Local Government Regulation of Agriculture

September 18, 2025

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Topics of Local Government Regulation

- Zoning
- Subdivision and Land Development
- Stormwater Management
- Uniform Construction Code

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Source of Local Government Authority

- Local government entities are creatures of the state and have no inherent powers of their own
- They possess only such police powers that are expressly granted to them by state legislation
- Local government legislation (i.e., ordinances) cannot permit what a state statute or regulation forbids or prohibit what a state enactment allows

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ACRE – Agriculture, Communities and Rural Environment

On July 6, 2005, Act 38, also known as “ACRE” and codified under 3 Pa. C.S. § 311, went into effect to ensure that municipal ordinances regulating normal agricultural operations are not in violation of state law.

The central purpose of ACRE is to protect normal agricultural operations from unauthorized local regulation.

The intent of ACRE is to resolve conflicts that may arise from the regulation of normal agricultural operations at the local level.

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ACRE Protects Normal Agricultural Operations

The definition of a “normal agricultural operation” under the Right to Farm Act is incorporated in ACRE. 3 Pa. C.S. § 312

The activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities and is:

- at least ten contiguous acres in size or
- produces an anticipated annual gross income of at least $10,000

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ACRE Precludes Unauthorized Local Ordinances

Under ACRE, a local government is precluded from adopting or enforcing an unauthorized local ordinance.
3 Pa. C.S. § 313

"Unauthorized local ordinance." An ordinance enacted or enforced by a local government unit which does any of the following:

(1) Prohibits or limits a **normal agricultural operation** unless the local government unit:

(i) has expressed or implied authority under State law to adopt the ordinance; and

(ii) is not prohibited or preempted under State law from adopting the ordinance.

(2) Restricts or limits the ownership structure of a normal agricultural operation.

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ACRE – Legislative Declaration

- Pennsylvania has a vested and sincere interest in ensuring the long-term sustainability of agriculture and normal agricultural operations in a manner consistent with state policies and statutes

- Recognition that state has enacted statutes to protect and preserve agricultural operations and also empowered local governments to protect health, safety and welfare of citizens

- ACRE is to ensure that when local governments enact ordinances to protect health, safety and welfare in regulating normal agricultural operations that the ordinances are consistent with their authority

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ACRE – Two Methods to Challenge an Ordinance

1. "[a]n owner or operator of a normal agricultural operation may request the Attorney General to review a local ordinance believed to be an unauthorized local ordinance and to consider whether to bring legal action under section 315(a)." 3 Pa. C.S. § 314(a)

2. "[a]ny person who is aggrieved by the enactment or enforcement of an unauthorized local ordinance may bring an action against the local government unit in the Commonwealth Court to invalidate or enjoin the unauthorized local ordinance"

   3 Pa. C.S. § 315(b)

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Attorney General's ACRE Program

- Agricultural Operator submits written request to Attorney General's Office for review of ordinance.
- If Attorney General accepts the case, the local government is given an opportunity to address legal problems with ordinance before legal action is filed
- The Attorney General has authority to file a legal action in the Commonwealth Court's original jurisdiction to challenge the ordinance
- There is no cost to the Agricultural Operator

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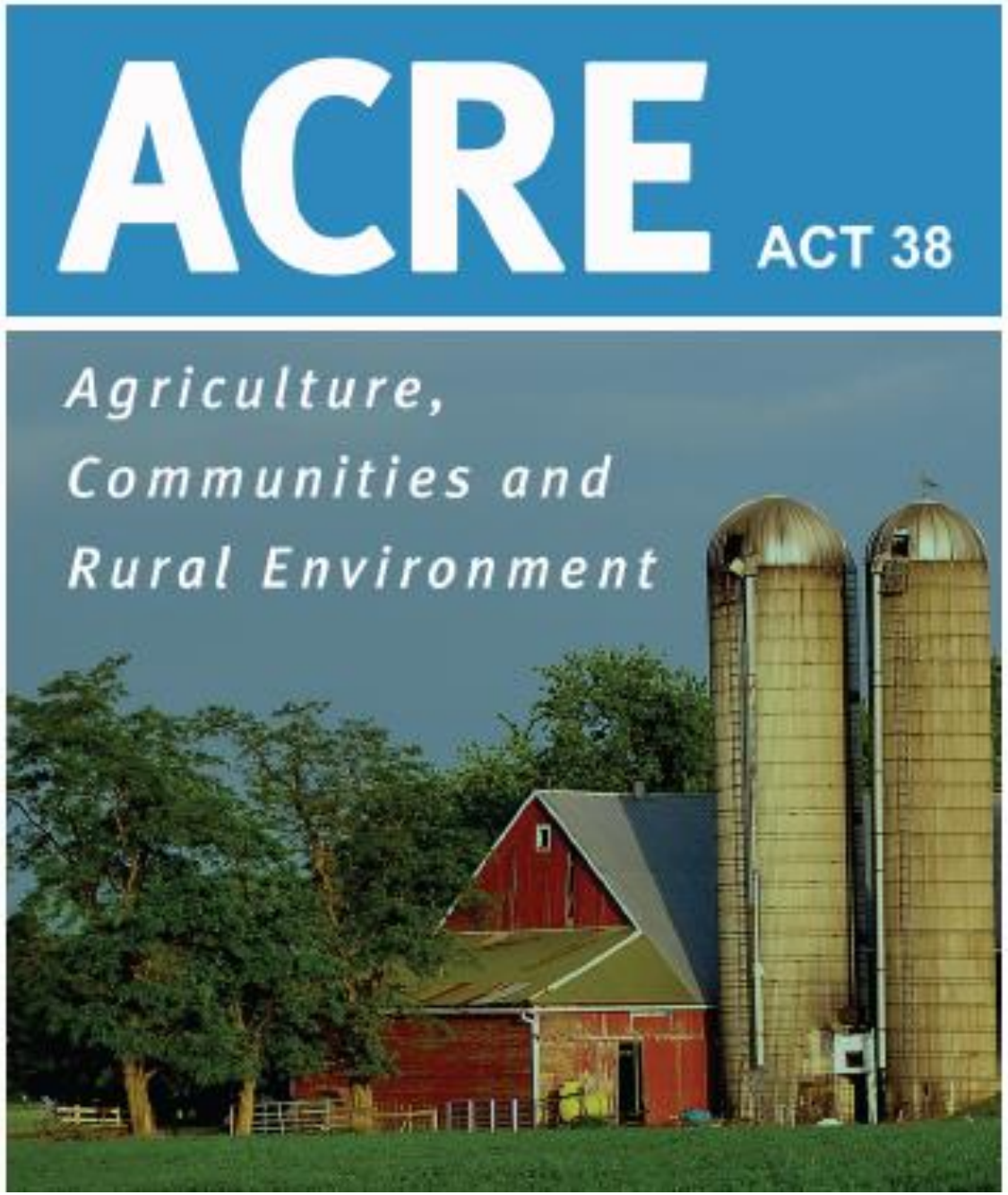

Requests for review of an ordinance should be sent, in writing, to the following address:

PA Office of Attorney General
Attn: ACRE
15th Floor, Strawberry Square
Harrisburg, PA 17120

ACRE@attorneygeneral.gov

Requests for review should include a copy of the ordinance, a short explanation of the objection the farm owner or operator has to the ordinance, and any other materials that will aid the Attorney General's review.

https://www.attorneygeneral.gov/resources/acre/

ACRE Private Right of Action

- Agricultural Operator can file legal action directly with the Commonwealth Court to challenge an ordinance under the authority of ACRE
- ACRE provides the potential for an award of attorney's fees and costs in a private action

1. Plaintiff if ordinance was enacted or enforced with negligent disregard of the local government's limit of authority

2. Local government if legal action brought was frivolous or without substantial justification

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Statutes & Regulatory Programs Commonly Invoked in ACRE Challenges

- Both statutes and regulations can be raised to challenge an ordinance under ACRE
- Analysis to determine if the local government was either without authority or preempted by state law from enacting or enforcing the local ordinance

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Municipalities Planning Code (MPC)

- The enabling legislation that delineates municipal authority to enact zoning ordinances. 53 P.S. § 10603
- One purpose of the MPC is “to ensure that municipalities enact zoning ordinances that facilitate the present and future economic viability of existing agricultural operations in this Commonwealth and do not prevent or impede the owner or operator's need to change or expand their operations in the future in order to remain viable.” 53 P.S. § 10505
- To accomplish this purpose the MPC includes explicit limitations on local government authority to regulate agricultural operations

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MPC Limits on Authority 53 P.S. § 10603

- Zoning ordinances cannot regulate activities related to commercial agricultural production with requirements that would exceed the:
    - Nutrient Management Act ("*regardless of whether any agricultural operation within the area to be affected by the ordinance would be a concentrated animal operation")*
    - Agricultural Area Security Law
    - Right to Farm Law
- Zoning ordinance may not unreasonably restrict forestry activities and must permit forestry and timber harvesting as a by right use in all zoning districts

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MPC Limits on Authority 53 P.S. § 10603

- **Zoning ordinances shall encourage the continuity, development and viability of agricultural operations.** Zoning ordinances **may not restrict agricultural operations or changes to or expansions** of agricultural operations in geographic areas **where agriculture has traditionally been present** unless the agricultural operation will have a direct adverse effect on the public health and safety. Nothing in this subsection shall require a municipality to adopt a zoning ordinance that violates or exceeds the provisions of the act of May 20, 1993 (P.L.12, No.6), known as the "Nutrient Management Act," the act of June 30, 1981 (P.L.128, No.43), known as the "Agricultural Area Security Law," or the act of June 10, 1982 (P.L.454, No.133), entitled "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances." 53 P.S. § 10603(h)

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Nutrient and Odor Management Act (NOMA)

- NOMA is designed to establish uniform standards to manage nutrients and odors on Concentrated Animal Operations (CAOs) and Concentrated Animal Feeding Operations (CAFOs) across the Commonwealth

- NOMA states that "[t]his chapter and its provisions are of Statewide concern and occupy the whole field of regulation regarding nutrient management and odor management, to the exclusion of all local regulations." 3 Pa. C.S. § 519(a).

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Nutrient and Odor Management Act (NOMA)

- NOMA contains preemption language precluding local government regulation of nutrient and odor management practices, but also includes a provision providing that local government can enact ordinances that are consistent with and no more stringent than the requirements under the NOMA. 3 Pa. C.S. § 519(b)-(d).

- Court decisions have interpreted the preemption language to mean that a local government ordinance cannot duplicate, exceed or be more stringent than the NOMA requirements

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State Conservation Commission (SCC)

- The SCC is a departmental administrative commission under the concurrent authority of the PA Department of Environmental Protection (DEP) and the PA Department of Agriculture (PDA).

- The SCC administers and enforces the Nutrient and Odor Management Act Program under the nutrient and odor management regulations. 25 Pa. Code § 83.201, et seq.

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Right to Farm Act (RTFA) 3 P.S. § 951

- Precludes municipalities from defining activities of normal agricultural operations as a nuisance. 3 P.S. § 953(a).

- Protects direct commercial sales of agricultural commodities for landowners that produces not less than 50% of the commodities sold. 3 P.S. § 953(b).

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Agricultural Area Security Law (AASL)
3 P.S. § 902

- AASL provides for the creation of agricultural security areas (ASAs) in municipalities to protect and preserve the integrity and economic viability of agriculture. 3 P.S. § 902.
- AASL precludes a local government from enacting ordinances that would unreasonably restrict farm practices or farm structures
- AASL requires that local government exclude normal farming operations from definition of public nuisance
- AASL limits local government power of eminent domain

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PA DEP - Clean Streams Law (35 P.S. § 691.1)

- The Department of Environmental Protection (DEP) regulates all agricultural operations that use or produce manure under 25 Pa. Code § 91.36.

- DEP imposes additional regulatory requirements for Concentrated Animal Feeding Operations pursuant to its National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance regulations under 25 Pa. Code § 92.a.

- The DEP's regulatory scheme is designed to establish uniform and comprehensive regulation of agricultural operations to prevent pollution of surface water and groundwater and protect water quality. 35 P.S. § 691.5; 3 Pa. C.S. §§ 502(4), 505.

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Solid Waste Management Act (35 P.S. § 6018.101)

- DEP regulates Class A, Class B, and residential septage biosolids, which includes: permit, application, and testing requirements for land application
- DEP regulates the use of food processing residuals (FPRs) in normal farming operations
- Land application of biosolids and FPRs on farmland is permitted under the DEP's regulatory program
- Commonwealth Court has interpreted the SWMA and the DEP's regulations as preempting local regulation to the extent the regulation is inconsistent or in conflict with the SWMA, including land application of biosolids on farmland

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Domestic Animal Law (DAL)
(3 Pa. C.S. § 2301)

- DAL regulates the methods for the disposal of dead domestic animals and animal wastes, which includes farm animal mortalities and wastes on an agricultural operation

- The methods for disposal of dead domestic animals and wastes are burial, incineration and processing by rendering, fermenting, composting

- DAL preempts any ordinances the pertain to the procedures for disposal of dead domestic animals. 3 Pa. C.S. § 2389

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Air Pollution Control Act (APCA) (3 P.S. § 4001)

- APCA excludes operations engaged in the "production of agricultural commodities" from State air contaminant and air pollution regulations. 35 P.S. § 4004.1.

- The "production of agricultural commodities" is broadly defined to include all forms of agricultural operations. 35 P.S. § 4004.1(b)(1)-(4).

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Water Resources Planning Act (WRPA) (27 Pa. C.S. § 3101)

- DEP establishes the regulatory framework for water withdrawal and use registration, monitoring, record-keeping and reporting requirements. 27 Pa. C.S. §§ 3118, 3131, 3133-34; 25 Pa. Code § 110.

- WRPA explicitly prohibits local government from regulating the allocation of water resources and the conditions of water withdrawal.

- Section 3136(b) provides that “no political subdivision shall have any power to allocate water resources or to regulate the location amount, timing, terms or conditions of any water withdrawal by any person.”

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Uniform Construction Code

An Agricultural Building is defined as:

A structure utilized to store farm implements, hay, feed, grain or other agricultural or horticultural products or to house poultry, livestock or other farm animals, a milk house and a structure used to grow mushrooms, agricultural or horticultural products. The term includes carriage house owned and used by members of a recognized religious sect for the purposes of housing horses and storing buggies. The term includes a structure that is less than 1,000 square feet in size which is utilized to process maple sap. The term shall not include habitable space or spaces in which agricultural products are processed, treated or packaged and **shall not be construed to mean a place of occupancy by the general public**. 35 P.S. § 7210.103.

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Uniform Construction Code (UCC)

Exemption for a Roadside Stand as follows:

- One structure per parcel of land that is used for the direct commercial, seasonal sale of agricultural commodities
- Structure is open on at least 25% of the perimeter of the structure when in operation
- Structure is operated by producer whose products make up at least 50% of the agricultural commodities sold
- Structure is not more than 1,000 square feet in area

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Stormwater Management Act

Exemption from stormwater management plan for high tunnel meeting the following:

1. the high tunnel or its flooring does not result in an impervious area exceeding 25% of all structures located on the owner's total contiguous land area; and

2. the high tunnel meets one of the following:
   i. The high tunnel is located at least 100 feet from any perennial stream or watercourse, public road or neighboring property line.
   ii. The high tunnel is located at least 35 feet from any perennial stream or watercourse, public road or neighboring property line and located on land with a slope not greater than 7%.
   iii. The high tunnel is supported with a buffer or diversion system that does not directly drain into a stream or other watercourse by managing storm water runoff in a manner consistent with requirements of this act.

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Stormwater Management Act

"High tunnel." A structure which meets the following:

1. Is used for the production, processing, keeping, storing, sale or shelter of an agricultural commodity . . . or for the storage of agricultural equipment or supplies.

2. Is constructed consistent with all of the following:
   i. Has a metal, wood or plastic frame.
   ii. When covered, has a plastic, woven textile or other flexible covering.
   iii. Has a floor made of soil, crushed stone, matting, pavers or a floating concrete slab.

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ACRE Legal Analysis

- Review zoning ordinance definitions and all provisions that regulate agriculture
- Review the relevant statutes and regulations that regulate agriculture and compare to the ordinance requirements
- Zoning ordinances with requirements that conflict with or exceed state law will generally violate multiple statutes (ex. violation of AASL, RTFA and NOMA will also be an ordinance beyond the local government MPC authority)

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Commonwealth v. Richmond Township, 2 A.3d 678 (Pa. Cmwlth. 2010)

- Definition for "Intensive Agriculture" as "Agriculture (Intensive)" as "[s]pecialized agricultural activities including, but not limited to, mushroom production, poultry production, and dry lot livestock production, which due to the intensity of production, necessitate development of specialized sanitary facilities and control." Court held definition was vague and ambiguous and invited discriminatory enforcement.
- Court held a 1500 foot setback for intensive agricultural operations from other zoning districts or residences was preempted by the NOMA to the extent it applied it to **any facility** covered by the regulations.
- The Court held that because the setback conflicted with the NOMA it necessarily went beyond the Township's authority under the MPC.
- The Court also opined that the language in Section 10603(h) of the MPC "indicates that, as a matter of law, an agricultural operation complying with the NOMA, AASL, and the RTFA does not constitute an operation that has a direct adverse effect on the public health and safety."

Commonwealth v. Richmond Township, 2 A.3d 678 (Pa. Cmwlth. 2010)

- The Court held that the ordinance setback and restriction on composting violated the AASL as unreasonable restrictions on farm buildings and practices.

- The Court held that the ordinance requirements for disposal of liquid wastes in a manner to avoid public nuisance violated the RTFA protection against nuisance ordinances.

- The Court held that the Domestic Animal Law preempted the ordinance restriction on composting because composting animal mortalities is permissible under the DAL.

Commonwealth v. Locust Township, 49 A.3d 502 (Pa. Cmwlth. 2012) (en banc)

- Court evaluated ordinance setback of 500 feet for “intensive agricultural operations.”
- The Court opined that the setback in the ordinance applied to “all portions of an intensive agricultural operation (not just manure storage facilities), and because the 500 foot setback (a) exceeds the maximum setback provided in the NMA regulations just for manure storage facilities on CAOs and CAFOs . . . the Ordinance setback requirement is more stringent than that imposed under the NMA regulations and thus is preempted under Section 519 of the NMA.”
- The Court also held that the ordinance was preempted as applied to smaller, Non-CAO operations as well as CAOs and CAFOs
- The Court further held that the setback also violation the Township’s MPC authority

Berner v. Montour Twp., 217 A.3d 238 (Pa. 2019)

- The Supreme Court addressed the preemption of local regulation by the NOMA with respect to both animal agricultural operations that are not mandated to obtain a NMP under the Act and to CAOs and CAFOs that are required to obtain a NMP

- The Court explained that "we hold with little difficulty that Section 519 of the Act provides preemption protection from local regulation to both NMP operations subject to the Act's requirements as well as non-NMP operations that are free from them. More specifically, we conclude that the Act preempts any local regulation of nutrient management to the extent the local regulation imposes requirements that are stricter than, inconsistent with, or in conflict with the state law requirements, irrespective of whether a particular agricultural operation has an NMP mandating compliance with the Act."

- The Court opined its holding was consistent with Section 603(b) of the MPC that precludes zoning ordinances that would exceed the requirements of the NOMA "regardless of whether any agricultural operation" would be a CAO.

Burlingame v. Dagostin, 183 A.3d 462 (Pa. Super. 2018)

- Farm expanded to include a swine production operation that was a CAFO and the neighbors filed a lawsuit based on nuisance, thus implicating the RTFA's protection against nuisance suits

- The Court held that the swine operation was a normal agricultural operation that is protected against nuisance actions under the RTFA

- The farmer had an approved nutrient management plan prior to starting the operation of the swine facility and was in compliance with the plan, thus the RTFA barred the neighbors' nuisance action

Gilbert v. Synagro Central, LLC, 131 A.3d 1 (Pa. 2015)

- The Supreme Court held that land applying biosolids fell within the statutory definition of “normal agricultural operation” under the RTFA, thus the neighbors’ lawsuit was barred by the RTFA.

Commonwealth v. East Brunswick Township, 980 A.2d 720, 733 (Pa. Cmwlth. 2009)

- The Court held a township cannot duplicate the regulatory regime established by the SWMA and cannot impose more stringent requirements than the SWMA
- The SWMA does not authorize the Township to set up its own sewage sludge police force to enforce the SWMA. The Township cannot establish a comprehensive scheme of sewage sludge regulation to replicate the one set forth in the SWMA and the Department's regulations

Branton v. Nicholas Meat LLC, 159 A.3d 54 (Pa. Super. 2017)

- Neighbors filed a lawsuit against farm operation spreading FPRs

- The Court held that the land application of FPRs was a normal agricultural operation under the RTFA because it is regulated as a normal farming practice under state law

Current Issues

- Agritourism operations
- Direct commercial sales of agricultural commodities
- Restricting animal agriculture based on lot size
- Re-zoning areas where agriculture is present and precluding agriculture in the new zone
- Requiring special exceptions for ag in ag zone

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Questions

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