

## Chapter 127. Right to Farm

[HISTORY: Adopted by the Board of County Commissioners of Dorchester County 5-5-1998 by Ord. No. 253. Amendments noted where applicable.]

### GENERAL REFERENCES

Agricultural land preservation — See Ch. 60.

Agricultural use — See Ch. 62.

Grading, erosion and sediment control — See Ch. 100.

Subdivision regulations — See Ch. 140.

Zoning — See Ch. 155.

### § 127-1. Findings and policy.

- A. It is the declared policy of Dorchester County to preserve, protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. It is the purpose of this chapter to reduce the loss to the county of its agricultural resources by limiting the circumstances under which agricultural and forestry operations may be deemed to constitute a nuisance, trespass or other interference with the reasonable use and enjoyment of land, including but not limited to smoke, odors, dust, noise, chemicals or vibration; provided that nothing in this chapter shall in any way restrict or impede the authority of the state and of the county to protect the public health, safety and welfare.
- B. It is in the public interest to promote a clearer understanding between agricultural, forestry operations and nonagricultural residential neighbors concerning the normal inconveniences of agricultural operations which follow generally accepted agricultural and forestry practices and do not endanger public health or safety.
- C. This chapter is not intended to and shall not be construed as in any way modifying or abridging local, state or federal laws relating to health, safety, zoning, licensing requirements, environmental standards (including those standards which relate to air and water quality), and the like.
- D. An additional purpose of this chapter is to promote a good neighbor policy by advising purchasers and users of property adjacent to or near agricultural or forestry operations of the inherent potential problems associated with such purchase or use. These potential problems include but are not limited to noises, odors, dust, chemicals, smoke, vibration and hours of operation that may accompany agricultural operations. It is intended that, through mandatory disclosures, purchasers and users will better understand the impact of living near agricultural or forestry operations and be prepared to accept attendant conditions as the natural result of living in or near rural areas. However, this chapter shall be effective regardless of whether disclosure was made in accordance with § 127-5 herein ("Right to Farm Notice and Real Estate Transfer Disclosure").

### § 127-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

#### AGRICULTURAL LAND

All real property within the boundaries of Dorchester County that is: lying in the Agriculture District; or carried on the tax rolls of the State Department of Assessments and Taxation as agricultural; or all other land that has been used as an agricultural operation or forestry continuously for one year.

#### **AGRICULTURAL OPERATION**

Includes but is not limited to all matters set forth in the definition of "operation" at Md. Cts. & Jud. Proc. Code Ann., § 5-308 (a), as amended from time to time; the production of all matters encompassed within the definition of "farm product" at Md. Agriculture Code Ann., § 10-601(c), as amended from time to time; the cultivation and tillage of the soil; composting; production, harvesting and processing of agricultural crops; raising poultry; production of eggs; production of milk and dairy products; production of livestock, including pasturage; production of bees and their products; production of fish; production of fruit, vegetables and other horticultural crops; production of aquatic plants; aquaculture; production of timber and any commercial agricultural procedure performed as incident to or in conjunction with such operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market; and usage of land in furtherance of educational and social goals, such as 4-H, Future Farmers of America, and the like.

#### **FORESTRY OPERATION**

Includes but is not limited to the cultivation and production of all matters, products, etc., derived from the practice of forestry, as encompassed within the definition of "practice forestry," as set forth in Md. Bus. Occ. & Prof. Code Ann., § 7-101(e), as amended from time to time.

#### **GENERALLY ACCEPTED AGRICULTURAL OR FORESTRY PRACTICES**

Those methods used in connection with agricultural or forestry operations which do not violate applicable federal, state or local laws or public health, safety and welfare and which are generally accepted agricultural or forestry practices in the agriculture or forestry industry. Generally accepted agricultural or forestry practices include practices which are recognized as best management practices and those methods which are authorized by various governmental agencies, bureaus and departments, such as the Dorchester County Cooperative Extension Service of the University of Maryland, and the like. If no generally accepted agricultural or forestry practice exists or there is no method authorized by those agencies mentioned herein which govern a practice, the practice is presumed to be a generally accepted agricultural or forestry practice.

#### **HEALTH OFFICER**

The Director of the Health Department for Dorchester County or his designee.

### **§ 127-3. Limitation of actions.**

- A. A private action may not be maintained with respect to an agricultural or forestry operation conducted on agricultural land on the grounds that the agricultural or forestry operation interferes or has interfered with the use or enjoyment of property, whether public or private, if:
  - (1) The agricultural or forestry operation, including any change in the operation, has been under way for a period of one year or more and if the operation or the change did not constitute a nuisance from the date the operation or change in the operation began; and
  - (2) The agricultural or forestry operation is conducted substantially in accordance with generally accepted agricultural or forestry practices.
- B. Notwithstanding any provision of this section, no action alleging that an agricultural or forestry operation has interfered with the reasonable use or enjoyment of real property or personal well-being shall be maintained if the plaintiff has not sought arbitration through the Agricultural Reconciliation Committee, as defined in § 127-4 herein.

### **§ 127-4. Resolution of disputes and procedure for complaints, investigation and declaration.**

A. Nuisances which affect public health.

- (1) Complaints. A person may complain to the Dorchester County Health Department to declare that a nuisance which affects public health exists.
- (2) Investigations. The Health Officer may investigate all complaints of nuisance received against an agricultural or forestry operation. When a previous complaint involving the same condition resulted in a determination by the Health Officer that a nuisance condition did not exist, the Health Officer may investigate the complaint, but the Health Officer may also determine not to investigate such a complaint. The Dorchester County Health Department may initiate any investigation without citizen complaint.
- (3) After the Health Officer has completed his investigation, he will report his findings to the Agricultural Reconciliation Committee, to aid in their determination as to the existence of a nuisance.

B. Resolution of disputes regarding agricultural operations.

- (1) If any conflict cannot be resolved regarding an interference with the use or enjoyment of property from agricultural or forestry operations conducted on agricultural land, the parties to that controversy may file a written complaint with the Agricultural Reconciliation Committee.
- (2) There is hereby established the Dorchester County Agricultural Reconciliation Committee, which shall arbitrate and mediate disputes involving agricultural or forestry operations conducted on agricultural lands and issue opinions on whether such agricultural or forestry operations are conducted in a manner consistent with generally accepted agricultural or forestry management practices.
- (3) Agricultural Reconciliation Committee membership.
  - (a) The Agricultural Reconciliation Committee shall be composed of five persons, all county residents, all of whom shall have farm or forestry background, and shall be appointed by the County Commissioners. Members of the committee shall serve a three-year term; however the initial appointments shall be as follows:
    - [1] One member shall be appointed to serve a one-year term;
    - [2] Two members shall be appointed to serve a two-year term;
    - [3] Two members shall be appointed to serve a three-year term.
  - (b) After these initial appointments, all appointments shall be for a full three-year term.
- (4) The Agricultural Reconciliation Committee will conduct its proceedings in an informal manner, and the rules of evidence shall not apply. In each case before it, the Agricultural Reconciliation Committee shall engage in non-binding arbitration in controversies arising out of agricultural or forestry operations, including but not limited to the invasion of property and personal rights by agricultural or forestry operations conducted on agricultural land.
- (5) If the Agricultural Reconciliation Committee or a court finds that the conduct of a party in bringing or maintaining an action in connection with an agricultural or forestry operation conducted on agricultural land was in bad faith or without substantial justification, the Reconciliation Committee or court shall require that party to pay to the owner of the agricultural or forestry operation (or any other party opponent) the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by that party in defending against the action.

## § 127-5. Right to farm and real estate transfer disclosure.

Upon any transfer of real property by any means, the transferor shall provide the purchaser or lessee a Real Estate Transfer Disclosure Statement, as prescribed by the Dorchester County Commissioners, specifically advising the purchaser or lessee of the existence of this Right to Farm Ordinance.

## § 127-6. Severability.

Should any provision, section, paragraph or subparagraph of this chapter, including any code or text adopted hereby, be declared null and void, illegal, unconstitutional, or otherwise determined to be unenforceable by a court having competent jurisdiction, the same shall not affect the validity, legality, or enforceability of any other provision, section, paragraph or subparagraph hereof, including any code or text adopted hereby. Each such provision, section, paragraph or subparagraph is expressly declared to be and is deemed severable.

## § 127-7. Section headings, chapter heading, titles.

Section headings, chapter headings, titles, etc., are for the purpose of description or ease of use and do not form a part of the text of this chapter or any code or text adopted hereby.

## § 127-8. Existing liabilities.

Except to the extent specifically provided herein, this chapter shall not discharge, impair or release any contract, obligation, duty, liability or penalty whatever existing on the date of its enactment. It is not intended hereby that the law of nonconforming use be changed, or that the court's rule of construction concerning the application of changes in the law during the pendency of actions be modified hereby, but simply that this chapter should not effect a change between private parties.

## § 127-9. Short title.

This chapter shall be cited as the "Dorchester County Right to Farm Ordinance."