

Proposed Baltimore County Right-to-Farm Law

This proposed code is based on the Right-to-farm law existing in most counties of Maryland. It is adapted to the processes in Baltimore County and is based on the following presumptions:

- Does not create a new "reconciliation board" as other counties do.
- Existing Ag Board remains in an advisory role, not quasi-judicial. Does not replace existing Code Enforcement and Zoning processes.
- Ag Board arranges mediation where possible, and provides recommendations to the existing processes of Code Enforcement, the Zoning Commissioner, and the Board of Appeals.
- Code Enforcement and Zoning Commissioner are not required to follow the Ag Board's recommendation, but must provide written reasons when they do not.

[Note: Text in blue, in square brackets, would not be a part of the legislation, but is included here to assist in the understanding of this proposed Article.]

The Right-to-Farm law should be a new Article in the County Code as follows:

Article 36 Right to Farm

§ 36-1-101. Findings and policy.

(a) It is the declared policy of Baltimore 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 article to reduce the loss to the County of its agricultural resources by limiting the circumstances under which agricultural 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, fumes, flies, dust, noise, vibration, the operation of machinery of any kind related to agriculture (including aircraft) at any time of the day or night, the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides, and pesticides, provided that nothing in this article 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 more clear understanding between agricultural operations and nonagricultural residential neighbors concerning the normal inconveniences of agricultural operations which follow generally accepted agricultural practices and do not endanger public health or safety.

(c) This article is not intended to and shall not be construed in any way to modify or abridge local, state, or federal laws relating to health, safety, zoning, licensing requirements, environmental standards (including those standards which relate to air and water quality).

(d) An additional purpose of this article is to promote a good-neighbor policy by advising purchasers and users of property adjacent to or near agricultural operations of the inherent potential impacts associated with such purchase or use as identified in subsection (a) of this section. It is intended that, through mandatory disclosures, purchasers and users will better understand the impact of living near agricultural operations and be prepared to accept attendant

conditions as the natural result of living in or near rural areas. However, this article shall be effective regardless of whether disclosure was made in accordance with § 36-1-105 herein.

§ 36-1-102. Definitions.

(a) In this article, the following terms have the meanings indicated:

(b) "Agricultural land" means all real property within the boundaries of Baltimore County that either:

- meets the definition of "farm" or "limited-acreage wholesale flower farm" as those terms are defined in the Baltimore County Zoning Regulations and is lying in a Resource Conservation Zone, or
- is lying in any zoning districts and is carried on the tax rolls of the State Department of Assessments and Taxation as agricultural.

[Note: Present definitions in the BCZR are the following:

"Farm": "Three acres or more of land, and any improvements thereon, used primarily for commercial agriculture, as defined in these regulations, or for residential and associated agricultural uses. The term does not include the following uses as defined in these regulations: limited-acreage wholesale flower farms, riding stables, landscape service, firewood operations and horticultural nursery businesses."

Because of the definitions, an "owner-produced forestry resource" is included in the definition of "farm" and thus as an "agricultural land".

"Limited-acreage wholesale flower farm": "less than three acres of land, and any improvements thereon, and is primarily used for the growing of flowers and small plants and their wholesale distribution."

There is no proposal to change these definitions.]

(c) "Agricultural operation" includes, but is not limited to, the following, to the extent to which they are allowed by the various provisions of the BCZR:

- anything included in the definition of Agriculture, commercial as contained in the BCZR;
- the cultivation and tillage of the soil;
- composting;
- production, harvesting, and processing of agricultural crops, including drying of herbs, garlic, flowers, and similar plants;
- production and harvesting of agricultural, horticultural, vegetable, or fruit crops and on-farm processing of any agricultural product that has been grown, raised, or cultivated by the farmer and every product of farm, forest, orchard, or garden, except for canned, frozen, or pickled products;
- production of wine;
- raising poultry and production of eggs;
- production of milk and dairy products including frozen and cultured dairy products;
- production of livestock, including pasturage;

- butchering of animals;
- production and processing of any animal product including meats, wool, hides, or feathers;
- production of bees, their products, and all forms of apiculture;
- production of fish, marine food products, and all forms of aquaculture;
- production of aquatic plants;
- production, harvesting, and processing of timber and all forms of silviculture;
- any commercial agricultural procedure performed as incident to or in conjunction with such operations, including marketing, preparation for market, delivery to storage or to market, and delivery to carriers for transportation to market;
- usage of land in furtherance of educational and social goals, such as 4-H, Future Farmers of America, and agricultural-tourism; and
- other activities which are substantially similar in nature and impact to any of the above listed activities.

[The BCZR defines Agriculture, commercial as:

"The use of land, including ancillary structures and buildings, to cultivate plants or raise or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment pursuant to § 8-209 of the Tax-Property Article of the Annotated Code of Maryland, as amended. Commercial agriculture includes the production of field crops, dairying, pasturage agriculture, horticulture, floriculture, aquiculture, apiculture, viticulture, forestry, animal and poultry husbandry, the operation of an equestrian center, horse breeding and horse training and also includes ancillary activities such as processing, packing, storing, financing, managing, marketing or distributing, provided that any such activity shall be secondary to the principal agricultural operations."]

(d) "Generally accepted agricultural practices" means those methods used in connection with agricultural operations which do not violate applicable federal, state, or local laws or public health, safety, and welfare and which are generally accepted agricultural practices in the agriculture industry. "Generally accepted agricultural practices" includes practices which are recognized as best management practices and those methods which are authorized by various governmental agencies, bureaus, and departments, such as the University of Maryland Extension or the USDA Natural Resource Conservation Service of Baltimore County. If no generally accepted agricultural practice exists or there is no method authorized by those agencies mentioned herein which governs a practice, then those agencies shall be consulted for recommendations.

§ 36-1-103. Limitation of actions.

(a) A private action may not be sustained with respect to an agricultural operation conducted on agricultural land on the grounds that the agricultural operation interferes or has interfered with the use or enjoyment of property, whether public or private, if the agricultural operation was, at the time the interference is alleged to arise, conducted substantially in accordance with generally accepted agricultural practices.

(b) Notwithstanding any provision of this section, no action alleging that an agricultural 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 and obtained a decision as defined in § 36-1-104 herein.

§ 36-1-104. Resolution of disputes and procedure for complaints; investigation and declaration.

- (a) Agricultural nuisances which affect environmental health.
- (1) A person may complain to Department of Environmental Protection and Resource Management to declare that a nuisance which affects public health exists.
 - (2) DEPRM shall investigate all complaints of nuisance received against an agricultural operation. When a previous complaint involving the same condition resulted in a determination by DEPRM that a nuisance condition did not exist, DEPRM may decide not to investigate the new complaint further. DEPRM may initiate any investigation without citizen complaint.
 - (3) In determining whether a nuisance condition exists in connection with an agricultural operation, DEPRM shall apply the criteria provided in this article and shall consult with the Soil Conservation District, the Agricultural Land Preservation Advisory Board, the University of Maryland Extension, Baltimore County Office, the Maryland Department of Agriculture, or other qualified experts in the relevant field in determining whether the agricultural operation being investigated is conducted in accordance with generally accepted agricultural management practices.
- (b) Resolution of disputes regarding alleged code violations concerning agricultural operations, other than health issues.
- (1) A person may complain to the Department of Permits and Development Management alleging that an agricultural operation conducted on agricultural land interferes with the use or enjoyment of property or is in violation of any of the County's Zoning Regulations.
 - (2) PDM shall first forward the matter to the Agricultural Land Preservation Advisory Board for review. As appropriate, the Advisory Board shall consult with the Soil Conservation District, University of Maryland Extension, or others; investigate the complaint; and issue a recommendation as to whether such agricultural operations are conducted in a manner consistent with generally accepted agricultural management practices.
 - (3) The Advisory Board shall, as specified in BCZR Section 404.12, provide a recommendation to the Director of the Department of Permits and Development Management concerning whether or not the alleged actions should be considered a violation of the regulations.
- [Note: BCZR Section 404.12 currently gives the Advisory Board 30 days.]
- (4) Upon receipt of said recommendation, or expiration of the time limit specified in (3), whichever occurs first, the Director of PDM shall make a determination whether to apply the procedures of Article 3, Title 6 regarding Code Enforcement. In the event that the Director chooses to not follow the Advisory Board's recommendation regarding Code Enforcement action, the Director shall provide an explanation to the Advisory Board, in writing, of the reasons for this decision.
 - (5) In the case of an appeal to the Board of Appeals, the Advisory Board shall be notified and may provide a new recommendation to the Board of Appeals. The Board of Appeals shall take this recommendation into consideration in its decision.
- (c) Resolution of disputes regarding requests for determination opposing agricultural operations

[Note: This section is intended to apply only when someone requests a determination which is clearly intended to oppose an agricultural operation.]

(1) If a request for determination comes before the Zoning Commissioner to challenge or limit the use or intended use of an agricultural operation conducted on agricultural land, the Zoning Commissioner shall forward the matter to the Agricultural Land Preservation Advisory Board for review.

(2) As appropriate, the Advisory Board shall investigate the matter and attempt to involve the parties in mediation. When mediation is not possible, is not agreed to by both parties, or does not resolve the issue, the Advisory Board shall, within 30 days, provide a recommendation to the Zoning Commissioner concerning whether or not the subject use is or would be proper under the subject conditions. If the parties to a dispute have agreed to mediation and such mediation has not been completed, the Advisory Board may notify the Zoning Commissioner that the time limit is being extended for one additional 30-day period.

(3) In the determination of such a zoning issue, the Zoning Commissioner shall take into account the recommendation from the Advisory Board and, in the event that the decision is not in accordance with such recommendation, the Zoning Commissioner shall provide an explanation as a part of his order as to why the Advisory Board's recommendations were not followed.

(d) Resolution of disputes regarding requests for special exceptions, use permits, or determinations to allow agricultural operations

[Note: This section is intended to apply when a farmer requests an action to allow an agricultural operation. It should be noted that it may not be known if there is any opposition until the hearing is held.]

(1) If a request for a special exception, use permit, or determination to allow an agricultural operation comes before the Zoning Commissioner, the Zoning Commissioner shall forward the matter to the Agricultural Land Preservation Advisory Board for review.

(2) The Advisory Board shall investigate the matter and, within 60 days, provide a recommendation to the Zoning Commissioner concerning whether or not the requested use would be proper under the subject conditions.

(3) In the determination of such a zoning issue, the Zoning Commissioner shall take into account the recommendation from the Advisory Board and, in the event that the decision is not in accordance with such recommendation, the Zoning Commissioner shall provide an explanation as a part of his order as to why the Advisory Board's recommendations were not followed.

(e) Appeals

(1) In the case of an appeal to the Board of Appeals by one or both of the parties under subparagraphs (c) and (d), the matter shall first be forwarded to the Advisory Board which may attempt to bring the parties together for mediation. If this does not result in a resolution and a withdrawal of the appeal, the Advisory Board shall provide a recommendation to the Board of Appeals based on its own investigation. The Board of Appeals shall take this recommendation into consideration in its decision. The county shall defend the decision of the Zoning Commissioner before the Board of Appeals.

(f) Unsubstantiated Actions

If the Zoning Commissioner, Board of Appeals, or a Court finds that the conduct of a party in bringing or maintaining an action in connection with an agricultural operation conducted on agricultural land was in bad faith or without substantial justification, the Zoning Commissioner, Board of Appeals, or Court may require that party to pay to the owner of the agricultural 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.

§ 36-1-105. Right to farm notice and real estate transfer disclosure.

- (a) When a contract is presented for the sale, purchase, exchange, or lease of real property located within Baltimore County, the prospective grantor shall present to the prospective grantee a disclosure notice which states the following: "It is the policy of Baltimore County to conserve, protect, and encourage the development and improvement of agricultural land for the production of food and other products. This disclosure notice is to inform prospective buyers or renters that the subject property may lie within or near to an area in which farming activities may occur. Such farming activities may include operation of machinery, including aircraft, at any time of the day or night; may involve storage and disposal of manure and the application of chemical fertilizers, soil amendments, herbicides, and pesticides; and may result in inconveniences caused by smoke, odors, fumes, flies, dust, noise, vibration, and the like." A copy of this notice shall be included by the grantor or grantor's agent as an addendum to the contract at the time an offer to sell, purchase, exchange, or lease is made.
- (b) Upon any transfer of real property by any means, the transferor shall provide the purchaser or lessee a statement specifically advising the purchaser or lessee of the existence of this Article which shall be in substantially the form set forth in Appendix A at the end of this Article.
- (c) In order to inform Baltimore County residents of the existence of this Article, a copy of the right-to-farm notice shall be mailed to the owners of each real property in Baltimore County which is near to agricultural land in a form as approved by the Director of the Department of Permits and Development Management. This mailing shall occur once with the first annual tax bill after the effective date of this Article.
- (d) Any person who violates any provision of this section is guilty of a misdemeanor punishable by a civil penalty not exceeding \$100. Failure to comply with any provision of this right to farm notice and real estate transfer disclosure section shall not prevent the recording of any document, title to real property, mortgage, or deed of trust made in good faith or for value, and it shall not affect the application of this article.

APPENDIX A

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

This disclosure statement concerns the real property located in the county of Baltimore, State of Maryland, described as follows:

This statement is a disclosure of the existence of the Baltimore County Right to Farm Law in compliance with Article 36 of the Baltimore County Code (Right to Farm).

SELLER'S INFORMATION

The following are representations made by the seller and are not the representations of the agents(s) if any. This information is a disclosure and in not intended to be part of any contract between the buyer and seller.

Agricultural operations as defined in the Baltimore County Right to Farm Article lawfully exist in all zoning districts within the county. You may be subject to inconveniences or discomforts arising from such operations, including, but not limited to, smoke, odors, fumes, flies, dust, noise, vibration, the operation of machinery of any kind related to agriculture (including aircraft) at any time of the day or night, the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides, and pesticides. Baltimore County has determined that inconveniences or discomforts associated with such agricultural operations shall not be considered to be an interference with reasonable use and enjoyment of land, if such operations are conducted in accordance with generally accepted agricultural management practices and comply with all applicable regulations.

Baltimore County has established an advisory board to assist in the resolution of disputes which might arise between persons in this county regarding whether agricultural operations conducted on agricultural lands are causing an interference with the reasonable use and enjoyment of land or personal well being and whether those operations are being conducted in accordance with generally accepted agricultural practices. If you have any questions concerning this policy or the advisory board, please contact the Baltimore County Department of Permits and Development Management for additional information.

Seller _____ Date: _____

Seller _____ Date: _____

I/we acknowledge receipt of a copy of this statement:

Buyer _____ Date: _____

Buyer _____ Date: _____

If you desire legal advice, consult your attorney.