

**WITHDRAWN AS OF 4/11/2017**

Intro. Res. No. 1025-2017

Laid on Table 1/3/2017

Introduced by Presiding Officer, on request of the County Executive and Legislators Krupski, Fleming

**RESOLUTION NO. -2017, ADOPTING LOCAL LAW  
NO. -2017, A LOCAL LAW TO ENSURE CONTINUITY OF  
FARMLAND PRESERVATION AND AGRICULTURAL  
PRODUCTION IN SUFFOLK COUNTY**

**WHEREAS**, there was duly presented and introduced to this County Legislature at a meeting held on \_\_\_\_\_, 2017, a proposed local law entitled, "**A LOCAL LAW TO ENSURE CONTINUITY OF FARMLAND PRESERVATION AND AGRICULTURAL PRODUCTION IN SUFFOLK COUNTY**"; now, therefore be it

**RESOLVED**, that said local law be enacted in form as follows:

**LOCAL LAW NO. -2017, SUFFOLK COUNTY, NEW YORK**

**A LOCAL LAW TO ENSURE CONTINUITY OF FARMLAND  
PRESERVATION AND AGRICULTURAL PRODUCTION IN  
SUFFOLK COUNTY**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK**, as follows:

**Section 1. Legislative Intent.**

This Legislature hereby finds and determines that the County of Suffolk has worked assiduously since the early 1970's to preserve and protect the County's farmland resource, agricultural industry and heritage.

This Legislature also finds that the most important tool in the County's agricultural preservation effort has been its pioneering Purchase of Development Rights Program ("PDR program"). Under this program, farmland stays in private ownership and remains in agricultural production while the County acquires the property's non-agricultural development rights.

This Legislature further determines that the success of the County's PDR program is universally recognized. Despite enormous development pressure, the County of Suffolk has permanently preserved 10,500 acres of farmland and helped ensure that agriculture remains a viable industry in the County. In fact, Suffolk County is one of the most productive agricultural counties in the State, generating hundreds of millions of dollars in revenue, creating thousands of jobs and bolstering the County's increasingly important tourism industry.

This Legislature finds that the Suffolk County Farmland Committee has been a mainstay of the PDR program for nearly forty years, recommending farmlands that should be preserved and serving as a review board for proposed improvements on PDR lands.

This Legislature further finds that the County's PDR program, codified as, and generally known as "Chapter 8" of the Suffolk County Code, has been amended and updated

numerous times since the program's inception, in order to stay current with changing practices in the agricultural industry and to ensure the program's continued success. In 2010 and 2013, the County worked with farmers, environmentalists, community and political leaders to update Chapter 8 and the result of those efforts was the enactment of Local Law No. 52-2010 and Local Law No. 44-2013, both of which were approved by overwhelming votes of the County Legislature.

This Legislature further finds that in a decision in *Long Island Pine Barrens Society v. Suffolk County Legislature*, dated September 26, 2016, the State Supreme Court declared Local Law Nos. 52-2010 and 44-2013 null and void and permanently enjoined the County and the Farmland Committee from granting permits and hardship exemptions to farmers participating in the County's PDR program.

This Legislature determines that, without clarifying legislation by this Legislature, this judicial decision will severely undermine the County's farmland preservation efforts, places the PDR program in a state of limbo and upset a consensus on farming practices that was reached by the County's policymakers after years of careful deliberation with all interested stakeholders. Farmers currently participating in the PDR program are unsure what actions they may take to sustain production on their lands and farmers who were considering entering the program, are now hesitant to do so. Further, this Legislature finds that the uncertainty surrounding the program's future makes it more likely that thousands of acres of unprotected farmland will be converted into non-agricultural uses.

This Legislature also finds that the PDR program is a working lands program designed to ensure that land is available to support a productive agricultural industry for this, and future generations in Suffolk County.

This Legislature further finds that while the County is appealing the court decision, it is imperative that this Legislature immediately enact new legislation which will allow the County's farmland program to continue functioning. The herein legislation recognizes that participants in the PDR program have a right to farm and use standard agricultural and best management practices to sustain agricultural production on their farms. Further, this legislation is consistent with the policy of the State of New York, expressed in the State Constitution and the Agriculture and Markets Law, to conserve and protect farmland for the production of food and other agricultural products for this, and future generations.

Therefore, the purpose of this law is to enact a framework which will allow the County's PDR program to continue functioning and allow sound agricultural practices to continue on PDR lands.

## **Section 2. Definitions.**

As used in this law, the following terms shall have the meaning indicated:

**AGRICULTURAL LAND** - Land used in a bona fide farm operation to which the County has purchased development rights.

**AGRICULTURAL PRODUCTS** - Crops, livestock and livestock products as defined in § 301 of the New York State Agriculture and Markets Law, as same may be amended from time to time.

AGRICULTURAL PRODUCTION – The production of agricultural products for commercial purposes by farm operations through the use of land, structures, farm equipment and practices.

AGRICULTURE-RELATED PRODUCTS – Merchandise that promotes a farm or locally grown produce.

AGRICULTURAL TOURISM - As defined in Agricultural and Markets Law § 301, as same may be amended from time to time.

ALIENATION OF FARMLAND DEVELOPMENT RIGHTS – A written conveyance by the County of its interest or right, in whole or part, in any development right in agricultural land to another person, for a purpose not related to a farm operation or agricultural production by deed, lease or easement.

COMMISSIONER – The Commissioner of the Suffolk County Department of Economic Development and Planning.

COMMITTEE - The Suffolk County Farmland Committee.

CONVERSION – As defined in Agricultural and Markets Law section 301, as may be amended from time to time.

COUNTY – The County of Suffolk.

DEPARTMENT - The Suffolk County Department of Economic Development and Planning.

FARM EQUIPMENT – Any non-permanent accessory item incidental to the functioning of a farm operation including, but not limited to, motorized equipment, fencing, irrigation equipment and drainage systems.

FARMLAND DEVELOPMENT RIGHT – The permanent legal interest in real property to restrict or limit the use of agricultural land(s) exclusively to a farm operation as defined in Agriculture and Markets Law section 301, as may be amended from time, and/or agricultural production.

FARM OPERATION - As defined in Agricultural and Markets Law § 301, as may be amended from time to time.

FARM STAND - A structure for the retail sales of agricultural products, processed agricultural products (e.g., cheese, jam, wine) and agriculture-related products.

INTEREST OR RIGHT - In real property, includes all legally recognized interests and rights in real property other than fee simple.

LOCALLY GROWN - A product grown in the County of Kings, Nassau, Queens or Suffolk, in the State of New York.

LOT COVERAGE - The total floor area used for buildings, display areas and parking areas divided into the total lot area, expressed as a percentage. The total lot area shall only include Agricultural Lands to which the County has acquired development rights.

PERSON - Any individual, partnership, firm, association, trust, company, joint venture or corporation.

PREMISES - All parcels that constitute the farm operation.

PROCESSING - The conversion of agricultural products into any form or condition other than the natural form by subjecting the item to any procedure or technique, including, but not limited to, slaughter, milling, fermentation, cooking or juicing.

STRUCTURE – A permanent improvement constructed or erected on or above the ground including, but not limited to, barns, sheds and greenhouses. This term shall not include farm equipment.

### **Section 3. Farmland Committee.**

The Suffolk County Farmland Committee is hereby reauthorized. The Committee's membership, composition and authority shall be governed by the provisions of § 8-4 of the Suffolk County Code effective as of December 26, 2013. The Committee shall continue to recommend to the Department and the County farmlands from which farmland development rights may be acquired and shall continue to review activities proposed to be conducted on agricultural land. The Committee shall not have the authority to review or issue agricultural development permits, permits for farm stands and processing facilities, or special event permits, nor may the Committee waive maximum lot coverage requirements. Members serving on the Farmland Committee on the effective date of this local law shall continue to serve until such time as they resign or their successor is selected.

### **Section 4. Purchase of Development Rights.**

The County's program of purchasing development rights to agricultural land is hereby reauthorized and the process for acquisition of such rights shall be governed by § 8-5 of the Suffolk County Code effective as of December 26, 2013.

### **Section 5. Prohibitions and Enforcement.**

The prohibitions against certain uses of agricultural lands set forth in § 8-5 of the Suffolk County Code shall continue in full force and effect. The County's enforcement powers set forth in § 8-6 of the Suffolk County Code effective as of December 26, 2013 shall continue in full force and effect.

### **Section 6. Right to Farm on Agricultural Lands.**

A. The following actions are hereby determined to be standard agricultural practices, reasonable, necessary and appropriate for a farm operation and agricultural production, and shall not constitute a conversion of agricultural land or an alienation of farmland development rights:

1. the construction and operation of a farm stand and processing facilities, subject to maximum lot coverage requirements and other restrictions as set forth in this law;

2. on-farm production, preparation, processing and wholesale and retail marketing of agricultural products;
3. installation and utilization of farm equipment;
4. installation of livestock fencing, deer fencing, trellises and irrigation systems;
5. direct sale to consumers of locally grown agricultural products;
6. agricultural tourism;
7. the construction and use of structures including, but not limited to, barns, sheds and greenhouses necessary for a farm operation and/or supportive of agricultural production;
8. the installation of utilities, including overhead, surface or underground equipment such as a transmission line, pole, wire, pipe, well, drainage system or alternative energy systems limited to on-farm energy use; and
9. the construction and use of permeable parking surfaces.

B. With respect to the construction and use of farm stands, processing facilities, permeable parking surfaces and structures supporting agricultural production, the lot coverage shall not exceed the following:

<b>Parcel Area (acres)</b>	<b>Maximum Lot Coverage</b>
0 to 25	15%
25 to 50	12.5%
More than 50	10%

C. In no event shall the cumulative floor area of a farm stand and/or processing facility exceed 1,000 square feet of floor area. For purposes of this calculation, a farm stand display area shall not be counted towards this building limit. The Department may limit this building coverage to an amount less than the maximum building allowance as it deems necessary to carry out the purposes of this law.

D. The following restrictions shall apply to farm stands:

1. Only agricultural products, processed agricultural products, and other agriculture-related products shall be offered for sale at a farm stand. Such products shall include:
  - a. Agricultural products grown on premises and processed agricultural products including, but not limited to cheese, jam and wine, derived from agricultural products grown on premises.
  - b. Agricultural products grown off premises may be sold at farm stands, provided they are locally grown agricultural products or

processed agricultural products derived from locally grown agricultural products. The total amount of locally grown products offered for sale must be subordinate to produce grown on the farm operation and shall not exceed 40% of the total square footage of products displayed at the farm stand structure.

- c. Local merchandise that promotes the farm or locally grown produce, shall be allowed so long as the total sales area for these products does not exceed 10% of the total square footage of products displayed at the farm stand.
2. The farm stand structure shall not exceed 1,000 square feet.
  3. The farm stand operation may include an additional display area which shall not exceed 1,500 square feet. Awnings, overhangs, porches and decks attached to the farm stand structure shall count towards the farm stand display area.
  4. The farm stand structure shall be designed for seasonal or year-round use, and the installation and maintenance of permanent heating equipment within the farm stand structure is allowed.
  5. Storage of agricultural products and processed agricultural products, including cold or climate-controlled storage, is allowed within the farm stand structure.
  6. The installation of utilities, including any overhead, surface or underground equipment such as a transmission line, pole, wire, pipe, well, drainage system or septic system necessary for the supply of electricity, natural gas and/or water, for the mitigation of stormwater runoff, for the removal of sanitary sewage effluent and/or for communication purposes shall be allowed if necessary and required for the farm stand operation.
  7. Second floors are not allowed to be built for farm stand structures.
  8. The farm stand and display areas listed herein shall be constructed and operated in compliance with all applicable federal, state and local legal requirements, including, but not limited to, zoning restrictions and New York State and Suffolk County Department of Health Services regulations.
- E. The following provision shall apply to processing facilities:
1. Processing shall be limited to the processing of on premises and locally grown agricultural products. No less than 51% of the inputs used in processing must consist of products produced on premises.
  2. The processing structure shall not exceed 1,000 square feet. However, as set forth in subsection (C) of this section, the cumulative total floor area of a processing structure and a farm stand structure cannot exceed 1,000 square feet.
  3. Processing facilities shall not include display areas.

4. The modification of an existing structure for processing purposes is permissible, subject to written approval by the Commissioner.
5. The installation of utilities, including any overhead, surface or underground equipment such as a transmission line, pole, wire, pipe, well, drainage system or septic system necessary for the supply of electricity, natural gas and/or water, for the mitigation of stormwater runoff, for the removal of sanitary sewage effluent and/or for communication purposes shall be allowed if necessary and required for the processing facility.
6. Any processing facility shall be constructed and operated in compliance with all applicable federal, state and local legal requirements, including, but not limited to, zoning restrictions and New York State and Suffolk County Department of Health Services regulations.

#### **Section 7. Applicability.**

This law shall apply to all farmland development rights in agricultural land, whenever acquired, and of every kind owned by the County. This law shall not apply to non-agricultural lands acquired as open spaces or open areas for the purpose of preserving active parkland, passive parkland, woodlands and/or wetlands and shall not apply to farmlands to which the County does not own any interest or right.

#### **Section 8. Severability.**

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

#### **Section 9. SEQRA Determination.**

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

#### **Section 10. Effective Date.**

This law shall take effect immediately upon its filing in the Office of the Secretary of State.

DATED:

APPROVED BY:

\_\_\_\_\_  
County Executive of Suffolk County

Date: