligent or reckless,
- 3) conducted in conformity with generally accepted agricultural practices,
- 4) conducted in conformity with all local, state, and federal laws and regulations,
- 5) conducted in a manner which does not constitute a threat to public health and safety or cause injury to health or safety or any person, and

- 6) conducted in a manner which does not unreasonably obstruct the free passage or use of navigable waters or public roadways.

The Agriculture and Farmland Protection Board will determine if agricultural practices are acceptable.

The determination by the Agriculture and Farmland Protection Board referred to in the preceding paragraph shall be made by majority vote of the Board in a written opinion of such Board.

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

SECTION 4. Severability. If any provision of this local Law shall be adjudged by any Court of competent jurisdiction to be invalid, such adjudication shall not effect, impair or invalidate the remainder thereof, but shall be confined in its operation to the particular provision directly involved in the controversy in which such judgment shall have been rendered.

SECTION 5. Effective Date. This Local Law shall take effect immediately.

ADOPTED: April 12, 1995