

Section 10: Agricultural Rights and Provisions

10.1 Right to Farm

10.1.1 Legislative Purpose and Intent

The purpose and intent of this bylaw is to state with emphasis the Right to Farm accorded to all citizens of the Commonwealth under Article 97, of the Constitution and all state statutes and regulations thereunder including but not limited to: M.G.L. Ch. 40A, § 3, ¶ 1; M.G.L. Ch. 90, § 9; M.G.L. Ch. 111, § 125A and M.G.L. Ch. 128, § 1A. We, the citizens of Heath, restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution, ("Home Rule Amendment").

This General By-Law encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the Town of Heath by allowing agricultural uses and related activities to function with minimal conflict with abutters and Town agencies. This By-law shall apply to all jurisdictional areas within the Town.

10.1.2 Definitions

The word "farm" shall include any parcel or contiguous parcels of land or water bodies used for the purpose of agriculture or related activities thereto.

The words "farming" or "agriculture" or their derivatives shall include, but not be limited to the following:

- * farming in all its branches and the cultivation and tillage of the soil;
- * dairying;
- * production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities;
- * growing and harvesting of forest products and any other forestry or lumbering operations;
- * keeping of horses as a commercial enterprise; and
- * keeping and raising of domestic livestock, including horses, poultry, swine, cattle, ratites (such as emus, ostriches and rheas) and camelids (such as llamas and camels), bees, fur-bearing animals and other domesticated animals for food and other agricultural purposes.

"Farming" shall encompass activities including but not limited to, the following:

- * operation and transportation of slow-moving farm equipment over roads within the town;
- * control of pests, including, but not limited to, insects, weeds, predators and disease organisms of plants and animals;
- * application of manure, fertilizers and pesticides;
- * conducting agriculture-related educational and farm-based recreational activities including agri-tourism provided that the activities are related to marketing the agricultural output or services of the farm;
- * processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand including signage thereto;
- * maintenance, repair, or storage of seasonal equipment or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management or sale of the agricultural products; and
- * on-farm relocation of earth and the clearing of ground for farming operations.

10.1.3 Right to Farm Declaration

The Right to Farm is hereby recognized to exist within the Town of Heath. The above-described agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the neighborhood, community, and society in general. The benefits and protections of this bylaw are intended to apply to those agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover,

nothing in this Right To Farm bylaw shall be deemed as acquiring any interest in land or as imposing any land use regulation, which is properly the subject of state statute regulation, or local zoning law.

10.1.4 Disclosure Notification

Within 30 days after this bylaw becomes effective the Select Board shall prominently post in the Town Hall and make available for distribution the following disclosure:

“It is the policy of this community to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food and other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers or occupants that the property they are about to acquire or occupy lies within a town where farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors.”

10.1.5 Resolution of Disputes

Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a grievance with the Select Board, the Zoning Enforcement Officer, or the Board of Health, depending upon the nature of the grievance. The filing of the grievance does not suspend the time within which to pursue any other available remedies that the aggrieved may have. The Zoning Enforcement Officer or Select Board shall forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance involving all concerned parties, and report its recommendations to the referring Town authority within an agreed-upon time frame.

The Board of Health, except in cases of imminent danger or public health risk, shall forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance involving all concerned parties, and report its recommendations to the Board of Health within an agreed upon time frame.

10.1.6 Severability Clause

If any part of this bylaw is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this bylaw. The Town of Heath hereby declares the provisions of this bylaw to be severable.