

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

☐ County ☐ City ☒ Town ☐ Village
(Select one:)

of Elba

Local Law No. 2 of the year 20¹³

A local law to Enact Right to Farm Provisions
(Insert Title)

Be it enacted by the Town Board of the
(Name of Legislative Body)

☐ County ☐ City ☒ Town ☐ Village
(Select one:)

of Elba as follows:

SECTION I: LEGISLATIVE INTENT AND PURPOSE

The Elba Town Board finds, declares and determines that agriculture is a vital and essential enterprise and an important industry which enhances the economic base by providing employment and economic stability, maintains open space and promotes environmental quality, recreational opportunities, and quality of life in the Town of Elba and agricultural land does not increase the demand for services provided by local governments.

The Town Board further declares that it shall be the policy of this Town to encourage agriculture and foster understanding by all residents of the necessary day to day operations involved in farming so as to encourage cooperation with those practices.

It is the general purpose and intent of this law to maintain and preserve the rural traditions and character of the Town, to acknowledge the unique properties of the Muck soils in the Town and the need for their preservation, to permit the continuation of agricultural practices, to protect the

(If additional space is needed, attach pages the same size as this sheet, and number each.)

existence and operation of farms, to encourage the initiation and expansion of farms and agribusinesses, and to promote good agricultural practices and farm operations while maintaining positive interactions between farming and non-farming residents.

In order to maintain a viable agricultural economy in the Town of Elba, it is necessary to limit the circumstances under which farming may be deemed to be a nuisance and to allow agricultural practices inherent to and necessary for the business of farming to proceed and be undertaken free of unreasonable and unwarranted interference or restriction.

SECTION II: DEFINITIONS

1. "Farmland" shall mean land used in agricultural production, land used in support of a farm operation, and land used for agricultural amusements as defined in subdivision four of Section 301 of Article 25AA of the State Agriculture and Markets Law.
2. "Farmer" shall mean any person, organization, entity, association, partnership, limited liability company, or corporation engaged in the business of agriculture, as a commercial enterprise, including the cultivation of land, the raising of crops, or the raising of livestock.
3. "Agricultural products" shall mean those products as defined in section 301(2) of Article 25AA of the State Agriculture and Markets Law, including but not limited to:
 - a. Field crops, including corn, wheat, rye, barley, hay, potatoes and dry beans.
 - b. Fruits, including apples, peaches, grapes, cherries and berries.
 - c. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions.
 - d. Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
 - e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, llamas, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, milk and milk products, eggs, furs, and poultry products.
 - f. Maple sap and sugar products.
 - g. Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.
 - h. Aquaculture products, including fish, fish products, water plants and shellfish.
 - i. Short rotation woody crops raised for bioenergy.

- j. Apiary products, including honey, beeswax, royal jelly, bee pollen, propolis, package bees, nucs and queens.
 - k. Production and sale of woodland products, including but not limited to logs, lumber, posts and firewood.
4. "Agricultural practices" shall mean those practices necessary for the on-farm production, preparation and marketing of agricultural commodities. Examples of such practices include, but are not limited to: operation of farm equipment, proper use of agricultural chemicals and other crop production methods, placement of bee hives for targeted pollination of commercial crops, loading and unloading of trucks and transportation of agricultural products, construction and use of farm structures and the cleaning and maintenance of drainage ditches, culverts and tile lines.
5. "Farm operation" shall be defined as set forth in section 301 (11) in the State Agriculture and Markets Law.

SECTION III: RIGHT-TO-FARM DECLARATION

Farmers, as well as those employed, retained, or otherwise authorized to act on behalf of farmers, may lawfully engage in agricultural practices within this Town at all times and all such locations as are reasonably necessary to conduct the business of agriculture. For any agricultural practice, in determining the reasonableness of the time, place, and methodology of such practice, due weight and consideration shall be given to both traditional customs and procedures in the farming industry as well as to advances resulting from increased knowledge, research and improved technologies.

Agricultural practices conducted on farmland by farm operations shall not be found to be a public or private nuisance if such agricultural practices are:

- 1. Reasonable and necessary to the particular farm or farm operation,
- 2. Conducted in a manner which is not negligent or reckless,
- 3. Conducted in conformity with generally accepted and sound agricultural practices, including experimental or innovative practices,
- 4. Conducted in conformity with all local, state, and federal laws and regulations,
- 5. Conducted in a manner which does not constitute a threat to public health and safety or cause injury to health or safety of any person, and

6. Conducted in a manner which does not reasonably obstruct the free passage or use of navigable waters or public roadways.

Nothing in this local law shall be construed to prohibit an aggrieved party from recovering damages for bodily injury or wrongful death due to a failure to follow sound agricultural practice, as outlined in this section.

SECTION IV: NOTIFICATION OF REAL ESTATE BUYERS

In order to promote harmony between farmers and their neighbors, the Town requires land holders and/or their agents and assigns to comply with Section 310 of Article 25-AA of the State Agriculture and Markets Law and provide notice to prospective purchasers and occupants as follows:

"It is the policy of this state and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This disclosure notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors. Prospective residents are also informed that the location of property within an agricultural district may impact the ability to access water and/or sewer services for such property under certain circumstances. Prospective purchasers are urged to contact the New York State Department of Agriculture and Markets to obtain additional information or clarification regarding their rights and obligations under article 25-AA of the Agriculture and Markets Law."

This above notice shall be provided to prospective purchasers of property within an agricultural district or on property with boundaries within 500 feet of a farm operation located in an agricultural district.

A copy of this above notice shall be included by the seller or seller's agent as an addendum to the purchase and sale contract at the time an offer to purchase is made.

SECTION V: DUTY OF TOWN OFFICERS AND BOARDS TO CONSIDER IMPACT OF FARM OPERATIONS ON CERTAIN APPLICATIONS

The legislative intent and purpose of this law, as stated in Section 1, shall be taken into consideration by each Town Officer and/or Board in processing any application requesting rezoning, site plan approval and/or special use permit approval when the property which is the

subject of such application is located within a county adopted, State certified agricultural district. Such Town Officer and/or Board shall as part of its review of such application, determine whether appropriate and reasonable conditions may be prescribed or required, which would further the purposes and intent of this law as part of an approval of the application. Such appropriate and reasonable conditions shall be determined on a case-by-case basis and may include, but not be limited to, requiring declarations, deed restrictions and/or covenants which run with the land, which would notify future purchasers and owners of the subject property that owning and occupying such property might expose them to certain discomforts or inconveniences resulting from the conditions associated with agricultural practices and operations in the Town. All applicants shall be responsible for any and all costs related to the imposition of any appropriate and reasonable conditions set forth above, including, but not limited to, any attorney's fees incurred by the Town.

SECTION VI: RESOLUTION OF DISPUTES

1. Should any controversy arise regarding any inconveniences or discomfort occasioned by farm operations which cannot be settled by direct negotiation between the parties involved, either party may submit the controversy to a dispute resolution committee as set forth below in an attempt to resolve the matter prior to the filing of any court action and prior to a request for a determination by the Commission of Agriculture and Markets about whether the practice in question is sound pursuant to Section 308 of Article 25AA of the State Agriculture and Markets Law.
2. Any controversy between the parties shall be submitted to the committee within thirty (30) days of the last date of occurrence of the particular activity giving rise to the controversy or the date the party became aware of the occurrence.
3. The committee shall be composed of three (3) members from the Town selected by the Town Board, as the need arises, including one representative from the farm community, one person from Town government and one person mutually agreed upon by both parties involved in the dispute.
4. The effectiveness of the committee as a forum for the resolution of disputes is dependent upon full discussion and complete presentation of all pertinent facts concerning the dispute in order to eliminate any misunderstandings. The parties are encouraged to cooperate in the exchange of pertinent information concerning the controversy.
5. The controversy shall be presented to the committee by written request of one of the parties within the time limits specified. Therefore after, the committee may investigate the facts of the controversy but must, within twenty-five (25) days, hold a meeting at a mutually agreed place and time to consider the merits of the matter and within five (5) days of the meeting render a written decision to the parties. At the time of the meeting, both parties shall have an opportunity to present what each considers to be pertinent facts. No party bringing a complaint to the committee for settlement or resolution may be

represented by counsel unless the opposing party is also represented by counsel. The time limits provided in this subsection for action by the committee may be extended upon the written stipulation of all parties in the dispute.

6. Any reasonable costs associated with the function of the committee process shall be borne by the participants.

SECTION VII: RETROACTIVE AFFECT

This Local Law does not modify, amend or repeal any existing Local Laws, Codes, Statutes and/or Ordinances of the Town of Elba, but it may affect the application or implementation of these, as provided herein.

SECTION VIII: SEVERABILITY CLAUSE

If any part of this local law is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this Local Law. The Town hereby declares that it would have passed this local law and each section and subsection thereof, irrespective of the fact that any one or more of these sections, subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

SECTION IX: PRECEDENCE

This Local Law and its provisions are in addition to all other applicable laws, rules and regulations.

SECTION X: EFFECTIVE DATE

This Local Law shall be effective immediately upon filing with the New York Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2013 of the (County)(City)(Town)(Village) of Elba was duly passed by the Town Board on February 7, 2013, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 20____, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ and was deemed duly adopted (Elective Chief Executive Officer*) on 20 , in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 20____, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ on _____, 20____. (Elective Chief Executive Officer*)

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____, 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____, 20____, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ on _____, 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____, 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

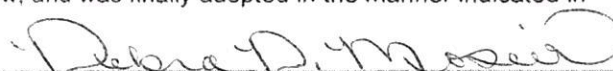
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____, State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1____ above.


Clerk of the county legislative body, City, Town or Village Clerk or
officer designated by local legislative body


(Seal)

Date: Feb 8, 2013

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF GENESEE

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.



Signature
Town Attorney

Title

County _____
City of Elba
Town _____
Village _____

Date: 2/11/13