



Municipal Law News

June 2014

RECENT AMENDMENTS GIVE MUNICIPALITIES MORE CONTROL OVER "URBAN" FARMING

-Laura J. Genovich

Many are familiar with the Michigan Right to Farm Act ("RTFA"), which protects farmers against nuisance actions if their farm complies with the relevant Generally Accepted Agricultural and Management Practices ("GAAMPs"). GAAMPs are voluntary practice standards approved by the Michigan Commission of Agriculture and Rural Development. In recent years, many so-called "urban farmers" – who raise livestock, such as chickens, in primarily residential areas – have also sought protection under the Right to Farm Act, arguing that they are immune from nuisance actions and zoning enforcement actions by municipalities. Urban farming is booming in both metropolitan areas and rural communities.

In April, the Michigan Commission of Agriculture and Rural Development amended the GAAMPs related to site selection (location of farm animals) and created a new "Category 4" for site selection, which covers locations that are primarily residential and don't allow agricultural uses by right. The revised GAAMPs provide that property is not suitable for livestock if the site is primarily residential (meaning there are more than 13 non-farm homes within an eighth of a mile of the livestock facility or a non-farm home within 250 feet of the livestock facility) and if local zoning does not allow agricultural uses by right.

According to the Commission, this amendment means that "urban" farming in a primarily residential area may still be entitled to RTFA protection if farming is permissible under the local zoning ordinance. This change vests greater control in municipalities, who may decide through their zoning ordinance whether to allow livestock in primarily residential areas.

Some farmers who oppose the amendment argue that the Michigan Court of Appeals has long applied the RTFA to all commercial farms, including those zoned residential, and that the revised GAAMPs are contrary to that case law. As of May 14, 2014, nearly 40,000 people had signed an online petition urging the Commission to reverse its decision. It is unknown when or whether the Commission will take any action in response to the petition.

If your municipality wishes to revisit its zoning ordinance in light of these critical changes, or if you have questions about the Right to Farm Act or urban farming, please contact one of Foster Swift's municipal attorneys.

UPCOMING WEBINAR

Avoid Common Freedom Of Information Act Mistakes - July 22, 2014

Increasingly, citizens are using the Freedom of Information Act to obtain information on all aspects of government. This session focuses on making sure public bodies timely and accurately respond to FOIA requests. It also focuses on avoiding common FOIA mistakes. The webinar will take place from noon to 1 p.m. Register here: <https://www1.gotomeeting.com/register/649387145>



CASE UPDATE

- Ronald D. Richards

SUPREME COURT UPHOLDS RIGHT TO OPEN TOWN MEETINGS WITH PRAYER

Our prior newsletters noted *Galloway v Town of Greece* as a “case to watch” on the municipal front. The case’s central issue was whether a town board’s practice of starting each meeting with a short prayer is constitutional. In early May 2014, the United States Supreme Court decided *Galloway* – and upheld the town board’s practice. The practice at issue was this: for over 15 years, the monthly town board meetings opened with a roll call, reciting the Pledge of Allegiance, and a prayer by a clergy selected from the congregations listed in a local directory. The Court ruled that the town’s practice does not violate the Constitution even if some prayers stressed Christianity routinely. The Court added, “[t]he prayer opportunity in this case must be evaluated against the backdrop of historical practice. As a practice that has long endured, legislative prayer has become part of our heritage and tradition, part of our expressive idiom,

similar to the Pledge of Allegiance, inaugural prayer, or the recitation of ‘God save the United States and this honorable Court’ at the opening of this Court’s sessions.”

As the Court noted in *Galloway*, decisions analyzing the constitutionality of government actions involving religion always depend on their specific facts. So caution should be given before extending *Galloway*’s decision to other practices.

WATCH WEBINAR RECORDINGS

Did you miss some of the Foster Swift webinar series for new officials? If so, don’t worry. We’ve got you covered. Each webinar was recorded and is posted on fosterswift.com.

Watch all 6 webinars on-demand. Just follow this link: <http://bit.ly/19Pmprn>.

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