

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
41 STATE ST, ALBANY, NEW YORK 12231

(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 of Covert

Town

Village

Local Law No. 1 of the year 2009

A local law Establishing "Right to Farm"
(Insert Title)

Be it enacted by the Town Board of the
(Name of Legislative Body)

County

City of Covert as Follows

Town

Village

1. Legislative Intent and Purpose

a. The Town Board of the Town of Covert recognizes farming is an essential enterprise and an important industry that enhances the economic base, natural environment, and quality of life in the Town of Covert. The Town Board further declares that it shall be the policy of the Town to encourage agriculture and foster understanding by all of the residents of the necessary day-to-day operations involved in farming so as to encourage cooperation with these practices.

b. It is the general purpose and intent of this law to maintain and preserve the rural traditions and character of the Town, to permit the continuation of agricultural practices, to protect the existence and operation of farms, to encourage the initiation and expansion of farms and agri-businesses, and to promote new ways to resolve disputes concerning agricultural practices and farm operations. In order to maintain a viable farming economy in the Town of Covert, it is necessary to limit the circumstances under which farming may be deemed to be a nuisance, and to allow sound agricultural practices inherent to and necessary for the business of farming, which do not threaten public health and/or safety, to proceed and be undertaken free of unreasonable interference and restrictions.

c. This law will apply to all farmland within the boundaries of the Town of Covert

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used for agriculture as currently defined in subdivision 4, section 301, Article 25AA of the State Agriculture and Markets Law.

2. Definitions

a. "Farm land" shall mean land used in agricultural production, as defined in section 301 (4) of Article 25AA of the State Agriculture and Markets Law.

b. "Farmer" shall mean any person, organization, entity, association, limited liability company, 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 as defined in section 301 (4) of Article 25AA of the State Agriculture and Markets Law.

c. "Agricultural products" shall mean those products as defined in section 301(2) of Article 25AA of the State Agriculture and Markets Law, including, but not limited to:

- i. Field crops including corn, wheat, oats, rye, barley, hay, potatoes, and dry beans;
- ii. Fruits including apples, peaches, grapes, cherries, and berries;
- iii. Vegetables including tomatoes, snap beans, cabbage, carrots, beets, and onions;
- iv. Horticulture specialties, including nursery stock, ornamental shrubs, ornamental trees, and flowers;
- v. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites such as ostriches and emus, farmed deer, farmed buffalo, fur bearing animals, wool bearing animals such as alpacas and llamas, milk, eggs, and furs;
- vi. Maple sap;
- vii. Christmas trees derived from managed Christmas tree operations whether dug for transplanting or cut from the stump;
- viii. Aquaculture products, including fish, fish products, water plants; shellfish;
- ix. Short rotation woody crops raised for bio-energy;
- x. Woodland products, including logs, lumber, posts, and firewood; and
- xi. Apiary products, including honey, beeswax, royal jelly, bee pollen, propolis, package bees, nucs, and queens.

d. "Sound agricultural practices" shall mean the practices necessary for the on-farm production, preparation, and marketing of agricultural commodities as defined and set forth in the New York State Agriculture and Markets Law section 308 (1), as may be amended from time to time by the State of New York. Examples of such practices shall include, but not be limited to, operation of farm equipment, proper use of

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agricultural chemicals, the construction and use of farm structures, and other crop production methods.

Accepted sound agricultural practices include, but are not limited to, all agricultural practices that are:

- i. Reasonable and necessary to the particular farm or farm operation;
- ii. Conducted in a manner that is not negligent or reckless;
- iii. Conducted in conformity with generally accepted sound agricultural practices;
- iv. Conducted in conformity with all state and federal laws and regulations;
- v. Conducted in a manner that does not constitute a threat to the general public's health and safety; and
- vi. Conducted in a manner which does not reasonably obstruct the free passage or use of navigable waters, or public roadways.

e. "Farm operation" shall be as defined in section 301 (11) in the State Agriculture and Markets Law.

f. Nothing herein shall be construed to broaden or otherwise redefine the terms "farm," "farm operation," "farming," "livestock," "livestock products" and/or "sound agricultural practices," to include dogs or cats thereunder or to otherwise provide protection to on-farm dog or cat breeding.

g. In the event of any discrepancies in interpretation, or in the event that a definition is missing or deemed incomplete, or is the cause of confusion within this section of the Town of Covert Right to Farm Law, the definitions listed in section 301, Article 25AA of the State Agriculture and Markets Law will take precedence.

3. Right to Farm Declaration

a. For the purpose of the Town of Covert Right to Farm Law, this law encompasses any land in an agricultural district created pursuant to section 303 of the New York State Agriculture and Markets Law, or land used in agricultural production subject to an agricultural assessment pursuant to section 306 of this same law as defined in the same New York State Agriculture and Markets Law.

b. A farmer, as well as those employed, retained, and otherwise authorized to act on behalf of a farmer, may lawfully engage in sound agricultural practices within the Town of Covert at all times and in all such locations as are reasonably necessary to conduct the business of agriculture. For any sound agricultural practice, in determining the reasonableness of time, place, and methodology of such practices, due weight and consideration shall be given to both traditional customs

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and procedures in the farming industry, as well as the advances resulting from increased knowledge, research, and improved technologies.

c. Pursuant to New York State Agricultural and Markets Law section 308(3):

Notwithstanding any other provisions of law, on any land in an agricultural district created pursuant to section three hundred three or land used in agricultural production subject to an agricultural assessment pursuant to section three hundred six of this article, an agricultural practice shall not constitute a private nuisance, when an action is brought by a person, provided such an agricultural practice constitutes a sound agricultural practice pursuant to an opinion issued upon request by the commissioner. Nothing in this section shall be construed to prohibit an aggrieved party from recovering damages for personal injury or wrongful death.

d. This statute may be amended from time to time by the State of New York, but it defines the conditions upon which an agricultural practice may be considered a nuisance.

4. Notification of Real Estate Buyers

In order to promote harmony between farmers and their neighbors, the Town of Covert requires land holders and/or their agents and assigns to comply with section 310 of Article 25AA of the State Agriculture and Markets Law and provide notice to prospective purchasers and occupants that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district.

5. Alternative Resolution of Disputes: Voluntary Mediation Program

a. The Town Board shall, at its annual reorganization meeting, appoint a standing Town of Covert Agricultural and Farmland Dispute Resolution Committee (“the Committee”). Membership of the Committee shall consist of three (3) residents of the Town of Covert, qualified as follows:

- i. A Town of Covert resident actively participating in a farm operation;
- ii. A Town of Covert resident not associated with a farm operation; and
- iii. A Town of Covert resident and an alternate nominated jointly by the Seneca County Cornell Cooperative Extension Executive Director and the Seneca County Soil and Water Conservation District Manager.

The Town Board shall annually designate, among the foregoing appointees, a committee

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Chair and a vice chair, who shall serve in the event of the chair's absence or inability to Serve. The committee shall designate its own secretary for each mediation session.

b. Should any dispute arise regarding any agricultural operation, which cannot be settled by direct negotiation between the parties involved, the parties may by mutual agreement submit the matter to the Committee as a request for mediation, to attempt a resolution of the matter prior to, or alternatively to, the filing of any court action or submission of the dispute to the Commissioner of Agriculture and Markets. In the event that a controversy arises, one of the direct participants involved in the matter shall notify the Town Clerk in writing that a controversy exists that requires action by the Committee. The Town Clerk shall notify the members of the dispute resolution committee, as well as the Town Board, that a dispute has been filed, and a meeting of the dispute resolution committee shall be convened as prescribed by the time limits set forth.

c. The Committee shall schedule mediation at the earliest time convenient to the parties seeking mediation and the Committee, and in any event within thirty (30) days from the receipt of a request for mediation. Upon the conclusion of such mediation the Committee shall reduce the results of same to writing and provide copies of same to the parties to mediation within fourteen (14) days of such conclusion.

d. The time limits provided in this section for action by the committee may be extended upon the written stipulation of all parties in the dispute.

e. The effectiveness of the mediation program offered by the Committee is dependent upon direct, full, frank conversations and presentation of all pertinent facts concerning the dispute under the guidance of the mediators. The parties are encouraged in the exchange of information concerning the controversy, and each party shall have an opportunity to present what each considers to be the pertinent facts. Inasmuch as mediation dispenses with formal rules of procedure and rules of evidence, direct participation by the disputants, without the intervention of counsel is strongly encouraged; but the right of any party to representation, at his or her option and expense, shall not be impaired. Any party electing to have counsel at the mediation shall notify the Committee and the other party at least seven (7) days prior to the mediation. Participation in mediation is a matter in the discretion of each party, and no party shall be compelled to participate in mediation when he or she has elected not to have counsel and the opposite party is represented by counsel.

f. To encourage the use of voluntary, local mediation, the parties requesting mediation shall stipulate, in writing, that the statements made in mediation shall be deemed to be in the nature of settlement discussions, and that such statements, and any agreement reached in mediation, shall not be used for evidentiary purposes in any other action or proceeding.

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g. The party responsible for filing a dispute with the dispute resolution committee shall be responsible for the payment of an established filing fee determined and promulgated by the Town Board. Each party is responsible for its own attorney's fees, should attorneys be retained.

6. Severability Clause

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. The Town of Covert hereby declares that it would have passed this local law and each section and subsection thereof, irrespective of the fact that any one or more of these sections, subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

7. Precedence and Compatibility with Local laws

This Local Law and its provisions are in addition to all other applicable laws, rules and regulations and shall be read in such a manner as to effectuate consistency with any and all such regulations

8. Effective Date

This Local Law shall be effective immediately upon passage and filing with the New York Secretary of State.

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

(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. 1 of 2009 of the (County)(City)(Town)(Village) of Covert was duly passed by the Town Board on _____, 20____, in accordance with the applicable provisions of law.

~~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 200__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 20__, and was (approved)(not approved)(repassed after
(Name of Legislative Body)
disapproval) by the _____ and was deemed duly adopted on _____,
(Elective Chief Executive Officer*)
in accordance with the applicable provisions of law.

~~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 disapproved)(repassed
(Name of Legislative Body)
after disapproval) by the _____ on _____, 20____. Such local law
(Elective Chief Executive Officer*)
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.

~~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 2002 of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 20__, and was (approved)(~~not
(Name of Legislative Body)
disapproved~~)(repassed after disapproval) by the _____ on _____,
(Elective Chief Executive Officer*)
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.

* 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 chairman 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.

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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 of 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: July 16, 2009

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

STATE OF NEW YORK
COUNTY OF SENECA

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



Title: Attorney

Town of Covert

Date: July 16, 2009

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