LOCAL LAW NO. 5 - YEAR 2008

County of Wyoming, Providing a Local Law Establishing the Right to Farm Legislation

BE IT ENACTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF WYOMING AS FOLLOWS:

SECTION 1 – TITLE

This local Law shall be known and cited as "A Local Law of Wyoming County, New York Establishing the Right to Farm Legislation."

SECTION 2 – LEGISLATIVE INTENT AND PURPOSES

The Wyoming County Board of Supervisors finds, declares and determines that agriculture is vital to Wyoming County, New York, because it is a livelihood and provides employment for agri-service, provides locally produced fresh commodities; agricultural diversity promotes economic stability; agriculture maintains open space and promotes environmental quality; and agricultural land does not increase the demand for services provided by local governments. In order to maintain a viable farming economy in Wyoming County, farmers must be afforded protection allowing them the right to farm. When non-agricultural land uses extend into agricultural areas, agricultural operations may become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operation or are discouraged from making investments in agricultural improvements.

It is the purpose of this law to reduce the loss to Wyoming County of its agricultural resources by limiting 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 3 – DEFINITIONS

a. "Agricultural and Farmland Protection Board" shall mean a board formally appointed by the County Board of Supervisors according to Article 25AA – 302 of New York State Agriculture and Markets Law.

b. "Right to Farm Committee" shall mean a committee, formally appointed by the Town Board of any town within Wyoming County, for the purpose of resolving right to farm disputes as provided hereunder. Such a committee shall be appointed on either an annual or ad hoc basis (or an existing committee can be designed to serve in that capacity) with such number of members as the Town Board shall determine, provided there are no less than three with at least one representative each from the farm and non-farm communities. All members,

however, shall be knowledgeable regarding agricultural practices common to the Town. The decision to form such a committee shall be at the sole discretion of the Town Board.

c. "Agricultural Practices" shall mean all activities conducted by a farmer on a farm to produce agricultural products and which are inherent and necessary to the operation of a farm, and the on-farm production, processing and marketing of agricultural products including, but not limited to, the collection, transportation, distribution, storage and land application of animal wastes; storage, transportation and use of equipment for tillage, planting, harvesting, irrigation, fertilization and pesticide application; storage and use of legally permitted fertilizers, limes and pesticides all in accordance with local, state and federal law and regulations and in accordance with manufacturers' instructions and warnings; storage, use, and application of animal feed and foodstuffs; construction and use of farm structures and facilities for the storage of animal wastes, farm equipment, pesticides, fertilizers, agricultural products and livestock, for the processing of animal wastes and agricultural products, for the sale of agricultural products, and for the use of farm labor, as permitted by local and state building codes and regulations; including the construction and maintenance of fences.

d. "Agricultural Products" shall mean those products as defined in Section 301(2) of Article Twenty-five-AA (25-AA) of the Agriculture and Markets Law.

e. "Farm" shall mean the land, buildings, farm residential buildings and machinery used in the production, whether for profit or otherwise, of agricultural products.

f. "Farmer" shall mean any person, organization, association, partnership or corporation engaged in the business of agriculture, for profit or otherwise, including the cultivation of land, the raising of crops, or the raising of livestock, poultry, fur bearing animals, or fish, the harvesting of timber or the practicing of horticulture or apiculture.

g. "Generally Accepted Agricultural Practices" shall mean those practices which are feasible, lawful, inherent, customary, necessary, reasonable, normal, safe and typical to the industry or unique to the commodity as they pertain to the practices listed in Section 3(c) entitled "agricultural practices".

h. Unless specifically defined, the above words or phrases used in this Local Law shall be interpreted so as to give them meanings they have in common usage, and to give this Local Law its most reasonable application.

I. "Agricultural Advisory Resolution Committee" shall mean all eight (8) voting members of the Wyoming County Agricultural Farmland Protection Board plus one (1) annually appointed member of the County Planning Board.

SECTION 4 – 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 Wyoming County at all such times and in all such locations as are reasonably necessary to conduct the business of agriculture. For any agriculture 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 and improved technologies.

Agricultural practices conducted on farmland 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 agricultural 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 that does not unreasonably obstruct the free passage or use of navigable waters or public roadway.

Nothing in this Local Law shall be construed to prohibit an aggrieved party from recovering damages for bodily injury or wrongful death due to failure to follow sound agricultural practices, as set forth in this section.

SECTION 5 – SEVERABILITY CLAUSE

If for any part of the Local Law is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remainder of this Local Law.

SECTION 6 – NOTIFICATION OF REAL ESTATE BUYERS

In order to promote harmony between farmers and their new neighbors, Wyoming County requires landholders and/or their agents and assigns to provide written disclosure notice to prospective purchasers and occupants as follows: “This property is within Wyoming County and it is the policy of the County to conserve, protect, and encourage the development of farm operations within our borders for the production of food and other products and one should be aware of the inherent potential conditions associated with such purchases or residence. Such conditions may include, but are not limited to, noise, odors, fumes, dust, smoke, insects, operation of machinery during any hour, day or

night, storage, and disposal of plant and animal waste products and the application of chemical fertilizers, soil amendments, herbicides, and pesticides by ground or aerial spraying or other methods.

Property owners and residents of Wyoming County should be aware that farmers have the right to undertake generally accepted practices and one should expect such conditions as a normal and necessary aspect of living in an agricultural area.

The failure to include a documented disclosure notice shall not affect the validity of such purchase and sale contract.

SECTION 7 – RESOLUTION OF DISPUTES

Any issue of controversy that arises which cannot be resolved directly between the parties involved, shall first submit the controversy to the Town's Right to Farm Committee or, in the absence of a local committee, the Wyoming County Agricultural Advisory Resolution Committee for prompt and inexpensive open hearing, recommendations and resolution. The Wyoming County Agricultural Advisory Resolution Committee will consist of all eight (8) voting members of the Agricultural Farmland Protection Board and one annually appointed individual from the Wyoming County Planning Board, who should be a non-farm resident. The Agricultural Advisory Resolution Committee will act as a grievance committee as a whole. The Committee will consist of nine (9) members and a quorum (5 members) must be present. Any controversy between the parties may be submitted to the Resolution Committee, whose decision shall be advisory only, within thirty one (31) days of the date of occurance of the particular and specific activity giving rise to the controversy or of the date a party became aware of the occurrence so that the issue can be placed on the agenda of the next regularly scheduled meeting of the Agricultural Farmland Protection Board for referral to the Wyoming County Agricultural Advisory Resolution Committee. The Resolution Committee will hold a hearing within thirty one (31) days of receipt of referral. Within thirty one (31) days of the Resolution Committee Meeting a written decision must be rendered to the parties involved.

The effectiveness of the Resolution Committee as a forum for resolution of grievances is dependent upon full discussion and complete disclosure and 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.

Any dispute decision made by the Resolution Committee is advisory only and can be appealed to the State Commissioner of the Department of Agriculture and Markets.

SECTION 8 – EFFECTIVE DATE

This Local Law shall be effective immediately upon acceptance by the Wyoming County Board of Supervisors and filing with the New York State Secretary of State.

DATED at Warsaw, New York
June 10, 2008 (Introduced)
August 12, 2008 (Adopted)
Cheryl J. Ketchum
Clerk