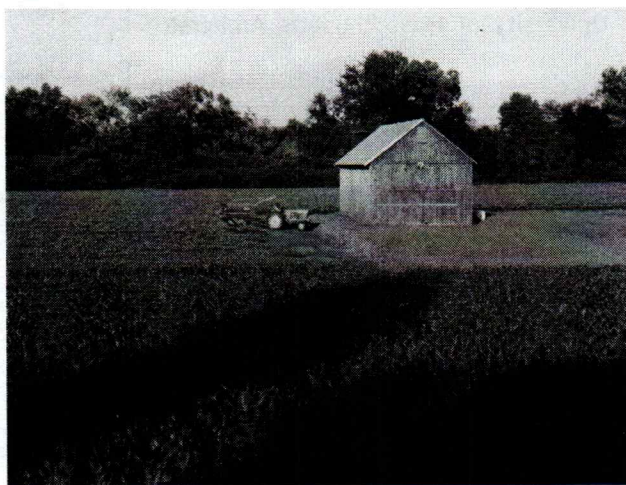


# ● Right to Farm Bylaws



## ● What are the objectives of a Right to Farm Bylaw?

To protect and encourage the growth and development of farm-related businesses by protecting farmers and farm operators against nuisance lawsuits.

## Why do we need a Right to Farm Bylaw?

Over the past 30 years, as productive farmland has been converted to residential development, persons not involved in farming were beginning to move into traditional agricultural areas and with them they were bringing new complaints concerning odor, flies, dust, noise from field work, spraying of farm chemicals, slow moving farm machinery, and other necessary byproducts of farming operations. Many states, including Massachusetts, adopted Right to Farm language in the state statutes to protect active farmers from nuisance lawsuits from neighbors. Local communities in Massachusetts can also adopt a local Right to Farm bylaw to create public awareness relative to the needs of local farms and farmers.

## How does a Right to Farm bylaw work?

A right-to-farm bylaw is a general bylaw that encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the community by allowing agricultural uses and related activities to function with minimal conflict with abutters and town agencies. Language is based on the all state statutes and regulations protecting agricultural activities, such as MGL Chapter 40A, Section 3; Chapter 90, Section 9; Chapter 111, Section 125A and Chapter 128 Section 1A.



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Such a bylaw or ordinance restates and republishes these rights pursuant to a town's authority conferred by Article 89, or the "Home Rule Amendment" of the Massachusetts Constitution.

### **DID YOU KNOW...**

In 1997, farm product sales in Massachusetts reached an all-time high of \$454 million. Net farm income —returns to the farm operator after paying expenses—climbed to a record high of \$143 million in 1997.

(“Agriculture’s Hold on the Commonwealth”, University of Massachusetts Amherst, 2000))

## **EXAMPLES FROM THE PIONEER VALLEY**

### **Smart Growth Technical Assistance Grant Program**

Several communities in the Pioneer Valley region were funded under Rounds 1 and 2 of the Smart Growth Technical Assistance Grant Program to prepare and adopt right-to-farm bylaws/ordinances. The Towns of Middlefield and Plainfield were funded under Round 1, both of which have adopted right-to-farm bylaws at their annual town meetings. The communities of Agawam, Granville, Hampden, Montgomery, and Westhampton were funded under Round 2 of this grant program. The Towns of Montgomery and Westhampton have adopted right-to-farm bylaws at Town Meeting. The Town of Hampden will vote on this bylaw at their spring town meeting and the Town of Agawam will vote on their right-to-farm ordinance during the summer of 2007. The Town of Granville has not yet adopted their right-to-farm bylaw but will consider it at a future town meeting.

### **Communities that have adopted Right to Farm Bylaw**

Cummington / Hadley / Hatfield / Middlefield / Montgomery / Northampton / Plainfield / Southwick / Westhampton

**A model bylaw or strategy is included in the Pioneer Valley Sustainability Toolkit.**

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### **FOR MORE INFORMATION, PLEASE CONTACT**

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**Part I**

## ADMINISTRATION OF THE GOVERNMENT

**Title XVI**

## PUBLIC HEALTH

**Chapter 111**

## PUBLIC HEALTH

**Section 125A**REVIEW OF ORDER ADJUDGING THE OPERATION OF A FARM  
TO BE A NUISANCE

Section 125A. If, in the opinion of the board of health, a farm or the operation thereof constitutes a nuisance, any action taken by said board to abate or cause to be abated said nuisance under sections one hundred and twenty-two, one hundred and twenty-three and one hundred and twenty-five shall, notwithstanding any provisions thereof to the contrary, be subject to the provisions of this section; provided, however, that the odor from the normal maintenance of livestock or the spreading of manure upon agricultural and horticultural or farming lands, or noise from livestock or farm equipment used in normal, generally acceptable farming procedures or from plowing or cultivation operations upon agricultural and horticultural or farming lands shall not be deemed to constitute a nuisance.

In the case of any such nuisance a written notice of an order to abate the same within ten days after receipt of such notice shall first be given as provided in section one hundred and twenty-four. If no petition for review is filed as herein provided, or upon final order of the court, said

board may then proceed as provided in said sections one hundred and twenty-two, one hundred and twenty-three and one hundred and twenty-five, or in the order of the court. If the owner or operator of said farm within said ten days shall file a petition for a review of such order in the district court for the district in which the farm lies, the operation of said order shall be suspended, pending the order of the court. Upon the filing of such petition the court shall give notice thereof to said board, shall hear all pertinent evidence and determine the facts, and upon the facts as so determined review said order and affirm, annul, alter or modify the same as justice may require. The parties shall have the same rights of appeal on questions of law as in other civil cases in the district courts.

## **MODEL RIGHT TO FARM BY-LAW**

### **Section 1      Legislative Purpose and Intent**

The purpose and intent of this By-law is to state with emphasis the Right to Farm accorded to all citizens of the Commonwealth under Article 97, of the Constitution, and all state statutes and regulations thereunder including but not limited to Massachusetts General Laws Chapter 40A, Section 3, Paragraph 1; Chapter 90, Section 9, Chapter 111, Section 125A and Chapter 128 Section 1A. We the citizens of [Farm-Town] restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution, ("Home Rule Amendment").

This General By-law encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the Town of [Farm-Town] by allowing agricultural uses and related activities to function with minimal conflict with abutters and Town agencies. This By-law shall apply to all jurisdictional areas within the Town.

### **Section 2      Definitions**

The word "farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of commercial agriculture, or accessory thereto.

The words "farming" or "agriculture" or their derivatives shall include, but not be limited to the following:

- farming in all its branches and the cultivation and tillage of the soil;
- dairying;



- production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities;
- growing and harvesting of forest products upon forest land, and any other forestry or lumbering operations;
- raising of livestock including horses;
- keeping of horses as a commercial enterprise; and
- keeping and raising of poultry, swine, cattle, ratites (such as emus, ostriches and rheas) and camelids (such as llamas and camels), and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals.

“Farming” shall encompass activities including, but not limited to, the following:

- operation and transportation of slow-moving farm equipment over roads within the Town;
- control of pests, including, but not limited to, insects, weeds, predators and disease organism of plants and animals;
- application of manure, fertilizers and pesticides;
- conducting agriculture-related educational and farm-based recreational activities, including agri-tourism, provided that the activities are related to marketing the agricultural output or services of the farm;
- processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand including signage thereto;
- maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of the agricultural products; and
- on-farm relocation of earth and the clearing of ground for farming operations.

### **Section 3      Right To Farm Declaration**

The Right to Farm is hereby recognized to exist within the Town of [Farm-Town]. The above-described agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the neighborhood, community, and society in general. The benefits and protections of this By-law are intended to apply exclusively to those commercial agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in this Right To Farm By-law shall be deemed as acquiring any interest in land, or as imposing any land use regulation, which is properly the subject of state statute, regulation, or local zoning law.

### **Section 4      Disclosure Notification**

Not later than 21 days after the purchase and sale contract is entered into, or prior to the sale or exchange of real property if no purchase and sale agreement exists, for the purchase or exchange of real property, or prior to the acquisition of a leasehold interest or other possessory interest in real property, located in the Town of [Farm-Town], the landowner shall present the buyer or occupant with a disclosure notification which states the following:

“It is the policy of this community to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food, and other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers or occupants that

the property they are about to acquire or occupy lies within a town where farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors. Buyers or occupants are also informed that the location of property within the Town may be impacted by commercial agricultural operations including the ability to access water services for such property under certain circumstances.”

A copy of the disclosure notification shall be given on a form prepared by the Town and shall be signed by the landowner prior to the sale, purchase, exchange or occupancy of such real property. A copy of the disclosure notification must be filed with the Board of Selectmen or its designee prior to the sale, purchase, exchange or occupancy of such real property. In addition to the above, a copy of this disclosure notification shall be provided by the Town to landowners each fiscal year by mail.

A violation of Section 4 shall be subject to a fine of \$300 and shall be enforced by the Board of Selectmen or its designee. The Town is authorized to enforce Section 4 under the non-criminal disposition provision of G.L. c. 40, § 21D.

## **Section 5      Resolution of Disputes**

[Applicable only in communities that have Agricultural Commissions.]

Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a grievance with the Select Board, the Zoning Enforcement Officer, or the Board of Health, depending upon the nature of the grievance. The filing of the grievance does not suspend the time within which to pursue any other available remedies that the aggrieved may have. The Zoning Enforcement Officer or Select Board may forward a copy of the grievance to the Agricultural Commission or its agent,



which shall review and facilitate the resolution of the grievance, and report its recommendations to the referring Town authority within an agreed upon time frame.

The Board of Health, except in cases of imminent danger or public health risk, may forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendations to the Board of Health within an agreed upon time frame.

#### **Section 6      Severability Clause**

If any part of this By-law is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this By-law. The Town of [Farm- Town] hereby declares the provisions of this By-law to be severable.