

Guidelines for Review of Local Laws Affecting Direct Farm Marketing Activities

Typically “direct farm marketing” encompasses roadside stands, farm markets, farmers’ markets, and “u-pick” or “pick your own operations”. Direct farm marketing is considered by the Department to be part of a “farm operation” and thus protected from unreasonable local restrictions by Agriculture and Markets Law (AML) §305-a when conducted on the farm.

Direct farm marketing should be allowed in all areas within a county-adopted, State certified agricultural district. However, the degree of regulation of the various forms of direct farm marketing that is considered unreasonable depends on the nature of the proposed activities and the size and complexity of the proposed structure. A requirement to apply for a permit is generally not unreasonable. Depending upon the size and scope of the retail facility, greater regulation, such as special use permits and site plan review, may be reasonable. The Department urges local governments to take into account the size and nature of the particular farm market when setting and administering such requirements. For example, to require a small farm market, which sells only a minimal amount of off-farm product, to obtain a special use permit and site plan approval may be unreasonably restrictive.

Generally, the Department does not review the administration of a local law before a landowner has exhausted his local administrative remedies.¹ Farmers must comply with local requirements which regulate the health and safety aspects of the construction of farm buildings through provisions to meet local building codes or the State Building Code (unless exempt from the State Building Code under 9 NYCRR §651.3²) and Health Department requirements. Farmers must also obtain local building permits and certificates of occupancy to ensure that health and safety requirements are met.

The following are some of the specific matters that the Department considers when reviewing a local law that affects direct farm marketing:

A. Maximum Dimensions:

Generally the Department will consider whether maximum dimensions imposed by a local law are sufficient to meet existing and/or future farm needs. For example, many roadside stands are located within existing garages, barns, and outbuildings that may have dimensions greater than those set by a local ordinance. Buildings specifically designed and constructed to accommodate the sale of farm products may also not meet the local requirements. The size and scope of the farm operation is also considered.

¹ However, an administrative requirement/process may, itself, be unreasonably restrictive. The Department evaluates the reasonableness of the specific requirement/process, as well as the substantive requirements imposed on the farm operation.

² Please see *Guidelines for Review of Local Zoning and Planning Laws* for discussion of State Building Code.

Larger farms, for example, cannot effectively market their produce through a traditional roadside stand.

B. Sign Limitations:

Whether or not a limitation on the size and/or number of signs that may be used to advertise a roadside stand is unreasonable depends upon the location of the stand and the type of produce sold. A farmer who is located on a principally traveled road probably will not need as many signs as one who is located on a less traveled road and may need directional signs to direct the public to their stand. The size of a sign needed may depend on whether the farmer needs to advertise the availability of several different types of produce or just one or two products.

C. Product Origin:

Some farmers import produce from other farms to sell at their stands to increase the diversity of products offered or to bridge periods of low supply of commodities produced on-farm. Product diversity may attract potential customers to a roadside stand or farm market. The Department believes the sale of some agricultural products grown off the farm should be allowed, but has not established a percentage of on-farm versus off-farm products for that purpose. The Department considers the facts of a particular case in making a determination whether a local law is unreasonably restrictive, but generally would view requiring a predominance of on-farm products as reasonable. The needs of “start-up” farm operations should also be considered. These farms often start out selling a large percentage of agricultural products grown off the farm in order to develop a customer base and maintain income while their farms are growing. If a percentage of on-farm products were required by a locality, allowing such farms a reasonable period of time to meet the percentage would be reasonable.

The Department considers commodities produced “on-farm” to include any products that may have been produced by a farmer on their “farm operation,” which could include a number of parcels owned or leased by that farmer throughout a town, county, or the State. The Department considers all such land owned or leased, when it is located in a State certified agricultural district, as the farm operation.

D. On-farm preparation of processed foods:

Some of the larger farm markets may have facilities for the on-site preparation of processed foods (e.g. a kitchen, bakeshop, etc.), as well as facilities for consumption of foods (e.g., a café). The Department considers these practices as part of the farm operation as long as the products that are prepared are composed primarily of ingredients produced on the farm.

E. Ag-tourism/recreational activities:

Many farm markets offer some form of on-farm recreational activity such as hayrides, a petting zoo, or a cornfield maze. While these activities may not be purely agricultural in nature, they are often an important component of farm markets since they are a useful tool to attract customers. While the Department encourages the diversification of farm businesses, which is often crucial to their economic viability, some of these activities may not be protected under §305-a in a farm specific review.