

# LOCAL LAW NO 2

OF

# THE YEAR 2007

## A LOCAL LAW FOR THE RIGHT TO FARM

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF BOSTON AS FOLLOWS:

### Section 1. Legislative Intent and purposes:

A. The Boston Town Board find, declares, and determines that agriculture is vital to the Town of Boston, New York, because it is a livelihood and provides employment for agriservice; provides locally produced, fresh commodities; agriculture diversity promotes economic stability; agriculture maintains open space and promotes environmental quality, and agriculture land does not increase the demand for services provided by local governments. In order to maintain a viable farming economy in the Town of Boston, farmers must be afforded protection allowing them the right to farm. When nonagricultural 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 operation or are discouraged from making investments in agricultural improvements.

B. It is the purpose of this article to reduce the loss to the Town of Boston 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.

### Section 2. Definitions.

A. As used in this article, the following terms shall have the meanings indicated:

**AGRICULTURAL PRACTICES** – 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 and the on-farm production, processing, and marketing of agricultural products, including, but not limited to, the collection, transportation, distribution, storage, and the 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 sale of agricultural products, and for the use of farm labor, as permitted by local and state building codes and regulations, including the construction and maintenance of fences.

**AGRICULTURAL PRODUCTS** - Those products as defined in §301(2) of Article 25-AA of the Agricultural and Markets Law.

**FARM** - The land, buildings, farm residential buildings, and machinery used in the production, whether for profit or otherwise, of agricultural products.

**FARMER** - Any person, organization, entity, association, partnership, or corporation engaged in the business of agriculture, for profit or otherwise, including the cultivation of land, the raising of crops, or the raising of livestock, poultry, fur-bearing animals, or fish, the harvesting of timber or the practicing of horticulture or apiculture.

**GENERALLY ACCEPTED AGRICULTURE PRACTICES** - 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 the practices listed in the definition of "agricultural practices."

B. Unless specifically defined, above words or phrases used in the article shall be interpreted so as to give them meanings they have in common usage, and to give this article its most reasonable application. Please note that the above definitions shall be applied to and for the interpretation of Local Law No.1 of 2007 – Right to Farm. The above definitions shall not be applied to other sections of the Town of Boston Town Code.

### Section 3. Authority to engage in agricultural practices.

A. Farmers, as well as those employed, retained, or otherwise authorized to act on Behalf of farmers, may lawfully engage in agricultural practices within the Town of Boston at all such times and in all such locations as are reasonable 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.

B. 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, regulations, and ordinances;
- 5.) Conducted in a manner which does not constitute a threat to public health and safety or cause injury to health or safety of any person; and
- 6.) Conducted in a manner which does not unreasonably obstruct the free passage or use of navigable waters or public roadways.

C. Nothing in this article shall be construed to prohibit an aggrieved party from recovering damages for bodily injury or wrongful death due to a failure to follow sound agricultural practices as outlined in this section.

#### Section 4. Duty of Town offices and boards to consider impact of farm operations on certain applications.

The legislative intent and purposes of this article shall be taken into consideration by each Town Officer and/or board in processing any application requesting rezoning, site plan approval and/or special use permit approval. Such Town Officer and/or board shall, as part of its review of such application, determine whether appropriate and reasonable conditions may be prescribed or required, which would further the purposes and intent of this article as part of an approval of the application. Such appropriate and reasonable conditions shall be determined on a case-by-case basis and may include, but not be limited to, requiring declarations, deed restrictions and/or covenants which run with the land which would notify future purchases and owners of the subject property that owning and occupying such property might expose them to certain discomforts or inconveniences resulting from the conditions associated with agricultural practices and operations in the Town.

#### Section 5. Notice to prospective real estate buyers

The following notice shall be included in building permits and on plats of subdivisions submitted for approval pursuant to Town Law Section 276:

It is the policy of the Town of Boston to conserve, protect, and encourage the development of farm operations within our borders for the production of food and other products, and one should be aware of the inherent potential conditions associated with such purchases or residence. Such conditions may include, but are not limited to, noise, odors, fumes, dust, smoke, insects, operation of machinery during any hour, day or night, storage and disposal of plant and animal waste products, and the applications of chemical fertilizers, soil amendments, herbicides, and pesticides by ground or aerial spraying or other methods. Owning and/or occupying land within the Town of Boston means that one should expect and accept such conditions as a normal and necessary aspect of living in such an area.

#### Section 6. Informal resolution of disputes

A. Should any controversy arise regarding any inconveniences or discomforts occasioned by agricultural operation, including, but not limited to, noise, odors, fumes, dust, the operation of machinery, the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and/or pesticides, the parties may submit the controversy to the Conservation Advisory Council as set forth below in an attempt to resolve the matter prior to the filing of any court action.

B. Any controversy between the parties may be submitted to the Conservation Advisory Council, whose decision shall be advisory only, within 30 days of the date of the occurrence of the particular activity giving rise to the controversy or of the date a party became aware of the occurrence.

C. The effectiveness of the Conservation Advisory Council as a forum for resolution of grievances 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.

D. The controversy shall be presented to the Council by written request of one of the parties within the time limits prescribed above. Thereafter, the Council may investigate the facts of the controversy but must, within 30 days, hold a meeting to consider the merits of the matter and within 20 days of the meeting must render a written decision to the parties. At the time of the meeting, both parties shall have an opportunity to present what each party considers to be the pertinent facts.

#### Section 7. Miscellaneous

A. This Local Law shall be deemed to supersede and repeal any other Local Laws to the extent therein inconsistent herewith.

B. If any part of this Local Law shall be judicially declared invalid, void, unconstitutional or unenforceable, all unaffected provisions hereof shall survive such declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not been enacted

C. Nothing herein shall be deemed to be a waiver or restriction upon any rights and powers available to the Town of Boston to further regulate the subject matter of this Local Law.

#### Section 8. Effective Date

This Local Law shall become effective upon filing with the Secretary of State of the State of New York, as required by the Municipal Home Rule Law.

(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. 2 of 2007 of the ~~(County)~~(City)(Town)(Village) of BOSTON was duly passed by the TOWN BOARD on FEB. 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.)

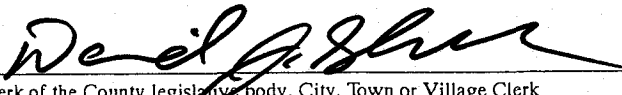
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority 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-----1-----, above.

  
Clerk of the County legislative body, City, Town or Village Clerk  
or officer designated by local legislative body

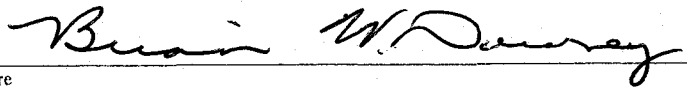
(Seal)

Date: FEBRUARY 7, 2007

(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 ERIE

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

TOWN ATTORNEY  
Title

~~CITY~~  
~~CNY~~ of BOSTON  
Town  
~~Village~~

Date: FEBRUARY 7, 2007