

DURHAM AGRICULTURE ORDINANCE

Extensive amendments adopted February 1, 2021

Pertinent excerpts

ARTICLE II DEFINITIONS

175-7. Definitions.

AGRICULTURE – Including but not limited to all uses, accessory uses, structures, functions, and events as defined in RSA 21:34-a - Farm, Agriculture, Farming, as amended. (See the Table of Uses and Article XX.1 for specific standards and restrictions.)

Accessory Uses. The following are considered accessory uses to an allowed agricultural use:

- 1) The storage, use of, and spreading of soil amendments, as defined in this section.
- 2) The use and application of agricultural chemicals pursuant to state requirements.
- 3) The preparation for market, delivery to storage or to market, and delivery to carriers for transportation to market of any products and materials from the farm.
- 4) The transportation of farm workers.
- 5) The marketing and selling at wholesale or retail of any products from the farm, on-site and off-site, where not otherwise prohibited or regulated.
- 6) Irrigation of growing crops from private water supplies or public water supplies.
- 7) The use of dogs or other livestock guard animals for herding, working, and guarding livestock.
- 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.
- 9) A farmstand situated on farm land owned by the operator of the farmstand provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms owned by the operator of the farmstand. Items not produced on the farm or farms owned by the operator are limited to agriculture-related products, specialty foods, gift items, crafts, and items reflecting agriculture and rural America.
- 10) Use of new technologies recommended by the University of New Hampshire Cooperative Extension; the New Hampshire Department of Agriculture,

Markets, and Food; and appropriate agencies of the United States Department of Agriculture.

11) Agritourism, as defined in this section.

Agricultural Sales, Commercial. Sale of items specifically including agriculture-related products, trees, specialty foods, gift items, crafts, and items reflecting agriculture and rural America. (This use need not be located on a farm property, in contrast to Farmstand, Accessory, below.)

Agritourism. Attracting visitors to a farm to attend events and activities that are accessory, related and subordinate to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, and active involvement in the activity of the farm.

Animal Feedlot. A commercial agricultural establishment consisting of confined feeding areas and related structures used for the finishing of livestock.

Aquaculture. The commercial raising, harvesting, and sale of fish and other aquaculture products.

Aquaculture – Accessory Use. The noncommercial raising and harvesting of fish and other aquaculture products for personal consumption.

Bees, Keeping of. The raising of bees and cultivation and sale of bee products.

Bees, Keeping of - Accessory Use. The raising and breeding of bees for noncommercial purposes, other than incidental sales of bee products produced on the premises, in conjunction with a residence.

Best Management Practices For Agriculture (BMPs) – Those practices and procedures described in the Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire, distributed and periodically updated by the New Hampshire Department of Agriculture, Markets, and Food, as revised. BMPs also include other practices and procedures recommended by the University of New Hampshire Cooperative Extension; the New Hampshire Department of Agriculture, Markets, and Food; and the United States Department of Agriculture. Other documents providing guidance for agricultural practices and procedures endorsed by the Durham Agricultural Commission as appropriate references for best management practices are also deemed BMPs.

[Reference - <http://agriculture.nh.gov/publications-forms/documents/bmp-manual.pdf>]

Chickens and Turkeys, Keeping of - Accessory Use. The breeding and raising of chickens and turkeys for noncommercial purposes in conjunction with a residence. (Note that Poultry, keeping of as a principal use is not restricted to chickens and turkeys.)

Crop Cultivation. The cultivation, conservation, and tillage of the soil and the production, cultivation, growing, and harvesting of any agricultural, floricultural, viticultural, and horticultural crops and any other plant including greenhouse and high-

tunnel crops and tree products and any other plant that can be legally grown and harvested extensively for profit or subsistence.

Farm or Farming. Any land, buildings, or structures on or in which agriculture and farming activities are conducted, including the residence(s) of owners, occupants, and employees located on the subject land. This includes all farm outbuildings and any other structures used in the farm operations. An operation may be deemed a commercial farm where at least \$10,000 of agricultural products is produced and sold in a year.

Farmers' Market. An event or series of events at which two or more vendors of agricultural commodities gather for purposes of offering for sale such commodities to the public. Commodities offered for sale include, but are not limited to, products of agriculture, as defined in RSA 21:34-a. A farmers' market does not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.

Farmstand, Accessory. A farmstand as defined under Accessory Uses, above. (Contrast to Agricultural Sales, Commercial, above.)

Forestry. The production, cultivation, growing, harvesting, and sale of any trees or nursery stock.

Fur-bearing Animals, Keeping of. The raising, breeding, and sale of domesticated strains of fur-bearing animals, such as mink, ermine, and chinchilla.

Goats and Sheep, Keeping of. The raising, breeding, and sale of goats and sheep.

Goats and Sheep, Keeping of – Accessory Use. The raising and breeding of goats and sheep for noncommercial purposes in conjunction with a residence.

Horses, Keeping of. The commercial breeding, boarding, raising, training, riding instruction, and selling of horses, mules, donkeys, and other equidae.

Horses, Keeping of - Accessory Use. The noncommercial breeding, boarding, raising, and riding of horses, mules, donkeys, and other equidae.

Livestock - Large, Keeping of. The raising, breeding, or sale of beef and dairy cattle, steer, oxen, domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), and reindeer (*Rangifer tarandus*).

Livestock – Large, Keeping of – Accessory Use. The raising and breeding of large livestock, specifically including the animals listed above, for noncommercial purposes, other than incidental sales of any related products produced on the premises, in conjunction with a residence. This use includes one or two animals per lot.

Poultry, Keeping of. The raising, breeding, and sale of poultry, including chickens, turkeys, ducks, geese, and gamebirds. (Note that Chickens and Turkeys, keeping of – Accessory Use is restricted to only those two types of poultry.)

Rabbits, Keeping of. The raising, breeding and sale of rabbits.

Rabbits, Keeping of – Accessory Use. The raising and breeding of rabbits for noncommercial purposes in conjunction with a residence.

Soil Amendments. Including commercial fertilizer, lime, wood ash, sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules and regulations, other lawful soil amendments.

Swine, Keeping of. The raising, breeding, or sale of swine and swine products.

Swine, Keeping of – Accessory Use. The raising and breeding of swine for noncommercial purposes, other than incidental sales of any related products produced on the premises, in conjunction with a residence. This use includes one or two animals per lot.

CATEGORY OF USES	RESIDENTIAL ZONES				COMMERCIAL CORE ZONES					RESEARCH-INDUSTRY ZONES			
	Rural (R)	Residence A (RA)	Residence B (RB)	Residence C (RC)	Central Business (CB)	Professional Office (PO)	Church Hill (CH)	Courthouse (C)	Coe's Corner (CC)	Office Research - Route 108 (OR)	Mixed Use and Office Research (MUDOR)	Office Research Light Industry (ORLI)	Durham Business Park (DBP)
Kennel	CU	X	X	CU	X	X	X	X	X	CU	X	CU	X
Temporary sawmill <i>See Article XX</i>	P	P	P	P	X	X	X	X	X	P	P	P	P
Reuse of existing agricultural building <i>See Article XX</i>	CUA	X	X	CUA	X	X	X	X	X	P	P	P	P
Uses Accessory to Residential Uses													
Chickens and Turkeys, keeping of	P	P	P	P	X	X	X	X	P	P	P	P	X
Goats and Sheep, keeping of	P	P	P	P	X	X	X	X	P	P	P	P	X
Horses, keeping of	P ²	P ²	P ²	P ²	X	X	X	X	P ²	P ²	P ²	P ²	P ²
Livestock – large, keeping of	P ²	P ²	P ²	P ²	X	X	X	X	X	P ²	P ²	P ²	X
Swine, keeping of	P ²	P ²	P ²	P ²	X	X	X	X	X	P ²	P ²	P ²	X
Rabbits, keeping of	P	P	P	P	P	P	P	P	P	P	P	P	P
Bees, keeping of	P	P	P	P	X	P	P	P	P	P	P	P	P
Aquaculture	P	P	P	P	X	X	X	X	P	P	P	P	P
Uses Accessory to Farms													
Farmstand	P	X	X	P	P	X	X	P	P	P	P	P	X

Notes

2. The use is permitted only on lots of 3 acres or greater. Roosters are permitted only in the Rural District.
3. In the Central Business District the use is permitted only on rooftops.

**ARTICLE XX.1
STANDARDS FOR AGRICULTURAL USES**

175-109.1. Purpose.

The purpose of this article and of other provisions in this chapter related to agriculture is to:

- A. Help preserve a working landscape of farms, gardens, and forests;
- B. Support local farms, farmers, and food production;
- C. Foster long-term economic and environmental sustainability and resilience; and
- D. Fulfill the goals included in the Agricultural Resources Master Plan and those pertinent to agriculture established by the Durham Town Council

175-109.2. Compliance Required.

This article establishes performance standards for agricultural uses. These standards must be met for all activities involving the specified uses.

A. General Provisions. The following provisions apply to all agricultural uses and activities:

1. See definitions of various agricultural activities under AGRICULTURE in Article II. See Agricultural Uses in the Table of Uses. There is no set limit on the number of principal and accessory uses related to agriculture that may be established on a lot (though other requirements may effectively serve to limit the number of uses).
2. Best management practices. Best management practices 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, or appropriate agencies of the United States Department of Agriculture (per RSA 21:34-a). Best management practices shall be applied to all pertinent aspects of the farm, including but not limited to the following:
 - a. Manure, compost from manure, and odor from animals. Manure must be removed from the structure and immediate area housing animals and composted or disposed of in a timely manner.
 - b. Feed. Feed should be stored in fully enclosed and secured containers in order to prevent pests and predators.
 - c. Slaughtering of animals.
3. Site plan review.
 - a. Site plan review is required as specified in the text of Section 175-53 – Table of Land Uses and in the Site Plan Regulations (except as specified in b., below). Site plan review is required for all buildings, driveways, parking areas, public use areas, and significant structures and for site changes that are part of any commercial agricultural operation. Site plan review is not required for non-commercial agriculture.

- b. Site plan review is not required for uses that are accessory to single-family and duplex residences nor for temporary farmstands. The establishment, expansion, or change of the uses specified under Agricultural Uses in the Table of Uses is exempt from site plan review (though physical changes to the site ordinarily reviewed, such as building construction, are subject to review), with the exception of Farmers' Markets; Agricultural Sales, Commercial; and Aquaculture which are subject to site plan review.
 - c. Applicants for projects related to agriculture may request waivers from specific provisions of the site plan requirements as allowed. Such projects may also be eligible for review under the Minor Site Plan process.
4. Minimum acreage is established in the Table of Uses for specific agricultural uses (Additional standards are given in Table 109.1E). In cases where minimums are established for more than one use occurring on a property, the minimum acreages are not added together. For example, if 3 acres is required for each of two uses, then 3 acres will be sufficient to accommodate both uses.
 5. All animals must be contained on the subject lot. It is the responsibility of the property owner to contain the animals through appropriate means which may or may not include fencing.
 6. Fences used for agricultural purposes, such as the containment of livestock and poultry or the protection of crops, may be located at the property line and need not meet setbacks otherwise applicable to fencing. The vertical opacity of any such fences that are higher than six feet shall not exceed 25% (for the purpose of maintaining an open view through the fence).
 7. Housing structure. An appropriate structure for housing animals shall be provided in accordance with University of New Hampshire Cooperative Extension Housing and Space Guidelines. Chickens and turkeys shall be maintained in the structure from sunset to sunrise.

[Reference: http://extension.unh.edu/resources/files/Resource000471_Rep493.pdf]
 8. Housing structure setbacks. Structures for housing animals shall meet all setbacks applicable to structures. The structure shall not be placed in the front court (including for corner lots). However, in the Rural Zoning District the structure may be placed in the front court provided it is set back at least 50 feet from the front (or side, for corner lots) property line. In the Residence A and Residence B Districts, the structure shall be reasonably screened from the road. All requirements in this subsection may be changed by special exception.
 9. Guidance from Agricultural Commission. Landowners and others with questions or concerns related to this ordinance and to agriculture in general are encouraged to speak with the Durham Agricultural Commission. Interested parties should contact the Town Planning Department.

10. Complaints. When a complaint is issued regarding any agricultural use, at the option of the Town's enforcement official, the complaint may be referred to the Agricultural Commission which may then investigate the complaint and seek to resolve it, as appropriate. When such a complaint is reviewed by the Agricultural Commission, regardless of the outcome of the Agricultural Commission's review, the Town's enforcement official shall nonetheless maintain responsibility for ultimate disposition of the complaint, in accordance with Town law.
11. Housing and Land Area Standards. See Section E below.
12. Irrigation. Irrigation is subject to applicable water withdrawal and use restrictions of the State of New Hampshire and the Town of Durham.
13. Number of Buildings. There is no set limit on the number of allowed agricultural buildings, whether principal or accessory buildings, on lots of three acres or greater (This provision overrides several general limitations included elsewhere in this ordinance).
14. Permits. A building, fence, and/or sign permit may be required depending on specific circumstances. See the Code Administrator for clarification, where appropriate.

B. Chickens and Turkeys, Keeping of – Accessory Use. The following terms and conditions apply to the keeping of chickens and turkeys as an accessory use:

1. Single/Two Family. The keeping of chickens and turkeys is permitted as an accessory use to single-family and duplex residences only.
2. Roosters. Roosters are permitted only on lots greater than 20,000 square feet located in the Rural Zoning District.
3. Number of animals. A maximum of 12 animals may be maintained per lot.
4. Selling Products. Eggs, chickens and turkeys may be sold on the premises provided the products are produced on the subject property and activity is conducted in accordance with the New Hampshire Department of Agriculture, Markets, and Food's Guidelines for Selling Shell Eggs and any signage conforms with the standards for residential accessory signs.

[Reference - <https://www.agriculture.nh.gov/publications-forms/documents/shell-egg-guidelines.pdf>]

C. Goats and Sheep, Keeping of – Accessory Use. The following terms and conditions apply to the keeping of Goats and Sheep – Accessory Use:

1. Single/Two Family. The keeping of goats and sheep is permitted as an accessory use to Single-Family and Duplex Residences only.

2. No more than two goats or two sheep may be kept on the property in the Residence A and Residence B districts. See Table 175-109.1 E – Housing and Land Area Standards for Livestock for requirements in other districts.
3. Permitted goats. In all zones, with the exception of the Residence Coastal and Rural Districts, only miniature, dwarf, or pygmy breed of goats may be kept on lots that are smaller than 80,000 square feet. Any kind of goat may be kept in the Residence Coastal and Rural Districts and on lots in other zones that are 80,000 square feet or larger. In all zones, with the exception of the Residence Coastal and Rural Districts, all goats must be dehorned and all male goats must be neutered.
4. Selling Products. Milk, cheese, wool, live goats and sheep, and other goat and sheep products may be sold on the premises provided the products are produced on the subject property and the activity is conducted in accordance with New Hampshire RSA 184. Inspection and Sale of Dairy Products (with specific reference to RSA 184:84.V). Any signage shall conform with the standards for residential accessory signs.

[Reference - <http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-XIV-184.htm>]

D. Forestry. All forestry activities shall be conducted in accordance with RSA 227-J, the Basal Area Law and RSA 227-J:9 in particular and RSA 79:10 Notice of intent to cut, and shall use as guidance for best forest management practices the “New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations” 2016, as amended; Best Management Practices for Forestry: Protecting New Hampshire’s Water Quality 2005 as amended; and Good Forestry in the Granite State (DRED). Where forestry activity or significant tree removal has occurred within 200 feet of any public street or property boundary, the property owner shall reclaim the area – including removal of logs, wood debris, and stumps, as appropriate – within 60 days.

E. Housing and Land Area Standards for Livestock. The standards given in Table 175-109.1E. Housing and Land Area Standards shall be met for all sites except for the accessory keeping of chickens and turkeys and of goats and sheep.

1. Structures for housing animals must have a roof and be enclosed on at least three sides.
2. All undeveloped land on the subject parcel, including fields and woods and any structures built for the animals, but excluding wetlands, counts toward the minimum area of land per animal.
3. The minimum area of land per animal may be reduced by special exception. When such an application for a special exception is received, the Planning and Zoning Department shall promptly notify the Agricultural Commission which shall have a reasonable opportunity to provide input on the application prior to the Zoning Board of Adjustment making a decision. The Agricultural Commission shall allow for all interested parties to comment on the application.

4. For animals not listed in the table and animals that are not standard-size animals which are permitted in the zoning district, the minimum area of housing per animal and the minimum land area per animal shall be established by the Zoning
5. Administrator after consulting with the Agricultural Commission. The applicant is encouraged to present information on best management practices for the animal to the Agricultural Commission.

NH Code of Administrative Rules regulate the possession of wildlife, including the raising of deer, elk, and game birds. Annual permits to raise these animals, and others, are required by NH Fish and Game. http://www.gencourt.state.nh.us/rules/state_agencies/fis800.html

Table 175-109.1 E. - Housing and Land Area Standards for Livestock

ANIMAL	HOUSING - minimum area per animal (in square feet)	LAND - minimum area per animal (in square feet)
Horse	Box stalls: 45 square feet; 5 x 9 feet recommended	40,000
Cow	75	40,000
Buffalo and Bison	No requirement	40,000
Ox and Steer	75	40,000
Goat	20	8,500
Sheep	20	8,500
Swine	48	3,000
Llama	40	20,000
Alpaca	18	10,000
Chicken	3	No requirement
Turkey	6	100
Duck	3	15
Goose	6	18
Guinea Fowl	3	No requirement
Pheasant	5	25
Pigeon	2	No requirement
Quail	1	4