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States' Agritourism Statutes:

Delaware



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[Del. Code Ann. tit. 9, § 306, 2601, 4901, and 6902](#)

Current through ch. 310 of the 151st General Assembly (2021-2022).

§ 306. Agritourism activities on farms

(a) “Agritourism activity” means any activity that allows members of the general public to view or enjoy rural activities, including: farming; ranching; wineries; historical, cultural or harvest-your-own activities; guided or self-guided tours; bed and breakfast accommodations; or temporary outdoor recreation activities. “Agritourism activity” includes, but is not limited to: planting, cultivation, irrigation or harvesting of crops; acceptable practices of animal husbandry; barn parties or farm festivals; livestock activities, not to include rodeos; hunting; fishing; swimming; boating, canoeing or kayaking; temporary camping; picnicking; hiking; diving; water skiing or tubing; paintball; and nonmotorized freestyle, mountain or off-road bicycling. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

(b) Agritourism activities may be allowed statewide on farms of 10 or more acres subject to the provisions of this title adopted for each county; provided, however, that except for the “related uses” specified in § 909 of Title 3, no agritourism activities shall be permitted on farmlands which are subject to the Agricultural Lands Preservation and Forestland Preservation programs established in Chapter 9 of Title 3.

§ 2601. Power of County Council; area subject to regulation

(a) The County Council may, in accordance with the conditions and procedure specified in this subchapter, regulate the location, height, bulk and size of buildings, parking areas, and other structures, the percentage of lot which may be occupied, the size of yards, courts and other open spaces, the density and distribution of population, the location and uses of buildings, parking areas, and structures for trade, industry, residence, recreation, public activities or other purposes and the uses of land for trade, industry, residence, parking, recreation, public activities, water supply conservation, soil conservation or other similar purposes, in any portion or portions of New Castle County which lie outside of incorporated municipalities; provided however, that no such regulation or regulations promulgated pursuant to Chapter 30 of this title shall apply to any lands, buildings, parking areas, or other structures proposed to be used by or for any nonprofit corporation organized under the laws of this State and engaged at the time of such proposal in the operation in this State of 1 or more acute general hospital facilities for the purpose of such or similar operations, or to any lands,



buildings, parking areas, or other structures of such corporation devoted to such operations. The territory lying within incorporated municipalities shall be included upon request made by the governing body or authority thereof.

(b) Notwithstanding subsection (a) of this section, no such regulation or regulations shall apply to any land, building, greenhouse or other structure proposed to be devoted to any agricultural use or which is devoted at the time of such proposal to agricultural use or to any land, building, greenhouse or other structure owned by a cooperative agricultural associations or a corporation which is or is proposed to be devoted to agricultural use. For the purposes of this subsection, any land, building, greenhouse or structure shall be deemed to be devoted to agricultural use if:

(1) The land, building, greenhouse or structure is assessed pursuant to § 8335 of this title;

(2) The land, building, greenhouse or structure is within an Agricultural Preservation District pursuant to Chapter 9 of Title 3;

(3) The person who owns, leases or otherwise controls the land, building, greenhouse or structure is required to implement a nutrient management plan or agricultural waste management plan for the same and the land, building, greenhouse or structure itself is devoted to or used in the production for sale of plants and animals useful to man, including but not limited to:

a. Forages and sod crops;

b. Grains and feed crops;

c. Dairy animals and dairy products;

d. Poultry and poultry products;

e. Livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all of such animals;

f. Bees and apiary products;

g. Fish, hydroponic and aquacultural products;

h. Fur animals; and

i. Trees and forest products;

(4) The land, building, greenhouse or structure is devoted to and meets the requirements and qualifications for payments or other compensation pursuant



to a soil conservation program under an agreement with an agency of the federal government;

(5) The land, building or structure is a farm market or roadside stand provided:

a. The products offered for sale are grown or produced on the subject farm or lands in agriculture production associated with such farm operation; or

b. The products are grown or produced on a local regional farm, and such farm market or roadside stand shall comply with the following provisions:

1. All buildings, structures and associated canopies shall comply with the building height setback requirements established by the local jurisdiction within its zoning ordinances. All construction shall conform to applicable building codes and building permit requirements as enacted by the local jurisdiction;

2. Off street customer parking shall be provided in accordance with the provisions of the zoning ordinance of the local jurisdiction provided that at least 1 parking space shall be provided for each 100 square feet of floor area of the establishment. The area of 1 parking space shall be equivalent to a standard parking stall of 9' x 18';

3. If a new vehicular entrance is proposed to support a farm market or roadside stand, an entrance permit shall be obtained from the Delaware Department of Transportation prior to the start of construction; and

4. Signage shall comply with signage provisions and permitting requirements established by the local jurisdiction within its zoning ordinances; and

(6) The land, building or structure is used for an agritourism activity, and such land, building or structure complies with the following provisions:

a. All buildings, structures and associated canopies shall comply with the building height setback requirements established by the local jurisdiction within its zoning ordinances. The construction of buildings or structures to be used by the participants of any agritourism activity shall conform to applicable building codes and building permit requirements enacted by the local jurisdiction;

b. If a new vehicular entrance is necessary to support an agritourism activity, an entrance permit shall be obtained from the Delaware Department of Transportation prior to the start of construction; and

c. Any signage shall comply with signage provisions and permitting requirements established by the local jurisdiction, as well as any applicable signage regulations adopted by the Department of Transportation.



(c) Notwithstanding subsection (a) of this section, no such regulation or regulations shall apply to the agricultural uses of conducting hayrides, horseback riding, guided tours, barn parties and petting zoos.

§ 4901. Power of county government; area subject to regulation

(a) The county government may, in accordance with the conditions and procedure specified in this subchapter, regulate the location, height, bulk and size of buildings, parking areas, and other structures, the percentage of lot which may be occupied, the size of yards, courts, and other open spaces, the density and distribution of population, the location and uses of buildings, parking areas, and structures for trade, industry, residence, recreation, public activities or other purposes, and the uses of land for trade, industry, residence, parking, recreation, public activities, water supply conservation, soil conservation, or other similar purposes, in any portion or portions of Kent County which lie outside of incorporated municipalities, or incorporated municipalities without zoning provisions, notwithstanding any provisions of other titles or chapters of this Code to the contrary. Any real property proposed to be used for an agritourism activity as defined in this title shall be given an expedited review before the Levy Court.

(b) Notwithstanding subsection (a) of this section, no such regulation or regulations shall apply to any land, building, greenhouse or other structure proposed to be devoted to any agricultural use, or which is devoted at the time of such proposal to agricultural use, or to any land, building, greenhouse or other structure owned by a cooperative agricultural associations or a corporation which is or is proposed to be devoted to agricultural use. For the purposes of this subsection, any land, building, greenhouse or structure shall be deemed to be devoted to agricultural use if:

- (1) The land, building, greenhouse or structure is assessed pursuant to § 8335 of this title;
- (2) The land, building, greenhouse or structure is within an Agricultural Preservation District pursuant to Chapter 9 of Title 3;
- (3) The person who owns, leases or otherwise controls the land, building, greenhouse or structure is required to implement a nutrient management plan or agricultural waste management plan for the same and the land, building, greenhouse or structure itself is devoted to or used in the production for sale of plants and animals useful to man, including but not limited to:
 - a. Forages and sod crops;
 - b. Grains and feed crops;
 - c. Dairy animals and dairy products;



- d. Poultry and poultry products;
- e. Livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all of such animals;
- f. Bees and apiary products;
- g. Fish, hydroponic and aquacultural products;
- h. Fur animals; and
- i. Trees and forest products;

(4) The land, building, greenhouse or structure is devoted to and meets the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government; and

(5) The land, building or structure is a farm market or roadside stand provided:

a. The products offered for sale are grown or produced on the subject farm or lands in agriculture production associated with such farm operation; or

b. The products are grown or produced on a local regional farm, and such farm market or roadside stand shall comply with the following provisions:

1. All buildings, structures and associated canopies shall comply with the building height setback requirements established by the local jurisdiction within its zoning ordinances. All construction shall conform to applicable building codes and building permit requirements as enacted by the local jurisdiction;
2. Off street customer parking shall be provided in accordance with the provisions of the zoning ordinance of the local jurisdiction provided that at least 1 parking space shall be provided for each 100 square feet of floor area of the establishment. The area of 1 parking space shall be equivalent to a standard parking stall of 9' x 18';
3. If a new vehicular entrance is proposed to support a farm market or roadside stand, an entrance permit shall be obtained from the Delaware Department of Transportation prior to the start of construction; and
4. Signage shall comply with signage provisions and permitting requirements established by the local jurisdiction within its zoning ordinances.



(c) Notwithstanding subsection (a) of this section, no such regulation or regulations shall apply to the agricultural uses of conducting hayrides, horseback riding, guided tours, barn parties and petting zoos.

§ 6902. Power and jurisdiction of county government

(a) The county government may, in accordance with the conditions and procedure specified in this subchapter, regulate the location, height, bulk and size of buildings, parking areas, and other structures, the percentage of lot which may be occupied, the size of yards, courts and other open spaces, the density and distribution of population, the location and uses of buildings, parking areas, and structures for trade, industry, residence, parking, recreation, public activities or other purposes and the uses of land for trade, industry, residence, recreation, public activities, water supply conservation, soil conservation or other similar purposes, in that portion of Sussex County which is not included within the corporate limits of any city or town, unless any territory within such corporate limits is included upon request made by the governing body or authority of such city or town, notwithstanding any provision of other titles or chapters of this Code to the contrary. Any real property proposed to be used for an agritourism activity as defined in this title shall be given an expedited review before the County Council.

(b) Notwithstanding subsection (a) of this section, no such regulation or regulations shall apply to any land, building, greenhouse or other structure proposed to be devoted to any agricultural use, or which is devoted at the time of such proposal to agricultural use, or to any land, building, greenhouse or other structure owned by a cooperative agricultural associations or a corporation which is or is proposed to be devoted to agricultural use. For the purposes of this subsection, any land, building, greenhouse or structure shall be deemed to be devoted to agricultural use if:

- (1) The land, building, greenhouse or structure is assessed pursuant to § 8335 of this title;
- (2) The land, building, greenhouse or structure is within an Agricultural Preservation District pursuant to Chapter 9 of Title 3;
- (3) The person who owns, leases or otherwise controls the land, building, greenhouse or structure is required to implement a nutrient management plan or agricultural waste management plan for the same and the land, building, greenhouse or structure itself is devoted to or used in the production for sale of plants and animals useful to man, including but not limited to:
 - a. Forages and sod crops;
 - b. Grains and feed crops;
 - c. Dairy animals and dairy products;



- d. Poultry and poultry products;
- e. Livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all of such animals;
- f. Bees and apiary products;
- g. Fish, hydroponic and aquacultural products;
- h. Fur animals; and
- i. Trees and forest products;

(4) The land, building, greenhouse or structure is devoted to and meets the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government; and

(5) The land, building or structure is a farm market or roadside stand provided:

a. The products offered for sale are grown or produced on the subject farm or lands in agriculture production associated with such farm operation; or

b. The products are grown or produced on a local regional farm, and such farm market or roadside stand shall comply with the following provisions:

1. All buildings, structures and associated canopies shall comply with the building height setback requirements established by the local jurisdiction within its zoning ordinances. All construction shall conform to applicable building codes and building permit requirements as enacted by the local jurisdiction;
2. Off street customer parking shall be provided in accordance with the provisions of the zoning ordinance of the local jurisdiction provided that at least 1 parking space shall be provided for each 100 square feet of floor area of the establishment. The area of 1 parking space shall be equivalent to a standard parking stall of 9' x 18';
3. If a new vehicular entrance is proposed to support a farm market or roadside stand, an entrance permit shall be obtained from the Delaware Department of Transportation prior to the start of construction; and
4. Signage shall comply with signage provisions and permitting requirements established by the local jurisdiction within its zoning ordinances.



(c) Notwithstanding subsection (a) of this section, no such regulation or regulations shall apply to the agricultural uses of conducting hayrides, horseback riding, guided tours, barn parties and petting zoos.

