

CHAPTER 338

HB 663 - FINAL VERSION

19Mar2019... 0751h

04/25/2019 1488s

2019 SESSION

19-0827

08/10

HOUSE BILL 663

AN ACT relative to the definition of agriculture and existing agricultural uses.

SPONSORS: Rep. Pearl, Merr. 26; Rep. Lang, Belk. 4

COMMITTEE: Environment and Agriculture

ANALYSIS

This bill makes changes to the definitions of agriculture and existing agricultural activities and uses in zoning and planning ordinances and rules.

Explanation: Matter added to current law appears in bold italics.

Matter removed from current law appears [in brackets and struckthrough.]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to the definition of agriculture and existing agricultural uses.

Be it Enacted by the Senate and House of Representatives in General Court convened:

338:1 Definition of Agriculture. Amend RSA 21:34-a, I to read as follows:

I. The word "farm" means any land, buildings, or structures on or in which agriculture and farming operations or activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on such land. Structures shall include all farm outbuildings used in the care of livestock[, and]; in the production and storage of fruit, vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of annual or perennial plants; and any other structures used in the operations or activities named in paragraph [II] II(a) or (b) of this section or any combination of such individual operations or activities.

338:2 Definition of Agriculture. Amend RSA 21:34-a, II to read as follows:

II. The words "agriculture" and "farming" mean all operations or activities of a farm, including:

(a)(1) The cultivation, conservation, [and] or tillage of the soil.

(2) The storage[,] and use of[, and] or spreading of commercial fertilizer, lime, wood ash, sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules and regulations, other lawful soil amendments.

(3) The use of [and] or application of agricultural chemicals.

(4) The [raising] husbandry [and sale] of livestock which shall include but not be limited to all beef [and] or dairy cattle, steer, oxen, goats, sheep, swine, horses, mules or other equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, poultry, rabbits, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), [and] or reindeer (*Rangifer tarandus*).

(5) The [breeding] husbandry, boarding, [raising,] training, or riding instruction [, and selling] of equines.

(6) The [commercial raising,] husbandry and harvesting [, and sale of fresh water fish or other] aquaculture products including fresh or salt water finfish, shellfish, or other aquatic organisms grown for consumption or processing.

(7) The [raising, breeding, or sale] husbandry of poultry or game birds or production of eggs.

(8) The [raising] husbandry of bees or production of honey.

(9) The [raising, breeding, or sale] husbandry of domesticated strains of fur-bearing animals.

(10) The production of greenhouse crops.

(11) The production, cultivation, growing, or harvesting[, and sale] of any agricultural, floricultural, viticultural, forestry, or horticultural crops including, but not limited to, berries, herbs, honey, maple syrup, fruit, vegetables, tree fruit, grapes, flowers, seeds, grasses, nursery stock, sod, trees [and] or tree products, Christmas trees grown as part of a commercial Christmas tree operation, trees grown for short rotation tree fiber, compost, or any [other] plant that can be legally grown [and] or harvested extensively for profit or subsistence.

(b) Any practice or activity on the farm incident to, ancillary to, or in conjunction with such farming operations, including, but not necessarily restricted to:

(1) Preparation for market, delivery to storage or to market, or to carriers for transportation to market of any products or materials from the farm.

(2) The transportation to the farm of supplies and materials.

(3) The transportation of farm workers.

(4) Forestry or lumbering operations.

(5) [The] Marketing or selling at wholesale or retail, regardless of the manner or form of the transaction, [of] any livestock or products derived principally from the production of the farm, including, but not limited to items listed in subparagraph (a), whether on-site [and] or off-site, provided that marketing such products is [where] not specifically prohibited by local regulations. [Marketing includes] For the purposes of this section marketing shall include agritourism, which means attracting visitors to a farm to attend events [and] or activities that are accessory uses to the primary farm operation, including, but not limited to, [eating] being provided a meal, making overnight stays, enjoyment of the farm environment, education which shall be instruction or learning about [farm] the farm's operations, or active involvement in the [activity] activities of the farm.

(6) Irrigation of growing crops from private water supplies or public water supplies where not prohibited by state or local rule or regulation.

(7) The use of dogs for herding, working, or guarding livestock, as defined in RSA 21:34-a, II(a)(4).

(8) The production and storage of compost and the materials necessary to produce compost, whether such materials originate, in whole or in part, from operations of the farm.

338:3 Definition of Agriculture. Amend RSA 21:34-a, IV to read as follows:

IV. Management practices on the farm shall include technologies recommended from time to time by the university of New Hampshire cooperative extension, the New Hampshire department of agriculture, markets, and food, [and] or appropriate agencies of the United States Department of Agriculture.

338:4 Declaration of Purpose. Amend RSA 672:1, III-d to read as follows:

III-d. For purposes of paragraphs III-a, III-b, III-c, and III-e, "unreasonable interpretation" includes the failure of local land use authorities to recognize that agriculture and agritourism operations or activities as defined in RSA 21:34-a, forestry, renewable energy systems, and commercial and recreational fisheries, when practiced in accordance with applicable laws and regulations, are traditional, fundamental and accessory uses of land throughout New Hampshire, and that a prohibition upon these uses cannot necessarily be inferred from the failure of an ordinance or regulation to address them;

338:5 Agricultural Uses of Land. Amend RSA 674:32-a to read as follows:

674:32-a Presumption. In accordance with RSA 672:1, III-d, whenever agricultural operations or activities as defined in RSA 21:34-a are not explicitly addressed with respect to any zoning district or location, such operations or activities [they] shall be deemed to be permitted there, as either a primary or accessory use, so long as conducted in accordance with best management practices guidelines adopted by the commissioner of the department of agriculture, markets, and food and with applicable federal and state laws, regulations, and rules.

338:6 Existing Agricultural Uses and Activities. Amend RSA 674:32-b to read as follows:

674:32-b Existing Agricultural Uses and Activities. Any agricultural use or activity which exists pursuant to RSA 674:32-a may without restriction be expanded, altered to meet changing technology or markets, or changed to another agricultural use or activity, as set forth in RSA 21:34-a, so long as any such expansion, alteration, or change complies with all federal and state laws, regulations, and rules, including agricultural best management practices guidelines adopted by the commissioner of the department of agriculture, markets, and food; subject, however, to the following limitations:

I. Any new establishment, re-establishment after abandonment, or significant expansion of an operation involving the keeping of livestock, poultry, or other animals may be made subject to special exception, building permit, site plan review, or other local land use board approval in accordance with the provisions of RSA 674:32-c, II and III.

II. Any new establishment, re-establishment after abandonment, or significant expansion of a farm stand, retail operation, or other use or activity involving on-site transactions with the public, including agritourism as defined in RSA 21:34-a, may be made subject to applicable special exception, building permit, site plan review, or other local land use board approval in accordance with the provisions of RSA 674:32-c, II and III, and may be regulated to prevent traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public safety. No municipality shall adopt an ordinance, bylaw, definition, or policy regarding agritourism activities that conflicts with the definition of agritourism in RSA 21:34-a.

338:7 Agricultural Uses of Land. Amend RSA 674:32-c, II to read as follows:

II. Nothing in this subdivision, or in RSA 674:32-b, shall exempt new, re-established, or expanded agricultural operations or activities from generally applicable building and site requirements such as dimensional standards, setbacks, driveway and traffic regulations, parking requirements, noise, odor, or vibration restrictions or sign regulations; provided, however, that in circumstances where their literal application would effectively prohibit an agricultural use or activity allowed by this subdivision, or would otherwise be unreasonable in the context of an agricultural use or activity, in accordance with the provisions of RSA 672:1, III-b, the board of adjustment, building code board of appeals, or other applicable local board, after due notice and hearing, shall grant a waiver from such requirement to the extent necessary to reasonably permit the agricultural use or activity, unless such waiver would have a demonstrated adverse effect on public health or safety, or on the value of adjacent property. Such waiver shall continue only as long as utilized for the permitted agricultural use or activity.

338:8 Effective Date. This act shall take effect upon its passage.

Approved: September 05, 2019

Effective Date: September 05, 2019