



Cape Cod Cranberry Growers' Association

GROWER ADVISORY

The "Right to Farm" Laws

Introduction

Laws protecting agriculture in the Commonwealth are collectively codified into a statutory scheme commonly known as the "Right to Farm Laws". These laws were enacted as various issues were brought to the attention of the Legislature. Consequently the protective laws are scattered all over the map of Massachusetts General Law.

Taken together these laws define agriculture as it is to be protected under the Right to Farm Statutory scheme and offer protection to farmers from unreasonable zoning restrictions, unreasonable environment complaints, and attempts to protect the agricultural community from frivolous lawsuits.



Definition of Agriculture

Pursuant to the provisions of G. L. c.128, §1A the Legislature defines agriculture and farming as "the 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 forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture 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.

Protections Awarded Under the "Right to Farm" Laws

(1) Protection From Unreasonable Zoning Requirements

Chapter 40A section 3, restricts activities cities and towns may not regulate relative to agriculture, floriculture, and viticulture. This section of the Zoning Enabling Act prohibits town-zoning bylaws from regulating aspects of construction that is addressed in the state Building Code. This law interdicts towns from unreasonably regulating or requiring a special permit for the use of land with the primary purpose of agriculture. This interdiction precludes the town from requiring a special permit for use, expansion, or reconstruction of existing structures in agricultural use. These buildings include those used for the sale of goods provided that during the harvest season of the primary crop (cranberries), the majority of such products for sale, based on gross sales or volume, have been produced by the owner or lessee of the land on which the facility is located. In areas not zoned for agriculture towns may be limit such activity to parcels of more than 5 acres. Land divided by public roads or waterways can be deemed to be one contiguous parcel. Equally, no town ordinance or by-law can exempt any land from wetland regulations.

(2) Exemption of Normal Agricultural Practice Deemed a Nuisance

Chapter 111 section 125A provides protection to farmers from complaints from "the odor from the normal maintenance of livestock or the spreading of manure on agricultural 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 or horticultural lands." Chapter 111 section 143 removes hog operations from these exemptions.

(3) Limitations To Actions Against Farmers

Chapter 243 section 6 exempts ordinary farming activities on farms in existence for at least 1 year from being deemed a nuisance. Negligent conduct or actions inconsistent with accepted agricultural practices are not protected here.

Strictly speaking these 3 sections comprise the "right to farm" laws and can be used to protect the grower from illegal by-laws and from unreasonable complaints from neighbors. However, it is best to reach an accord with neighbors rather than invoke the nuances of the law. Other regulation such as the limited liability of private landowners, though similar in nature, will be addressed in a future advisory.

The information in this guide is provided by the Cape Cod Cranberry Growers' Association as a service to its members. The information represents our interpretation of the state requirements and by no means is intended to act as a substitute for reading and following the specific regulatory requirements.

Massachusetts General Law Chapter 40A sec. 3, chapter 111 sec. 143, chapter 243 sec. 6

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