

MASSACHUSETTS “RIGHT TO FARM” LAWS

The Massachusetts General Laws contain three different chapters which provide farmers relief from excessive regulation or nuisance complaints. They are:

CHAPTER 40A. “ZONING”

This section of zoning law restricts areas which cities and towns may regulate relative to commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. This section relates to many areas, including farm buildings, retail farm stands, etc. on parcels of 5 acres or more or on parcels of 2 acres or more that meet income requirements. There is a great deal of specific caselaw in our files relative to court decisions which effect agriculture. The first paragraph of M.G.L. Chapter 40A, Section 3 reads as follows:

Chapter 40A: Section 3. Subjects which zoning may not regulate; exemptions; public hearings; temporary manufactured home residences

No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities may be limited to parcels of 5 acres or more or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel. No zoning ordinance or by-law shall exempt land or structures from flood plain or wetlands regulations established pursuant to the General Laws. For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof. Said nursery stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises.

CHAPTER 111 “PUBLIC HEALTH”, SECTIONS 1, 125A AND 143

Public health statutes provide a key protection for farming operations conducting generally accepted farming activities from being deemed a nuisance by the Board of Health. Such accepted activities include the spreading of manure on farmland, noise from farm operations, etc. The three relevant sections of Chapter 111 are Section 1 (Definitions) which contains a definition of “Farming” or “Agriculture”, Section 125A that contains the nuisance exemption language, and Section 143 which removes piggeries from the exemption in Section 125A. The laws are as follows:

Chapter 111: Section 1. Definitions

“Farming” or “agriculture”, farming in all of its branches and cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any practices, including any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agricultural or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

Chapter 111: 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.

Chapter 111: Section 143. Trade or employment attended with noisome and injurious odors; assignment of places; prohibition; appeal

Section 143. No trade or employment which may result in a nuisance or be harmful to the inhabitants, injurious to their estates, dangerous to the public health, or may be attended by noisome and injurious odors shall be established in a city or town except in such a location as may be assigned by the board of health thereof after a public hearing has been held thereon, subject to the provisions of chapter forty A and such board of health may prohibit the exercise thereof within the limits of the city or town or in places not so assigned, in any event. Such assignments shall be entered in the records of the city or town, and may be revoked when the board shall think proper.

The department of environmental protection shall advise, upon request, the board of health of a city or town previous to the assignment of places for the exercise of any trade or employment referred to in this section, and any person, including persons in control of any public land, aggrieved by the action of the board of health in assigning certain places for the exercise of any trade or employment referred to in this section may, within sixty days, appeal from the assignment of the board of health to the department and said department may, after a hearing rescind, modify or amend such assignment.

Notwithstanding any provision in section one hundred and twenty-five A of this chapter, this section shall apply to the operations of piggeries.

CHAPTER 243. ACTIONS FOR PRIVATE NUISANCES

Chapter 243: Section 6. Actions against farming operations; limitations

Section 6. No action in nuisance may be maintained against any person or entity resulting from the operation of a farm or any ancillary or related activities thereof, if said operation is an ordinary aspect of said farming operation or ancillary or related activity; provided, however, that said farm shall have been in operation for more than one year. This section shall not apply if the nuisance is determined to exist as the result of negligent conduct or actions inconsistent with generally accepted agricultural practices. For the purposes of this section, "agriculture" and "farming" shall be as defined in section one A of chapter one hundred and twenty-eight.