

**AN ORDINANCE TO PROVIDE FOR THE PROTECTION OF THE
RIGHT TO FARM IN WASHINGTON COUNTY, MARYLAND BY
ENACTING A NEW ORDINANCE ENTITLED "RIGHT TO FARM
ORDINANCE FOR WASHINGTON COUNTY, MARYLAND"**

RECITALS

The Board of County Commissioners of Washington County, Maryland ("Board") was granted the authority to adopt ordinances or regulations and take other action to protect a person's right to farm or to engage in agricultural or forestry operations by Chapter 442, Laws of Maryland 1999, as codified in Section 1-1101 of the Code of the Public Local Laws of Washington County, Maryland (the "Public Local Laws").

The Board believes it to be in the best interests of the citizens of the County to protect the right to farm in Washington County (the "County") by enacting a new ordinance entitled **"Right to Farm Ordinance for Washington County, Maryland"** (the "Ordinance").

The attached Ordinance is necessary to serve the public interest and the efficient regulation of land use in Washington County.

A public hearing was held on the 30th day of September, 2003, following due notice and advertisement of a summary of the Ordinance in a newspaper of general circulation in the County as required by Section 1-1101 of the Public Local Laws.

Public comment was received, reviewed and considered concerning the aforesaid Ordinance.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of County Commissioners of Washington County, Maryland, that the attached Ordinance entitled **"Right to Farm Ordinance for Washington County, Maryland"** is hereby enacted.

Adopted this 28th day of October, 2003.

Effective the 1st day of January, 2004.

DJM MAB
Nov 26, 2003 11:11 am

Liber 10 Folio 0140

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Washington County

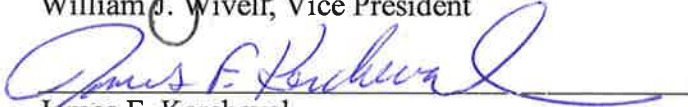
ATTEST:

BOARD OF COUNTY COMMISSIONERS OF
WASHINGTON COUNTY, MARYLAND


Joni L. Bittner, Clerk


Gregory I. Snook, President

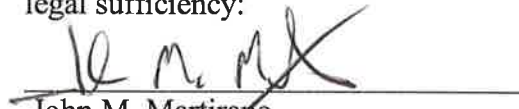

William J. Wivell, Vice President


James F. Kercheval


John C. Munson


Doris J. Nipps

Approved as to form and
legal sufficiency:


John M. Martirano
Assistant County Attorney

Mail to:

County Attorney's Office
100 West Washington Street
Hagerstown, Maryland 21740

Liber 10 Folio 0142

Acts, Ordinances, Resolutions-County
Clerk of the Circuit Court
Washington County

ARTICLE 12. EFFECTIVE DATE.....	7
§1201. Effective Date.	7
APPENDIX A WASHINGTON COUNTY RIGHT TO FARM NOTICE	8
APPENDIX B REAL ESTATE TRANSFER DISCLOSURE STATEMENT.....	9

RIGHT TO FARM ORDINANCE FOR WASHINGTON COUNTY, MARYLAND

ARTICLE 1. INTENT AND POLICY

§101. Intent and Policy.

(a) It is the declared policy of the County to preserve, protect, enhance and encourage Agricultural Operations and the development and improvement of its Agricultural Land for the production of food and other agricultural products. It is the further intent of the County to provide proper notification to its residents of the County's recognition and support through this ordinance of the right to farm.

(b) When non-agricultural land uses extend into agricultural areas or exist side-by-side, Agricultural Operations may become the subject of nuisance complaints and lawsuits due to the lack of information about such operations. As a result, agricultural operators are sometimes forced to cease or curtail their operations. Others are discouraged from making investments in agricultural improvements to the detriment of agricultural uses and the economic viability of the County's agricultural industry as a whole. It is the purpose of this Ordinance to reduce the loss to the County of its agricultural resources by clarifying and 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, flies, dust, noise, chemicals, or vibration; provided that nothing in this Ordinance shall in any way restrict or impede the authority of the State and of the County to protect the public health, safety and welfare, nor shall it restrict or impair private covenants.

(c) It is in the public interest to promote a clearer understanding between Agricultural Operations and non-agricultural neighbors concerning the normal inconveniences of Agricultural Operations that follow generally accepted agricultural practices and do not endanger public health or safety.

(d) This Ordinance is not intended to and shall not be construed as in any way modifying or abridging local, State or federal laws, including, but not limited to, laws relating to nuisance, health, safety, trespass onto agricultural property, zoning, licensing requirements, environmental standards (including those standards which relate to air and water quality and pesticide use), and the like. Rather, it is to be utilized in the interpretation and enforcement of the provisions of the zoning ordinances and County regulations.

(e) An additional purpose of this Ordinance is to promote a good neighbor policy by advising purchasers and users of property adjacent to or near Agricultural Operations of the inherent potential problems associated with such purchase or use. These potential problems include, but are not limited to noises, odors, dust, flies, 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 Operations and will be prepared to accept attendant conditions as the natural result of living in rural areas. However, this Ordinance shall be effective

Liber 10 Folio 0144

Acts, Ordinances, Resolutions-County
Clerk of the Circuit Court
Washington County

regardless of whether disclosure was made in accordance with Section 6 herein ("Right to Farm Notice and Real Estate Transfer Disclosure").

ARTICLE 2. DEFINITIONS

§201. Definitions.

In this Ordinance, the following words and phrases have the meanings indicated:

(a) **"Agricultural Land"** means all real property within the boundaries of Washington County that is: (1) lying in an Agricultural zoning district, (2) carried on the tax rolls of the State Department of Assessments and Taxation as agricultural, or (3) all other land that is currently used for Agricultural Operations and has been used as an Agricultural Operation continuously for at least one (1) year.

(b) **"Agricultural Operation"** shall mean and include, but is not limited to, all matters set forth in the definition of "agricultural operation" in Md. Code, Courts and Judicial Proceedings Article, §5-403(a), as may be amended from time to time; the production of all matters encompassed within the definition of "farm product" at Md. Code, Agriculture Article, §10-601(c), as may be amended from time to time; cultivation and tillage of the soil; dairying, spreading of manure, lime, fertilizer and the like; composting; spraying; producing; irrigating, protecting from frost, cultivating, growing, harvesting and processing of any agricultural crops or commodities; including viticulture, horticulture, timber or apiculture, raising fish or poultry and other fowl; production of eggs; production of milk and dairy products; equine operations; production of livestock, including pasturage; fur bearing animals, production of bees and their products; production of fruit, vegetables and other horticultural crops; production of aquatic plants; aquaculture; production of timber; and any commercial agricultural practices or 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; usage of land in furtherance of educational and social goals (including, but not limited to 4-H clubs and Future Farmers of America), agro-tourism and alternative agricultural enterprises; and the like occurring at any time.

(c) **"Generally Accepted Agricultural Management 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 practices in the agriculture industry. Generally Accepted Agricultural Management Practices include practices that are recognized as generally accepted management practices and those methods that are authorized by various governmental agencies, bureaus, and departments, such as the Maryland Cooperative Extension, the Washington County Soil Conservation District, and the like. If no generally accepted agricultural management practice exists or there is no method authorized by those agencies mentioned herein which governs a practice, the practice is presumed to be a generally accepted agricultural management practice.

Liber 10 Folio 0145

Acts, Ordinances, Resolutions-County
Clerk of the Circuit Court
Washington County

ARTICLE 3. LIMITATION OF ACTIONS

§301. Limitation of Actions.

(a) Private action.

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 real property, whether public or private, if the Agricultural Operation was, at the time the interference is alleged to arise, conducted in accordance with Generally Accepted Agricultural Management Practices.

(b) Final judgment of Board needed.

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 final decision of the Agricultural Reconciliation Board, as defined in Article 4 herein.

ARTICLE 4. CREATION OF WASHINGTON COUNTY AGRICULTURAL RECONCILIATION BOARD

§401. Establishment of Board.

There is hereby established the Washington County Agricultural Reconciliation Board (WCARB), which shall arbitrate and mediate disputes involving Agricultural Operations conducted on Agricultural Lands and issue opinions on whether such Agricultural Operations are conducted in a manner consistent with Generally Accepted Agricultural Management Practices.

§402. Composition of Board and Removal.

The WCARB shall be composed of five (5) persons appointed by the Board of County Commissioners of Washington County. The WCARB shall be composed of one representative from each of the following, all of whom shall be residents of Washington County:

- 1) the Washington County Farm Bureau;
- 2) the Maryland Cooperative Extension Agricultural Science faculty for Washington County;
- 3) a citizen at large
- 4) a citizen at large
- 5) an attorney

The Board of County Commissioners shall have the authority to remove any member of the WCARB at any time and for any reason in its sole discretion.

§403. Term of Board Members.

The Board members shall serve a three-year term; however, the initial appointments shall be as follows:

Liber 10 Folio 0146

Acts, Ordinances, Resolutions-County
Clerk of the Circuit Court
Washington County

- 1) Two members shall be chosen to serve a three-year term;
- 2) Two members shall be chosen to serve a two-year term;
- 3) One member shall be chosen to serve a one-year term; and

After these initial appointments, all terms shall be for three years.

§404. Board Proceedings.

The WCARB shall serve as volunteers, with no monetary compensation. The WCARB shall, within forty-five (45) days after the receipt of a written request outlining the controversy, hold a hearing or meeting to consider the merits of the matter and shall within twenty (20) days of the hearing or meeting render a written decision to the parties.

ARTICLE 5. RESOLUTION OF DISPUTES AND PROCEDURE FOR COMPLAINTS, INVESTIGATION AND DECLARATION

§501. Nuisances That Affect Public Health.

(a) **Complaints.** A person may complain to the Washington County Health Department to declare that a nuisance exists that affects public health.

(b) **Investigations.** The County Health Officer may investigate complaints of nuisance made against an Agricultural 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 complaint. The Health Department may initiate any investigation without citizen complaint.

(c) **Declaration of Nuisance.** If the Health Officer determines that a nuisance exists, the Health Department may declare the existence of a nuisance. In determining whether a nuisance condition exists in connection with an Agricultural Operation, the Health Officer shall apply the criteria provided in this Ordinance as permitted by State and federal law. Further, the Health Officer may and is encouraged to consider the professional opinion of the Cooperative Extension Service of the University of Maryland or other qualified experts in relevant fields in determining whether the Agricultural Operation being investigated is conducted in accordance with Generally Accepted Agricultural Management Practices.

(d) Once the Health Officer has completed the investigation, the Health Officer will report the investigation findings to the WCARB as established herein.

§502. Resolution of Disputes Regarding Agricultural Operations.

(a) This section establishes a process to hear disputes arising out of the terms herein and this process would be an inexpensive, informal way to resolve disputes that might otherwise lead to legal action.

(b) Should any controversy arise regarding an interference with the use or enjoyment of property from Agricultural Operations conducted on Agricultural Land, the parties to that controversy shall submit the controversy to the WCARB in writing through the Washington County Planning Department within thirty (30) days of the date of the

Liber 10 Folio 0147

Acts, Ordinances, Resolutions-County
Clerk of the Circuit Court
Washington County

occurrence of the particular activity giving rise to the controversy or of the date a party became aware of the occurrence.

(c) The WCARB shall conduct its proceedings in an informal manner and the strict rules of evidence shall not apply. The WCARB has the power, but is not required hereunder, to hold hearings and to compel testimony under oath and the production of documents. In each case before it, the WCARB may issue decisions settling or otherwise resolving controversies arising out of Agricultural Operations, including but not limited to the invasion of property and personal rights by Agricultural Operations conducted on Agricultural Land.

(d) Three (3) WCARB members shall constitute a quorum for purposes of holding a hearing. If a quorum exists, any decision, resolution or finding shall be construed as an act of the WCARB if passed by a majority of those present.

(e) If a hearing ends in a tie vote, the complainant shall be deemed to have failed to meet the burden of persuasion and the WCARB shall dismiss the Complaint.

(f) Decisions of the WCARB shall be binding on the parties as a matter of law, but enforcement of such decisions shall be suspended by operation of law if, within thirty days of the date of the WCARB's written decision, a party appeals such a decision to the Circuit Court for Washington County. Appeals from decisions of the WCARB shall be a trial *de novo*.

(g) If the WCARB 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 WCARB or the 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 reasonable expenses, including reasonable attorney's fees, incurred by that party in defending against the action.

ARTICLE 6. RIGHT TO FARM NOTICE

§601. Notice To All Property Owners.

Because of the County's desire to maintain a good neighbor policy and to provide this information to real property owners, the Washington County Treasurer shall mail (one time only) a copy of the "Right to Farm Notice" to all owners of real property in Washington County with the annual tax bill in the next fiscal year following the effective date of this Ordinance, in substantially the form set forth in Appendix A.

ARTICLE 7. REAL ESTATE TRANSFER DISCLOSURE

§701. Transfer Disclosure.

(a) Upon any transfer of real property in Washington County by any means, including but not limited to sale, exchange, installment sales contract, lease with an option to purchase or any other option to purchase, or ground lease coupled with improvements, the transferor shall provide the purchaser or lessee a statement specifically advising the

Liber 10 Folio 0148

Acts, Ordinances, Resolutions-County
Clerk of the Circuit Court
Washington County

purchaser or lessee of the existence of this Right to Farm Ordinance which shall be in substantially the form set forth in Appendix B.

(b) **Penalty for Violation.** Any person who violates any provision of this Article is guilty of an infraction punishable by a civil penalty not exceeding One Hundred Dollars (\$100.00). Failure to comply with any provision of this Real Estate Transfer Disclosure Article shall not prevent the recording of any document, or the transfer of title to real property or any mortgage or deed of trust made in good faith or for value, and it shall not affect the application of this Ordinance.

ARTICLE 8. MISCELLANEOUS

§801. Codification.

The County Attorney shall provide for the codification of this Ordinance, merging this Ordinance with all amendments hereafter made. In preparing the codification of this Ordinance the County Attorney is directed to provide the proper numerical and alphabetical designation to each provision of the Ordinance as deemed proper, it being the legislative intent that article numbers, section numbers and other similar designation are matters of form and not substance and may be changed by the County Attorney for editing and codification purposes as deemed appropriate. The document that is the result of this codification shall be known as and may be hereafter referred to as the Right to Farm Ordinance for Washington County.

§802. Severability.

Should any provision, section, paragraph or subparagraph of this Ordinance, 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.

§803. Section Headings, Chapter Headings and 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 Ordinance or any code or text adopted hereby.

ARTICLE 9. EXISTING LIABILITIES

§901. Existing Liabilities.

Except to the extent specifically provided herein, this Ordinance shall not discharge, impair or release any contract, obligation, duty, liability or penalty whatsoever existing on the date of its enactment. It is not intended hereby that the law of non-conforming 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 Ordinance should not effect a change between private parties.

Liber 10 Folio 0149

Acts, Ordinances, Resolutions-County
Clerk of the Circuit Court
Washington County

ARTICLE 10. MANDATORY REVIEW

§1001. Mandatory Review.

After the passage of one year, the Board of County Commissioners shall review this Ordinance to determine whether to continue it in its present form or to change it.

ARTICLE 11. SHORT TITLE OF ORDINANCE

§1101. Short Title.

This Ordinance may be cited as the Right to Farm Ordinance for Washington County, Maryland.

ARTICLE 12. EFFECTIVE DATE

§1201. Effective Date.

Adopted this 28th day of October, 2003.

This Ordinance shall become effective on the 1st day of January, 2004.

Liber 10 Folio 0150

Acts, Ordinances, Resolutions-County
Clerk of the Circuit Court
Washington County

APPENDIX A WASHINGTON COUNTY RIGHT TO FARM NOTICE

Washington County has a Right to Farm Ordinance that recognizes the right to farm Agricultural Lands in a manner consistent with Generally Accepted Agricultural Management Practices. Contact the Washington County Planning Department at 240-313-2430 or visit the County's website at www.washco-md.net/county_attorney/legal.htm for further information.

Liber 10 Folio 0151

Acts, Ordinances, Resolutions-County
Clerk of the Circuit Court
Washington County

APPENDIX B

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS REAL ESTATE TRANSFER DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY LOCATED IN WASHINGTON COUNTY, STATE OF MARYLAND, DESCRIBED AS _____ . THIS STATEMENT IS A DISCLOSURE OF THE EXISTENCE OF THE RIGHT TO FARM ORDINANCE FOR WASHINGTON COUNTY ("THE ORDINANCE") AS REQUIRED BY THE ORDINANCE.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

WASHINGTON COUNTY ALLOWS AGRICULTURAL OPERATIONS (as defined in the Ordinance) WITHIN THE COUNTY. You may be subject to inconveniences or discomfort arising from such operations, including but not limited to noise, odors, fumes, dust, flies, the operation of machinery of any kind during any 24-hour period (including aircraft), vibration, the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, and pesticides. Washington County has determined that inconveniences or discomforts associated with such agricultural operations shall not be considered to be an interference with the reasonable use and enjoyment of land, if such operations are conducted in accordance with Generally Accepted Agricultural Management Practices. Washington County has established a reconciliation board to assist in the resolution of disputes that 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 question concerning this policy or the reconciliation board, please contact the Washington County Planning Department 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 CONCERNING THE EFFECT OF THIS DISCLOSURE, PLEASE CONSULT YOUR ATTORNEY.