

# TOWN OF FARMINGTON

## Right to Farm Ordinance

ENACTED: March 12, 2007

CERTIFIED BY: Daryl T. Schram  
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Deputy Town Clerk  
Title

**Chapter 11 – Land Use  
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**Article 14 – Right to Farm**

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**Chapter 11 – Land Use**  
**Article 14 - Right to Farm Ordinance**

**11-14.1 Title:**

This Ordinance shall be known and cited as the Town of Farmington Right to Farm Ordinance and will be referred to herein as “this Ordinance”.

**11-14.2 Authority and Administration:**

This Ordinance is adopted pursuant to Title 30-A MRSA §3001 and the Maine Nuisance Law and provisions of Title 17 MRSA §2805.

**11-14-3 Purpose:**

The right to farm is hereby recognized to exist in the Town of Farmington and is hereby declared as an allowed use in the zoning districts as determined in the Table of Uses in the Town of Farmington Zoning Ordinance.

The Town of Farmington finds that it is in the public interest to enhance and encourage farms, farm operations and locally grown farm products within the town. The Town also finds that residential and commercial development adjacent to farms and farm operations can lead to compatibility issues for nearby farm operations and cause diminished economic viability of the farming industry.

This Ordinance is intended to promote public health, safety, and welfare, and to support and encourage continued farming and farm operations in the town. This Ordinance is not intended to modify or abridge State nuisance law, but is to be used as an interpretation and enforcement tool.

The main purpose of this Ordinance is to state that farms and farm operations are not nuisances as long as Best Management Practices are used.

An additional purpose of this Ordinance is to require notification of applicants for, and subsequent buyers of lots within developments requiring approval by the Town through its Planning Board or Code Enforcement Officer for uses on lands adjacent (abutting and across-street/right-of-way) to existing farms and farm operations, of the existence of these farms and farm operations and that the proposed development may be subject to inconveniences or compatibility issues from normal farm operations.

**11-14.4 Applicability:**

This section does not affect the application of State and federal laws. The Town of Farmington must provide the Commissioner of Agriculture, Food, and Rural Resources (hereinafter “Commissioner”) with a copy of this and any other proposed Town ordinance that impacts farm operations. The Town Clerk or a

municipal official designated by the Clerk shall submit a copy of this and any other proposed ordinance to the Commissioner at least ninety (90) days prior to the meeting of the legislative body or public hearing at which adoption of the ordinance will be considered. The Commissioner shall review the proposed ordinance and advise the Town if the proposed ordinance would restrict or prohibit the use of Best Management Practices.

**11-14.5 Validity:**

If any part of this Ordinance is found to be invalid, the remainder of this Ordinance shall remain in effect.

**11-14.6 Conflicts with Other Ordinances:**

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or any other ordinance, regulation, or statute, the more restrictive provision shall apply.

**11-14.7 Effective Date:**

The effective date of this Ordinance shall be the date this Ordinance is adopted by the voters at Town Meeting.

**11-14.8 Definitions:**

- A. **Farm.** Farm shall mean the land, buildings, and machinery used in the commercial production of farm products.
- B. **Farm Operation.** Farm operations shall mean a condition or activity that occurs on a farm in connection with the commercial production of farm products and includes, but is not limited to, operations giving rise to noise, odors, dust, insects, fumes, operation of machinery and irrigation pumps, ground and aerial seeding, ground spraying, composting of material produced by the farm or imported for use on the farm, to be used at least in part on the farm, disposal of manure, the application of chemical fertilizers, soil amendments, conditioners and pesticides, and the employment and use of labor.
- C. **Farm Product.** Farm product shall mean those plants and animals useful to humans and includes, but is not limited to, forages and sod crops, grains and food crops, dairy products, poultry and poultry products, bees, livestock and livestock products, and fruits, berries, vegetables, flowers, seeds, grasses and other similar products.

**11-14.9 Best Management Practices:**

- A. If a farm or farm operation is alleged to be a nuisance, it may not be legally determined to be such if it meets one of the following conditions:
1. The farm or farm operation conforms to the Best Management Practices, as determined by the Commissioner in accordance with the Maine Administrative Procedure Act, Title 5 MRSA, Chapter 375; or
  2. For complaints regarding the storage or use of farm nutrients as defined in Title 7 MRSA §4201, Subsection 4, the farm or farm operation has implemented a Nutrient Management Plan developed in accordance with Title 7 MRSA, §4204 and operation of the farm is consistent with the Nutrient Management Plan; or
  3. The farm or farm operation existed before a change in the land use or occupancy of land within one mile of the boundaries of the farm, and the farm or farm operation would not have been considered a nuisance before the change in land use or occupancy.
    - a. The above paragraph does not apply to a farm or farm operation that materially changes the nature of the farm operation after a change in the land use or occupancy of the land within one mile of the boundaries of the farm.
    - b. Nothing in 11-14.9.A.3 above affects the applicability of any of the other provisions in this Subsection.
  4. There shall be a one hundred foot (100') minimum setback from the property line adjacent to a farm field of any well that supplies drinking water to a household.

**11-14.10 Change in Land Use:**

- A. Violation of municipal ordinances: A method of operation used by a farm or farm operation located in an area where agricultural activities are allowed may not be considered a violation of a municipal ordinance if the method of operation constitutes a Best Management Practices as determined by the Maine Department of Agriculture, Food, and Rural Resources.

**11-14.11 Complaint Resolution:**

- A. Pursuant to 17 M.R.S.A. § 2805 all complaints shall be submitted to the

Department of Agriculture in writing and shall be signed by the complainant.

- B. The Commissioner shall investigate all complaints involving a farm or farm operation, including, but not limited to, complaints involving the use of waste products, ground and surface water pollution and insect infestations. In cases of insect infestations not arising from agricultural activities, from agricultural activities, when the State Entomologist believes that the infestation is a public nuisance and is able to identify the source or sources of the infestation, the Commissioner shall refer the matter to the Department of the Attorney General. If the Commissioner finds upon investigation that the person responsible for the farm or farm operation is using Best Management Practices, the Commissioner shall notify that person and the complainant of this finding in writing. Notwithstanding Subsection 11-14.9A.3., if the Commissioner identifies the source or sources of the problem and finds that the problem is caused by the use of other than Best Management Practices, the Commissioner shall:
1. Determine the changes needed in the farm or farm operation to comply with Best Management Practices and prescribe site specific Best Management Practices for that farm operation;
  2. Advise the person responsible for the farm or farm operation of the changes, as determined in paragraph A, that are necessary to conform with Best Management Practices and determine subsequently if those changes are implemented; and
  3. Give the findings of the initial investigation and subsequent investigations and any determination of compliance to the complainant and person responsible.
- C. Good faith. The Maine Rules of Civil Procedure, Rule 11, applies in any private action filed against the owner or operator of a farm or farm operation in which it is alleged that the farm or farm operation constitutes a nuisance if it is determined that the action was not brought in good faith and was frivolous or intended for harassment only.
- D. Failure to adopt Best Management Practices. If the person responsible for the farm or farm operation does not apply Best Management Practices as required by the Commissioner, the Town shall send a written report to the Commissioner, and the Commissioner shall send a written report to an appropriate agency if a federal or State law has been violated and to the Attorney General.

The Attorney General may institute an action to abate a nuisance or to enforce the provisions of this section or any other applicable State law,

and the court may order the abatement with costs as provided under Section 2720, such injunctive relief as provided in this section or by other other applicable law, or that a civil violation has been committed. Failure to apply Best Management Practices in accordance with this Section constitutes a separate civil violation for which a fine up to \$1,000, together with an additional fine of up to \$250 per day for every day that the violation continues, may be adjudged.

### **11-14.12 Disclosure**

- A. Applicants for developments requiring approval by the Town through its Planning Board or Code Enforcement Officer, including but not limited to subdivision and site review projects, for uses on lands adjacent (abutting and across-street/right-of-way) to existing farms and farm operations, must be notified by the Code Enforcement Office, upon receipt of such applications, of the existence of these farms and farm operations and that the development may be subject to inconveniences or compatibility issues from normal farm operations. (Effective upon the date of Ordinance adoption).

Subsequent buyers of lots within developments approved by the Town through its Planning Board or Code Enforcement Officer, including but not limited to subdivision and site review projects, for uses on lands adjacent (abutting and across-street/right-of-way) to existing farms and farm operations, must be notified by the property owner of the existence of these farms and farm operations and that the property may be subject to inconveniences or discomfort from such operations. (Effective upon date of Ordinance adoption).

The above notifications shall contain the following statement: "Such discomfort and inconveniences may include, but are not limited to: noise, odor, fumes, dust, smoke, machinery operation at any time and throughout any 24 hour period, manure storage and disposal, application (spraying or otherwise) of chemical fertilizers, soil amendments, herbicides, and pesticides. If you choose to work or live near a farm or farm operation, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a town with a strong rural character and an active farming community."

### **11-14.13 Amendments**

- A. Initiation of Amendments: An amendment to this Ordinance may be initiated by:
1. The Municipal Officers, provided a majority of the Municipal Officers has so voted; and

2. Written petition of a number of voters equal to at least 10% of the number of votes cast in the municipality at the last gubernatorial election.
- B. Public Hearing: The Municipal Officers shall hold a public hearing on the proposed amendment in accordance with 30A MRSA §4352(9). Notification of the hearing shall be posted and advertised twice in a newspaper of general circulation in the municipality. The date of the first publication must be at least seven (7) days prior to the hearing. Notice of the hearing must be posted in the municipal office at least thirteen (13) days before the hearing.
  - C. Adoption of the Amendment: An amendment to this Ordinance shall be adopted by majority vote of the Town Meeting.