

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2012 Legislative Session

Bill No. CB-6-2012

Chapter No. 2

Proposed and Presented by Council Member Franklin

Introduced by Council Members Franklin and Lehman

Co-Sponsors _____

Date of Introduction March 6, 2012

BILL

1 AN ACT concerning

2 Agricultural Industry

3 For the purpose of amending and adding to the Right to Farm provision and generally regarding
4 agriculture.

5 BY repealing and reenacting with amendments:

6 SUBTITLE 30. AGRICULTURE.

7 Sections 30-101, 30-102, and 30-103,

8 The Prince George's County Code

9 (2007 Edition, 2010 Supplement).

10 BY adding:

11 SUBTITLE 30. AGRICULTURE.

12 Sections 30-103.01, 30-103.02, 30-103.03,

13 and 30-103.04,

14 The Prince George's County Code

15 (2007 Edition, 2010 Supplement).

16 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
17 Maryland, that Sections 30-101, 30-102, and 30-103 of the Prince George's County Code be and
18 the same are hereby repealed and reenacted with the following amendments:

19 **SUBTITLE 30. AGRICULTURE.**

20 **DIVISION 1. RIGHT TO FARM.**

21 **Sec. 30-101. Purpose.**

1 It is the declared policy of the Prince George’s County Government to promote, preserve,
 2 protect, enhance and encourage [the agricultural industry within the County.] agricultural
 3 operations, forestry operations and the development and improvement of its agricultural land for
 4 the production of food and other agricultural products. The encroachment of nonagricultural
 5 land uses into rural areas may interfere with efficient agricultural and forestry production by
 6 [encouraging litigation against farmers. Protection must be provided to farms, so that they may
 7 continue established operations despite adjacent nonagricultural neighbors] becoming the subject
 8 of nuisance complaints and lawsuits due to lack of information about such operations.
 9 Therefore, it is in the public interest to promote a clearer understanding between agricultural and
 10 forestry operations and non-agricultural neighbors concerning the normal inconveniences of
 11 agricultural and forestry operations that follow generally accepted agricultural practices and do
 12 not endanger public health or safety. Protection [must] will be provided to [farms] agricultural
 13 and forestry operations, so that they may [continue established operations] operate and be
 14 successful on agricultural land, despite adjacent non-agricultural neighbors. The ordinance is not
 15 intended to and shall not be construed as in any way modifying or abridging local, state, or
 16 federal laws, including, but not limited to laws relating to health, safety, trespass onto
 17 agricultural property, zoning, and licensing requirements.

18 **Sec. 30-102. Definitions.**

19 [(a) Terms used in this Subtitle are defined as follows:

20 (1) **Agricultural Operation:** The commercial production of food or other
 21 agricultural products, including any structure, vehicle or other farm machinery, condition, or
 22 activity associated therewith. Types of agricultural operations include the following:

- 23 (A) Cultivation of land;
- 24 (B) Raising or production of poultry;
- 25 (C) Production of eggs;
- 26 (D) Production of milk (dairy);
- 27 (E) Production of fruits, vegetables, or other horticultural or floricultural crops;
- 28 (F) Raising or production of livestock;
- 29 (G) Pasturage; and
- 30 (H) Apiaries.]

31 (a) Terms used in this Subtitle are defined as follows:

1 (1) **Agricultural Land** shall mean all real property within the boundaries of Prince
2 George’s County that is carried on the tax rolls of the Maryland State Department of
3 Assessments and Taxation as agricultural; or all other land that is currently used for agricultural
4 operations and has been used, and/or is under preparation for use as an agricultural operation
5 continuously for at least one (1) year.

6 (2) **Agricultural Operation** shall mean and include, but is not limited to, all matters
7 set forth in the definition of “agricultural operation” in the Annotated Code of Maryland, Courts
8 and Judicial Proceedings Article 5-403(a), as may be amended from time to time; and the
9 production of all matters encompassed within the definition of “farm product” in the Annotated
10 Code of Maryland, Agriculture Article 10-601(c), as may be amended from time to time.

11 Agricultural Operation shall also mean and include cultivation and tillage of the soil,
12 dairying, spreading of manure, lime, fertilizer and the like, composting, spraying, producing,
13 irrigating, protecting from frost, cultivating, rowing, harvesting and processing of any
14 agricultural crops or commodities, including viticulture, horticulture, timber or apiculture, raising
15 fish or poultry and other fowl, production of eggs, production of milk and dairy products, equine
16 activities, production of livestock, pasturage, fur bearing animals, production of bees and their
17 products, production of fruit, vegetables and other horticultural crops, production of wine,
18 production of aquatic plants, aquaculture, production of timber, production of wool and fleece,
19 and any commercial agricultural practices or procedure performed as incident to or in
20 conjunction with such operations, including on farm processing and preparation for market,
21 delivery to storage or to market or to carriers for transportation to market, equine activities,
22 usage of land in furtherance of educational and social goals, including but not limited to 4-H
23 clubs and Future Farmers of America, agri-tourism, alternative agricultural enterprises, occurring
24 at any time.

25 (3) **Forestry Operation** includes, but is not limited to, the cultivation and production
26 of all matters and products derived from the practice of forestry, as encompassed in the definition
27 of “forestry” as set forth in the Annotated Code of Maryland, Business Occupations and
28 Professions Article, Section 7-101(c), as amended from time to time.

29 (4) **Generally Accepted Agricultural Land Management Practices** shall mean
30 those

1 methods used in connection with agricultural operations, which do not violate applicable
 2 federal, State or local laws or public health, safety and welfare and which are generally accepted
 3 practices in the agricultural industry. Generally accepted agricultural management practices
 4 include practices that are recognized as generally accepted management practices and those
 5 methods that are authorized by various governmental agencies, bureaus, and departments,
 6 including but not limited to the University of Maryland Extension Prince George's County, and
 7 the Prince George's County Soil Conservation District. If no generally accepted agricultural
 8 management practice exists or there is no method authorized by those agencies mentioned herein
 9 which governs a practice, the practice is presumed to not be a generally accepted agricultural
 10 management practice.

11 **[Sec. 30-103. Agricultural operations defense in private nuisance actions.**

12 (a) If it is alleged in a private action for legal or equitable relief that an agricultural
 13 operation, or a change in an agricultural operation, has interfered, is interfering, or will interfere
 14 with the use or enjoyment of private property, because such operation constitutes a public or
 15 private nuisance, then the person charged in such action shall not be liable if:

16 (1) The agricultural operation, or change in operation, has been, is, or will be
 17 conducted in accordance with generally accepted agricultural practices, and such agricultural
 18 operation conforms to any applicable federal, state, or County regulations; and

19 (2) The agricultural operation began prior to the use of the property by the person
 20 alleged to have suffered injury as a result of the agricultural operation or change in method of
 21 operation.

22 (b) The defense stated in Subsection (a) of this Section does not apply to agricultural
 23 operations which are conducted in a negligent or willfully injurious manner.]

24 **Sec. 30-103. Limitation of Actions**

25 (a) A private action may not be sustained with respect to an agricultural or forestry
 26 operation conducted on agricultural land on the grounds that the agricultural or forestry operation
 27 interferes or has interfered with the use or enjoyment of property, whether public or private, if:

28 (1) The agricultural or forestry operation, including any change in the operation, has
 29 been under way for a period of one year or more and if the operation or the change did not
 30 constitute a nuisance from the date the operation or change in the operation began; and

31 (2) The agricultural or forestry operation is conducted substantially in accordance

1 with generally accepted agricultural or forestry practices.

2 (b) Notwithstanding any provision of this section, no action alleging that an
 3 agricultural or forestry operation has interfered with the reasonable use or enjoyment of real
 4 property or personal well-being shall be maintained if the plaintiff has not sought [arbitration]
 5 resolution through Agricultural Reconciliation Committee, as defined in [Sec. 30-104] Sec. 30-
 6 103.01 herein.

7 SECTION 2. BE IT ENACTED by the County Council of Prince George's County,
 8 Maryland, that Sections 30-103.01, 30-103.02, 30-103.03 and 30-103.04 of the Prince George's
 9 County Code be and the same are hereby added:

10 **SUBTITLE 30. AGRICULTURE.**

11 **DIVISION 1. RIGHT TO FARM.**

12 **Sec. 30-103.01. Establishment of Agricultural Reconciliation Committee membership.**

13 (a) There is hereby established the Prince George's County Agricultural
 14 Reconciliation Committee, which shall mediate disputes involving agricultural operations
 15 conducted on agricultural lands and issue opinions concerning whether or not such agricultural
 16 operations are conducted in a manner consistent with generally accepted agricultural practices.

17 (b) Composition

18 (1) The Agricultural Reconciliation Committee shall be a five member sub-
 19 committee of the Prince George's County Agricultural Resources Advisory Committee
 20 appointed by the Prince George's County Executive and confirmed by the County Council. The
 21 Committee shall be composed of:

22 (A) Two members from the agricultural community, one must be an active
 23 voting member of the Prince George's County Farm Bureau;

24 (B) One member from the forestry community;

25 (C) One member from a real estate interest; and

26 (D) One other member from the community not actively engaged in agriculture.

27 (2) The Prince George's County Agricultural Marketing Specialist shall provide staff
 28 to the Agricultural Reconciliation Committee.

29 (c) Three members shall constitute a quorum. The Agricultural Reconciliation
 30 Committee shall be subject to the Open Meetings Act and its members shall be subject to the
 31 Prince George's County Ethics Ordinance, each as amended from time to time.

1 **Sec. 30-103.02. Resolution of disputes and procedure for complaints; investigation and**
2 **declaration.**

3 (a) Nuisances, which affect the public.

4 (1) Complaints. A person may complain to the Director, Department of
5 Environmental Resources or the Director's designee to declare that a nuisance exists, which
6 affects the public.

7 (2) Investigations. The Director, Department of Environmental Resources or the
8 Director's designee is authorized to investigate any complaint of nuisance received against an
9 agricultural operation. When a previous complaint involving the same condition resulted in a
10 determination by the Director that a nuisance condition did not exist, the Director is authorized to
11 investigate the complaint.

12 (3) Declaration of nuisance. If the Director, Department of Environmental Resources
13 or the Director's designee determines that a nuisance exists, the Director may declare the
14 existence of a nuisance. In determining whether a nuisance condition exists in connection with
15 an agricultural operation, the Director shall apply the criteria provided in this Section. Further,
16 the Director may consider the professional opinion of the University of Maryland Extension
17 Prince George's County, Prince George's Soil Conservation District or other qualified expert in
18 the relevant field in determining whether the agricultural operation being investigated is
19 conducted in accordance with accepted agricultural practices.

20 (b) Resolution of disputes regarding agricultural operations.

21 (1) Should any controversy arise regarding an interference with the use or
22 enjoyment of property from agricultural operations conducted on agricultural land, the parties to
23 that controversy shall submit the controversy to the Agricultural Reconciliation Committee.

24 (2) Any such controversy may be submitted in writing to the Agricultural
25 Reconciliation Committee within thirty (30) days of the alleged adverse impacts.

26 (3) The Agricultural Reconciliation Committee will conduct its proceedings in an
27 informal manner and the strict rules of evidence shall not apply. The Committee has the power
28 but is not required hereunder to hold hearings, to compel testimony under oath, to subpoena
29 witnesses, and to compel the production of documents. In each case, the Agricultural
30 Reconciliation Committee shall issue orders settling or otherwise resolving controversy arising
31 out of agricultural operations, including but not limited to the invasion of property and personal

1 rights by agricultural operations conducted on agricultural land.

2 (4) Orders of the Agricultural Reconciliation Committee shall be binding on the
 3 parties as a matter of law, but their enforcement shall be suspended by operation of law if,
 4 within 30 days of the date of the Committee’s judgment, a party appeals such order to the Circuit
 5 Court for Prince George’s County.

6 **Sec. 30-103.03. Right to farm notice and real estate transfer disclosure.**

7 (a) Upon any transfer of real property in the R-O-S, O-S, R-A, R-E, and/or R-R zones, the
 8 transferor (seller) shall provide a statement advising the buyer of the existence of this law which
 9 shall be in substantially the following wording:

10 PROXIMITY TO AGRICULTURAL AND/OR FORESTRY OPERATIONS:

11 Buyer(s) acknowledge that the property offered for sale is in the vicinity of
 12 property that is, or may be used, for agricultural or forestry operations. As such,
 13 the Property may be subject to activity including, but not limited to, noise, odor,
 14 fumes, insects, dust, chemical application and the operation of machinery at various
 15 times. Prince George’s County has adopted a right to farm ordinance stipulating
 16 that inconveniences or discomforts associated with the agricultural/forestry
 17 operation shall not be considered an interference with reasonable use and
 18 enjoyment of other properties in the vicinity, if such operations are conducted in
 19 accordance with generally accepted agricultural and forestry management practices,
 20 as referenced in Prince George’s County Code, Section 30-102. The County has
 21 established an Agricultural Reconciliation Committee to assist in the resolution of
 22 disputes that may arise with regard to agricultural or forestry operations when such
 23 operations are not conducted in accordance with generally accepted agricultural or
 24 forestry management practices. For further information refer to Prince George’s
 25 County Code, Subtitle 30, Division 1, and/or contact the Director, Department of
 26 Environmental Resources.

27 **Sec. 30-103.04. Existing liabilities and statutory construction.**

28 (a) Except to the extent specifically provided herein, this law shall not discharge,
 29 impair or release any contract, obligation, duty, liability or penalty whatever existing on the date
 30 of its enactment.

31 (b) This law is not intended to and shall not be construed as in any way modifying or

1 abridging local, state, or federal laws, including but not limited to laws relating to health, safety,
2 trespass onto agricultural property, zoning and licensing requirements.

3 SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect on forty-five (45)
4 calendar days after it becomes law.

Adopted this 27th day of March , 2012.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Andrea C. Harrison
Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Rushern L. Baker, III
County Executive

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.