

Appendix B: New York Direct Marketing Association Model Zoning for Roadside Stands and Farm Markets

Permitted Uses

The following sections contain proposed language that would incorporate into a zoning ordinance, as permitted uses, roadside stands and farm markets. The language should be inserted into the district regulations for each zoning district within the community where roadside stands or farm markets exist, or are being considered as allowed uses.

Included in the proposed language are statements of purpose for each of the two types of markets. These statements provide the community's rationale for allowing the uses within the framework of their zoning regulations.

Roadside Stand

The purpose of a roadside stand is to allow farmers, who are actively farming, low cost entrance into direct marketing their farm products. It is characterized as a direct marketing operation without a permanent structure and only offering outdoor shopping. Such an operation is seasonal in nature and features on-farm produced as well as locally produced agricultural products, enhanced agricultural products and handmade crafts. Permitted activities include: the marketing of agricultural products, products that are agriculture-related, including specialty foods, gift items, mass-produced items that reflect the history and culture of agriculture and rural America; crafts; pick-your-own fruits, vegetables and nuts; community supported agriculture (CSA).

Farm Market

The purpose of a farm market is to provide opportunities for actively producing farms to retail their products directly to consumers and enhance income through value-added products, services and activities. Permitted activities include: the marketing of agricultural products, products that are agriculture-related, including specialty foods, gift items, mass-produced items that reflect the history and culture of agriculture and rural America; crafts; agricultural commerce, agricultural tourism, pick-your-own operation; community supported agriculture; bed & breakfast inn; farm vacations.

The following are allowed as accessory uses to the farm market operation: Petting zoo and animal attractions; children's games and activities; crop mazes; holiday-oriented activities; miniature golf course incorporating farm themes; food service if growing any portion of the food served, such as vegetables with a deli, fruit in desserts, etc; horseback riding arenas.

Definitions

Definitions are critical to ensuring clarity and uniformity in the interpretation of zoning regulations. Clear definitions can inoculate the community from legal actions related to their zoning regulations. At the same time, they can protect the individual property owner by ensuring

consistent and uniform application of the regulations. For this purpose, the following definitions should be incorporated into the zoning ordinance when it is amended to allow roadside stands or farm markets.

Actively Producing Farm: Pursuant to Section 301, Sub. 4 of the Agriculture and Markets Law, the farm must have a minimum of 7 acres in production with \$10,000 in sales, or \$50,000 in sales if under 7 acres of land are in production. In addition, a predominance of the agricultural products being sold at the farm be New York State produced. This would be on an annual basis and would be determined by volume of product.

Agricultural Commerce: Additional enterprises permitted at farm markets to attract customers and promote the sale of agricultural products. These include, but are not limited to gift shops, on-farm brewery, Community Supported Agriculture, bakery, florist shop, garden center, nursery, ice cream shop, food processing where the predominant ingredient is grown by the market operator, cider mills, on-site artistry and pick-your-own operations.

Agricultural Products: Pursuant to Section 301, Sub. 2 of the Agriculture and Markets Law: Crops, livestock and livestock products, including, but not limited to the following:

- a) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.
- b) Fruits, including apples, peaches, grapes, cherries and berries.
- c) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.
- d) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
- e) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, milk, eggs, and furs.
- f) Maple sap
- g) Christmas trees derived from a managed Christmas tree operation, whether dug for transplanting or cut from the stump.
- h) Aquaculture products, including fish, fish products, water plants and shellfish.
- i) Woody biomass, which means short rotation woody crops raised for bioenergy, and shall not include farm woodland.

Agriculture-related products: Items sold at a farm market to attract customers and promote the sale of agricultural products. Such items include, but are not limited to all agricultural and horticultural products, animal feed, baked goods, ice cream and ice cream-based desserts and beverages, clothing and other items promoting the farm enterprise operating the farm market and agriculture in New York, value-added agricultural products, Christmas trees and related products and on-farm wineries.

Agricultural Tourism: Agricultural-related tours, events and activities, as well as non-agricultural related activities used to attract people and promote the sales of farm produce and agricultural products. These tours, events and activities include, but are not limited to petting zoos, school tours, outdoor trails, corn mazes, hayrides, pony rides, group picnics, on- and off-site food catering services, musical events, craft shows, outdoor recreation. To be a permitted use, the farm must be actively producing agricultural products for sale. Farm markets where the

seller is not actively producing agricultural products for retail sales will require a special use permit for agricultural tourism activities.

All-Weather Surface: Any roadway, driveway, alley or parking lot surface paved with crushed stone, asphalt, concrete or other pervious or impervious material in a manner that will support the weight of anticipated vehicular traffic in all weather conditions and minimize the potential for ruts, potholes or pooling of water.

Community Supported Agriculture: The retail sale of agricultural products to customers through a subscription paid in cash or labor, or a combination thereof

Enhanced Agricultural Products: An agricultural product that has been altered or processed in a way to increase its value to consumers and increase the profitability of the product to the farmer.

Farm Brewery: Facility for the production of malt liquors operated as a subordinate enterprise to a farm by the owner or owners of the farm on which it is located.

Farm Market: A permanent structure, operated on a seasonal or year-round basis, that allows for agricultural producers to retail their products and agriculture-related items directly to consumers and enhance income through value-added products, services and activities.

Farm Vacation: Temporary residency on the premises by paying transient guests for the purpose of observing or participating in the ongoing activities of an agricultural operation and learning about agricultural life.

Farm Winery: Any place or premises, located on a farm in New York State, in which wine is manufactured and sold, and is licensed by the State Liquor Authority as a farm or commercial winery.

Glare: Light emitting from a luminaire with intensity great enough to reduce a viewer's ability to see, and in extreme cases causing momentary blindness.

Handcrafted Item: An object that requires use of the hands, hand tools and human craft skills in its production, and which is usually not adaptable to mass production by mechanical means.

Pick Your Own Enterprise: A fruit or vegetable growing farm which provides the opportunity for customers to pick their own fruits or vegetables directly from the plant. Also referred to as a PYO.

Roadside Stand: A direct marketing operation without a permanent structure and only offering outdoor shopping. Such an operation is seasonal in nature and features on-farm produced as well as locally produced agricultural products, enhanced agricultural products and handmade crafts.

Seasonal Sign: Any sign that is removed for three consecutive months. These signs must be removed whenever business is closed for seven or more consecutive days. Because seasonal signs will be removed for a minimum of three months at a time, size and quantity restrictions do not apply.

Design and Operations Standards

In addition to clear definition of what would constitute the permitted activities associated with a roadside stand or farm market, specific design and use standards governing the design and operations of such enterprises should also be incorporated into the zoning ordinance.

Recommended standards include:

There shall be no sales of fuel and related products, tobacco products, alcoholic beverages except those listed under permitted uses, lottery tickets, vehicles or related products.

Food franchises are prohibited in any roadside stand or farm market operation.

To ensure public safety, roadside stands will be required to have off-street parking with an all weather surface and adequate ingress and egress with an area for turnaround.

There shall be one 10 x 20 parking area per 200 sq. ft. of selling and display area, with a minimum of 2 spaces. Parking spaces are exclusive of driveways and turnarounds. For the purpose of calculating the required number of parking spaces, production facilities, garden plots, planting beds and outdoor storage areas opened to the public are excluded. Pick-your-own operations will require a greater number of off road parking spaces based on expected number of cars per day.

Parking: To ensure public safety, farm markets will be required to have off-street parking with adequate ingress and egress with an area for turnaround. A minimum of one 10 x 20 parking area per 200 sq. ft. of selling and display area, with a minimum of two spaces, shall be required. For the purpose of calculating the required number of parking spaces, production facilities, garden plots, planting beds and outdoor storage areas opened to the public are excluded. The above notwithstanding, adequate off street parking shall be provided. Parking spaces are exclusive of driveways and turnarounds. Entrances and exits onto roadways must have an all-weather surface. PYO operations will require a greater number of off-road parking spaces based on the expected number of cars per day. Overflow parking should be, minimally, grass covered.

Setbacks: Frontyard - 20 feet from the right of way line to front of sales area, excluding production facilities, garden plots, planting beds and outdoor storage areas open to the public. No parking is allowed within frontyard setback or within 20 feet of the edge of roadway, whichever distance is less.
Sideyard - 20 foot setback from property line.

Rear - 40 foot setback from property line.

Where a roadside stand or farm market is located on a separate parcel of land, maximum lot coverage by buildings shall be 30%. Total coverage, including parking areas, shall not exceed 70%.

Signs: Seasonal signs are allowed, but cannot be placed anywhere it would create a traffic hazard. All other town signage regulations may apply.

Lighting: No outdoor lighting shall produce glare beyond the boundary of the property. No rotating or flashing lights on advertising signage shall be permitted.

Buffers: Buffers shall be a minimum of 15 feet in width, and planted with plant materials reaching a minimum of 6' within 5 years and producing a continuous visual barrier, or alternately, include a solid fence or wall with a minimum height of 6'.

(Buffers are recommended in addition to any required setbacks if next door use is substantially different.)

Water: Potable water on site is required.

These rights and privileges extend to any active farm in any zoning district.

Appendix B Model Right to Farm Law

Model Right To Farm Law from Dutchess County's 2015 Agricultural and Farmland Protection Plan

Be it enacted by the Town Board of the Town of _____ as follows:

Section 1. Legislative Intent and Purpose

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

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 _____, it is necessary to limit the circumstances under which farming may be deemed to be 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

1. "Farmland" shall mean land used in agricultural production, as defined in subdivision four of section 301 of Article 25AA of the State Agriculture and Markets Law.
2. "Farmer" shall mean any person, organization, entity, association, partnership, 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.
3. "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:
 - a. Field crops, including corn, wheat, rye, barley, hay, potatoes and dry beans.
 - b. Fruits, including apples, peaches, grapes, cherries and berries.
 - c. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.
 - d. Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.

e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, llamas, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, milk and milk products, eggs, furs, and poultry products.

f. Maple sap and sugar products.

g. Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.

h. Aquaculture products, including fish, fish products, water plants and shellfish.

i. Short rotation woody crops raised for bioenergy.

j. Production and sale of woodland products, including but not limited to logs, lumber, posts and firewood.

4. "Agricultural practices" shall mean those practices necessary for the on-farm production, preparation and marketing of agricultural commodities. Examples of such practices include, but are not limited to, operation of farm equipment, proper use of agricultural chemicals and other crop production methods, and construction and use of farm structures.

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

Section 3. Right-to-Farm Declaration

Farmers, as well as those employed, retained, or otherwise authorized to act on behalf of farmers, may lawfully engage in agricultural practices within this Town at all times and all such locations as are reasonably 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, research and improved technologies.

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 and sound agricultural practices,
4. Conducted in conformity with all local state, and federal laws and regulations,

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 reasonably obstruct the free passage or use of navigable waters or public roadways.

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

Section 4. Notification of Real Estate Buyers

In order to promote harmony between farmers and their neighbors, the Town requires land holders and/or their agents and assigns to comply with Section 310 of Article 25-AA of the State Agriculture and Markets Law and provide notice to prospective purchasers and occupants as follows: "It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products and also for its natural and ecological value. This notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors." This notice shall be provided to prospective purchase of property within an agricultural district or on property with boundaries within 500 feet of a farm operation located in an agricultural district.

A copy of this notice shall be included by the seller or seller's agent as an addendum to the purchase and sale contract at the time an offer to purchase is made.

Section 5. Resolution of Disputes

1. Should any controversy arise regarding any inconveniences or discomfort occasioned by agricultural operations which cannot be settled by direct negotiation between the parties involved, either party may submit the controversy to a dispute resolution committee as set forth below in an attempt to resolve the matter prior to the filing of any court action and prior to a request for a determination by the Commission or Agriculture and Markets about whether the practice in question is sound pursuant to Section 308 of Article 25AA of the State Agriculture and Markets Law.

2. Any controversy between the parties shall be submitted to the committee within thirty (30) days of the last date of occurrence of the particular activity giving rise to the controversy or the date the party became aware of the occurrence.

3. The committee shall be composed of three (3) members from the Town selected by the Town Board, as the need arises, including one representative from the farm community, one person

from Town government and one person mutually agreed upon by both parties involved in the dispute.

4. The effectiveness of the committee as a forum for the resolution of disputes 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.

5. The controversy shall be presented to the committee by written request of one of the parties within the time limits specified. Therefore after, the committee may investigate the facts of the controversy but must, within twenty-five (25) days, hold a meeting at a mutually agreed place and time to consider the merits of the matter and within five (5) days of the meeting render a written decision to the parties. At the time of the meeting, both parties shall have an opportunity to present what each consider to be pertinent facts. No party bringing a complaint to the committee for settlement or resolution may be represented by counsel unless the opposing party is also represented by counsel. The time limits provided in this subsection for action by the committee may be extended upon the written stipulation of all parties in the dispute.

6. Any reasonable costs associated with the function of the committee process shall be borne by the participants.

Section 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 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.

Section 7. Precedence

This Local Law and its provisions are in addition to all other applicable laws, rules and regulations.

Section 8. Effective Date

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

Model Disclosure Notice

"It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This disclosure notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an

agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors. Prospective residents are also informed that the location of property within an agricultural district may impact the ability to access water and/or sewer services for such property under certain circumstances. Prospective purchasers are urged to contact the New York State Department of Agriculture and Markets to obtain additional information or clarification regarding their rights and obligations under article 25-AA of the Agriculture and Markets Law."