

City of Detroit


CITY COUNCIL

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To: Honorable City Council

From: David D. Whitaker, Director 
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Re: **Right To Farm Act (RTFA) and Urban Agriculture**

Date: June 11, 2010

On May 18, 2010, the City Planning Commission (CPC) wrote a report discussing the proposed Urban Agriculture Policy for the City of Detroit, and the implications of the Michigan Right To Farm Act (RTFA), *MCL 286.471 et seq.* The issues involving urban agriculture raise a number of policy, legal, environmental, social and economic concerns that are likely to require continuing attention from Your Honorable Body, especially if the proposed Urban Agriculture Policy is adopted and implemented, via a new local ordinance. This is RAD's preliminary report regarding the RTFA issue at this time.

The basic provisions of the Right To Farm Act (RTFA) are summarized below. In essence, it implements a comprehensive statutory protection policy for farming, especially in areas where suburban sprawl abuts traditional agricultural lands. It does this primarily by protecting farms that use "generally accepted agricultural and management practices" (so-called GAAMPS, established by the state commission of agriculture) from adverse claims by neighboring property owners, and by favoring existing agricultural uses over new, neighboring residential ones who are "coming to the nuisance."

In a concentrated urban setting, the basic policy of the RTFA could have major unintended consequences, potentially authorizing the creation of new nuisances – smells, spillover effects on neighborhoods, cultural and social disruptions, etc. – that may be inconsistent with urban residential zoning and quality of life. The basic issue involved in this referral has to do with what new legal policies regulating agricultural may be necessary, specifically designed for the urban setting.

The Right To Farm Act

The RTFA was implemented to protect farmers from nuisance lawsuits. *Travis v Preston (On Rehearing)*, 249 Mich. App. 338, 342; 643 N.W.2d 235 (2002). The statute states that a farm or farm operation that conforms to "generally accepted agricultural and

management practices" shall not be found to be a public or private nuisance. Also, "A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation existed before a change in the land use or occupancy of land within 1 mile of the boundaries of the farm land, and if before that change in land use or occupancy of land, the farm or farm operation would not have been a nuisance."¹ *Belvidere Township v Heinze*, 241 Mich. App. 324; 615 N.W.2d 250 (2000) Whether a farm conforms to such "generally accepted agricultural and management practices" is decided according to policies adopted by the Michigan Commission of Agriculture. *Richmond Twp v Erbes*, 195 Mich. App. 210, 221; 489 N.W.2d 504 (1992); MCL 286.473(1)

Section 4 of the RTFA was amended in 1999, and now provides that, beginning June 1, 2000, except as provided in the RTFA itself (see discussion below), it is the express legislative intent that the RTFA preempt any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of the RTFA or generally accepted agricultural and management practices developed there under. Local units of government may not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts in any manner with the RTFA or generally accepted agricultural and management practices developed under the act. [MCL 286.474(6)]

As noted above and in the CPC report, the concerns addressed by the RTFA do not appear to be the same or similar concerns as those dominating the development of agriculture as a major economic activity in a concentrated urban environment like Detroit. Rather, the RTFA (which has its own problems among communities that have dealt with it) is aimed primarily at the exurban periphery of major metropolitan areas, where residential development meets traditional farming as potentially conflicting land uses. Therefore, RAD concurs with CPC that the RTFA does not adequately consider impacts of agricultural activities in an urbanized community, and its broad preemption provision could potentially undermine the City of Detroit's efforts to control local urban agricultural development.

Preemption of Local Regulation of Urban Agriculture

Conceptually, this issue seems relatively straightforward. Notwithstanding the broad preemption language added to the RTFA in 1999, in theory Detroit and other cities seeking local control over urban agriculture could avoid any undesirable effects of RTFA, whether in terms of pre-empting local authority and control, in terms of requiring standards and practices that are not suitable in the urban setting, or both, in either of two ways:

1. **State legislation could exempt communities of a certain size or character from the requirements and application of the RTFA; or**
2. **The RTFA itself, at MCL 286.474 (7), provides that "A local unit of government may submit to the director² a proposed ordinance prescribing**

¹ This is colloquially known as "the coming to the nuisance doctrine."

² Apparently the Director of the Michigan Department of Agriculture, though the statute does not define "director."

standards different from those contained in generally accepted agricultural and management practices if adverse effects on the environment or public health will exist within the local unit of government.” A 45-day review period, a public hearing, consultation with the Michigan Departments of Natural Resources and Environment, and Community Health, and approval by the commission of agriculture, are also required under this option.

While the above options may be conceptually simple and available, this is an area of public policy and local land use regulation where “the devil is in the details,” and where proponents of urban agriculture in Detroit have suggested developing it as an economic sector of unprecedented size in such a heavily urbanized setting. Therefore, moving forward with the specific regulations and policy decisions required by such a cutting-edge development agenda is likely to involve additional procedures, complications and decisions, well beyond the legislative strategy initially chosen to deal with the RTFA preemption issue. City Council is unlikely to have heard the last of urban agriculture policy and regulation.

If Your Honorable Body has any other questions or concerns regarding this subject and related issues, RAD will be happy to provide further research and analysis upon request.