

# June 27, 2020 Annual Town Meeting— Proposed Zoning Bylaw Changes— Article 8 (Agricultural Accessory Use)

## § 1. Purpose

Consistent with the Town's Open Space and Recreation Plan, the Town's Right to Farm Bylaw, the Rural 11 Prioritization Project, the Southern Worcester County Comprehensive Economic Development Strategy, and General Law Chapter 40A, § 3 of the Zoning Act, the purpose of this Bylaw is to provide for innovative economic development opportunities for Rutland Farmers. This Bylaw will benefit the general health and welfare of Town residents and the region by encouraging economic development and open space preservation that fits the rural character of the Town. This Bylaw will also provide opportunities for Rutland farmers to supplement their income produced through their farm operations by diversifying their operations to include businesses that may combine agriculture, tourism, outdoor recreation, and other farm related activities. Nothing herein is intended to limit any use protected by G.L. c. 40A, § 3 as an agricultural use.

## § 2. Applicability

This Bylaw applies to allowable agricultural accessory uses where the principal use of land is commercial agricultural as that term is used in G.L. c. 128, § 1A and referred to in G.L. c. 40A, § 3. This Bylaw applies to all zoning districts within the Town. To determine applicability, the applicant may be required to provide evidence to the Building Commissioner that the principal use of the land qualifies as commercial agriculture pursuant to G.L. c. 40A, § 3 and that the proposed agricultural accessory use is customarily incidental and subordinate to the primary commercial agricultural use.

## §3. Definitions

**Accessory Farm Store** - an on-site retail outlet for farm products that is subordinate to the primary commercial agriculture use of growing or harvesting of crops or the raising of livestock designed to bring the public to the farm for the purchase of agricultural products, agriculturally-related products, and/or value-added agricultural products.

**Agri-commercial** - means commercial activities designed to market to and bring the public to a Farm Enterprise for a farm related experience, and increase the sale of agricultural products to the public with the express purpose of enhancing the agricultural viability of a Farm Enterprise.

**Agriculturally-Related Products** - items sold at accessory farm stores to attract customers and promote the sale of agricultural products. Such items include, but are not limited to, all agricultural and horticultural products, animal feed, baked goods, ice cream and ice cream-based desserts and beverages, jams, honey, gift items, food stuffs, clothing and other items promoting farming and agriculture and value-added agriculture products and production on site.

A True Copy    Attest:  
  
Anita K. Carlson  
Town Clerk                      1 of 4

**Agriculture and Agricultural** - shall include farming in all of its branches and 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.

**Agri-entertainment** - means entertainment, such as a seasonal event, festival, contest, music, party, or other time-specific event, designed specifically to bring the public to a Farm Enterprise for a farm-related educational experience by displaying a combination of the farm setting and products of the agricultural operations with the ultimate goal to encourage the purchase of agricultural products. Agri-entertainment is designed to enhance the agricultural viability of farm operations.

**Agri-tourism** - means tourism designed specifically to bring the public to a Farm Enterprise for a farm-related educational experience by displaying a combination of the farm setting and products of agricultural operations with the ultimate goal to encourage the purchase of agricultural products. Agricultural tourism shall include Farm-Stay programs, entertainment events on the farm, fundraising activities, and community events. Agri-tourism is designed to enhance the agricultural viability of the farm operations.

**Farm Enterprise** - means a farming operation that is entitled to protection under G.L. c. 40A, § 3.

**Value-Enhanced Agricultural Production** - the enhancement or improvement of an agricultural commodity or of an animal or plant product produced on a farm to a higher value. The enhancement or improvement includes, but is not limited to marketing; processing, transforming, and/or packaging of agricultural commodities grown, raised, or otherwise created on the premises controlled by the owner of the agricultural operation into a product of higher value.

#### **§ 4. Permit Procedures, Authority**

The Planning Board shall act as the administering authority for Site Plan Review required under this Bylaw. The Site Plan Review requirements may be found in the document, titled, "Site Plan Approval Regulations, as amended." Otherwise, for new first-time agricultural accessory uses believed to be allowed as-of-right and not requiring Site Plan Review, the applicant may request review of said use and advice from the Building Commissioner in consultation with the Agricultural Commission and Planning and Community Development Office by notifying the Building Commissioner of the as-of-right use at least thirty (30) days prior to commencing said use believed to be allowed as-of-right by this Bylaw. The Applicant shall be responsible for obtaining any and all other necessary and applicable federal, state, and local permits and/or

licenses as may be required prior to issuance of a building permit. The dimensional requirements of the underlying zoning district shall apply to each accessory agricultural use allowed by this Bylaw.

## **§ 5. Use Provisions**

### **A. Allowable Accessory Uses**

Unless otherwise specified below, agri-entertainment, agri-commercial and agri-tourism shall be permitted as accessory uses provided that the primary use of land is Commercial Agriculture, the parcel has a minimum of five (5) acres and the sales meet the requirements of G.L. c. 40A, § 3. Examples of allowable accessory agri-entertainment, agri-commercial and agri-tourism uses include but are not limited to the following:

1. Fruit, pumpkin or related U-pick operations;
2. Corn mazes, crop art or related activities;
3. Educational and demonstrative tours;
4. Walking and bicycling tours and trails;
5. Petting and feeding zoos;
6. Hay rides;
7. Cut your own Christmas tree farms;
8. Agricultural museums;
9. Living history farms;
10. Processing demonstrations;
11. On-farm farmers' markets and roadside stands;
12. On-farm restaurants where a significant portion of products sold is prepared on site with farm crops grown or raised on site;
13. Winery tours and wine tasting where a significant portion of products sold is prepared on site with farm crops grown or raised on site;
14. Brewery tours and beer tasting where a significant portion of products sold is prepared on site with farm crops grown or raised on site;
15. Liquor tours and liquor tasting where a significant portion of products sold is prepared on site with farm crops grown or raised on site;
16. Ice cream and bakery facilities where a significant portion of products sold is prepared on site with farm crops grown or raised on site;
17. Outdoor recreation (fishing, hunting, bird watching, natural features);
18. Horseback riding;
19. Rural bed and breakfast;
20. Consuming agricultural or food products; and
21. Garden tours.

### **B. Allowable Accessory Uses Requiring Site Plan Review**

The following accessory non-agriculturally exempt uses are subject to Site Plan Review by the Planning Board;

1. Weddings, receptions, or private parties;

2. Concerts, festivals, or special events;
3. Lodging, other than rural bed and breakfast;
4. Art galleries or sculpture parks;
5. Nonmotorized active recreational uses including but not limited to: disc golf; zip lines; and archery.

#### **D. Site Plan Review Requirements**

Where Site Plan Review is required for an accessory non-agriculturally exempt use, the Planning Board shall be the Site Plan Review authority and the applicable site plan requirements shall apply. Further, the Planning Board shall make a finding whether each site plan element listed below has been adequately addressed by the applicant:

1. Noise control;
2. Off street parking;
3. Loading areas;
4. Traffic control measures for roads leading to the facilities;
5. Refuse disposal
6. Sanitation;
7. Crowd control and security;
8. Fire protection;
9. Lighting.
10. Screening from neighboring properties.

The Planning Board may impose reasonable conditions upon any Site Plan approval issued under this Section.

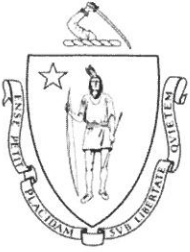
#### **C. Prohibited Accessory Uses**

The following accessory agricultural uses are prohibited:

Uses not specifically listed as accessory above, uses not customarily incidental to primary commercial farming uses, or uses otherwise prohibited in the underlying zoning district.

#### **§ 6. Severability**

If any provision of this Bylaw is held invalid by a court of competent jurisdiction, the remainder of the Bylaw shall not be affected thereby. The invalidity of any Section or Sections or parts of any Section or Sections of this Bylaw shall not affect the validity of the remainder of the Town of Rutland Zoning Bylaw.



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

RECEIVED  
TOWN OF RUTLAND

CENTRAL MASSACHUSETTS DIVISION  
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WORCESTER, MA 01608

2020 SEP 30 P 4: 28

MAURA HEALEY  
ATTORNEY GENERAL

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September 30, 2020

Anita K. Carlson, Town Clerk  
Town of R  
250 Main Street  
Rutland, MA 01543

Re: **Rutland Annual Town Meeting of June 27, 2020 – Case # 9847**  
**Warrant Article # 8 (Zoning)**

Dear Ms. Carlson:

**Article 8** - We approve Article 8 from the Rutland June 27, 2020, Annual Town Meeting. Our comments on Article 8 are provided below.

Article 8 amends the Town’s zoning by-laws to add a new “Agricultural Accessory Use,” by-law that allows for agri-tourism related activities on land where the principal use is commercial agriculture. The purpose of the by-law is to allow Rutland farmers the opportunity to supplement their income produced through their farming operations by including businesses that combine agriculture, tourism, outdoor recreation, and other farm related activities. See § 1 “Purpose.” Section 1 specifically states that nothing in the by-law is intended to limit uses protected by G.L. c. 40A, § 3. Section 5 of the by-law lists the agricultural accessory uses that are allowed: (1) as of right and (2) subject to site plan review by the Planning Board. The proposed by-law also provides a review process to determine whether a first-time agricultural accessory use is allowed as of right and not requiring site plan review. See § 4, “Permit Procedures, Authority.” Our comments on the new by-law are provided below.

Section 5 of the by-law lists the agricultural accessory uses that are allowed as of right, by site plan review, or prohibited. Specifically, Section 5 (A), “Allowable Accessory Uses,” provides in pertinent part as follows:

Unless otherwise specified below, agri-entertainment, agri-commercial and agri-tourism shall be permitted as accessory uses provided that the primary use of land is Commercial Agriculture, the parcel has a minimum of five (5) acres and the sales meet the requirements of G.L. c. 40A, § 3. Examples of allowable accessory agri-entertainment, agri-commercial and agri-tourism uses include but are not limited to the following: . . .

General Laws Chapter 40A, Section 3, provides exemption from local zoning by-laws for certain agricultural uses and provides in relevant part as follows:

No zoning . . . by-law . . . shall . . . prohibit unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products.....

General Laws Chapter 128, Section 1A, defines agricultures and provides in pertinent part as follows:

“Farming” or “agriculture” shall include farming in all of its branches and 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

These statutes together establish that, to the extent the use of land or structures constitutes commercial agriculture, the Town cannot require a special permit for, unreasonably regulate, or prohibit such activities: (1) on land zoned for agriculture; (2) on land that is greater than five acres in size; and (3) on land of 2 acres or more if the sale of products from the agricultural use generates \$1,000 per acre or more of gross sales.

Section 5 allows agri-entertainment, agri-commercial and agri-tourism as accessory uses provided that the primary use of land is (1) commercial agriculture; (2) on a parcel that has a minimum of five acres; and (3) the meets the sale the requirements of G.L. c. 40A, § 3. While the by-law seeks to promote and help agriculture, there may be agri-entertainment, agri-tourism, and other related commercial activities that are incidental to an agricultural parcel that qualify as commercial agriculture under G.L. c. 40A, § 3 but are not encompassed by Section 5’s requirements.<sup>1</sup> In such instances, the Town cannot prohibit, require a special permit for, or unreasonably regulate such uses, including limiting such activity to parcels five contiguous acres or more. We suggest that the Town discuss with Town Counsel the application of G.L. c. 40A, § 3, to agri-entertainment, agri-tourism, and other agricultural related commercial activities on agricultural property

**Note:** Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date that these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-

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<sup>1</sup> The Massachusetts Department of Agricultural Resources (MDAR) offers the following guidance to towns and farmers in determining if a specific agri-tourism type activity enjoys agricultural protections under state law:

<http://www.mass.gov/eea/docs/agr/legal/alm/alm-1005-agri-tourism.pdf>

laws and amendments are deemed to have taken effect from the date they were voted by Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,  
MAURA HEALEY  
ATTORNEY GENERAL

*Kelli E. Gunagan*

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Worcester, MA 01608  
(508) 792-7600

cc: Town Counsel Lauren F. Goldberg