

TOWNSHIP OF MAXATAWNY, BERKS COUNTY, PENNSYLVANIA  
ORDINANCE NO. 2021- 01

AN ORDINANCE OF THE TOWNSHIP OF MAXATAWNY, AMENDING THE ZONING ORDINANCE OF MAXATAWNY TOWNSHIP, BERKS COUNTY, PENNSYLVANIA, TO UPDATE DEFINITIONS, RULES, REGULATIONS AND STANDARDS CONCERNING AGRICULTURE.

BACKGROUND

WHEREAS, the Maxatawny Township Planning Commission and the Maxatawny Township Board of Supervisors have determined that it is in the best interest of the Township to amend certain agricultural provisions of the Zoning Ordinance, pursuant to the authority granted to the Township in the Pennsylvania Municipalities Planning Code,

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF MAXATAWNY TOWNSHIP, BERKS COUNTY, PENNSYLVANIA, AS FOLLOWS:

SECTION I

Article II - Definitions, §202 - Specific Terms of the Maxatawny Township Zoning Ordinance shall be amended as follows:

A. Replace the definition "Agriculture" with the following:

Agriculture (General) - The production, harvesting and preparation of agricultural, agronomic, horticultural, silvicultural, and aquaculture crops and products. As to livestock and livestock products, General Agriculture is the keeping of animals in a structure, fence or pasture (excluding kennels), involving "Animal Equivalent Units" of live weight of animals per acre that are less than the amounts specified under the definition of Concentrated Animal Operations, as used herein. In addition, the term General Agriculture includes the acceptance of spent mushroom soil or mushroom compost for dumping, storage or disposal, but does not include highly concentrated agricultural production such as Mushroom Operations.

B. Replace the definition "Agriculture (Intensive)" with the following:

Agriculture (Intensive) - The production, harvesting and preparation for market of agricultural, agronomic, horticultural, silvicultural and aquaculture crops and products. As to livestock and livestock products, Intensive Agriculture is the keeping of animals in a structure, fence, or pasture, involving "Animal Equivalent Units" of live weight of animals per acre that are equal to or greater than the threshold density definition of Concentrated Animal Operations, as used herein, provided, however, that if the Pennsylvania Department of Agriculture, Pennsylvania Department of Environmental Protection, or other State or Federal Agency revises the density definition of a Concentrated Animal Operation, then the term Intensive Agriculture shall be interpreted in accordance with the regulations of the Pennsylvania Department of Agriculture, Pennsylvania Department of Environmental Protection, or such other Agency, as it relates to the applicable definition. In addition to Concentrated Animal Operations, the term Intensive Agriculture includes, but is not limited to, Concentrated Animal Feeding Operations, and highly concentrated agricultural production of produce principally grown within buildings, such as Mushroom Operations.

C. Delete in its entirety the definition "Intensive Animal Husbandry", including the associated "Plus" provisions.

D. Remove the definition "Intensive Produce Operation" in its entirety.

E. Add new definitions as follows:

Animal Equivalent Unit (AEU) - 1,000 pounds live weight of livestock or poultry animals on an annualized basis, regardless of the actual number of individual animals comprising the unit, provided, however, that if the Pennsylvania State Conservation Commission is required, in the future, to utilize a different definition in administering the Nutrient Management Program, pursuant to State or Federal regulations, then this term shall be interpreted in accordance with the definition utilized by the Pennsylvania State Conservation Commission, or its successor Agency. In determining the live weight of livestock or poultry animals on an annualized basis and calculating Animal Equivalent Unit per Acre, the most recent version and release date of the Pennsylvania Act 38/Nutrient Management Program/Technical Manual, prepared by the Pennsylvania State Conservation Commission should be utilized, including but not limited to Section I, Identification of Concentrated Animal Operations, and Supplement 5, Table of Standard Animal Weights, or such successor publication as shall be issued by the State Conservation Commission.

Animal Equivalent Unit per Acre - An Animal Equivalent Unit per acre of crop land or area of lands that are suitable for the application of animal manure. The formula for calculating an Animal Equivalent Unit per Acre shall be the total number of Animal Equivalent Units divided by the acres available for manure application.

Concentrated Animal Feeding Operation - An agriculture operation where animals are kept and raised in confined situations. A Concentrated Animal Feeding Operation is defined as: Any agricultural operation with greater than one thousand (1,000) Animal Equivalent Units; A Concentrated Animal Operation with greater than three hundred (300) Animal Equivalent Units; or, Any agricultural operation defined as a large Concentrated Animal Feeding Operation under the Code of Federal Regulations. If the definition of large Concentrated Animal Feeding Operation is revised by the Code of Federal Regulation, or by another State or Federal Agency, then this term shall be interpreted in accordance with the revised regulations of such Agency.

Concentrated Animal Operation - An agricultural operation with eight (8) or more Animal Equivalent Units (AEUs) where the animal density exceeds two (2) AEUs per acre on an annualized basis. Animal density includes all livestock, including nonproduction animals such as horses used for recreation and transportation. An operation with less than eight (8) AEUs is not considered to be a Concentrated Animal Operation regardless of the animal density. The number of AEUs on an agricultural operation is calculated through the use of an established formula set by the Pennsylvania State Conservation Commission. The acreage used in the Concentrated Animal Operation formula to calculate the AEUs per acre includes land suitable for the application of manure, which may include rented or leased land outside the parcel where the agricultural operation is located. It is further provided, however, that if the Pennsylvania State Conservation Commission is required, in the future, to utilize a different definition in administering the Nutrient Management Program, pursuant to State or Federal regulations, then the term Concentrated Animal Operation shall be interpreted in accordance with the definition utilized by the Pennsylvania State Conservation Commission, or its successor Agency.

Mushroom Operation - Production for market of mushrooms, involving onsite substrate preparation, mushroom composting, with substrate colonization by spawn, top dressing, irrigation, and controlled climate, occurring in multiple production rooms, with production rooms cleaned of all compost and steam pasteurized at the end of the production cycle.

## SECTION II

Article V - Supplemental Regulations, §513 - Agricultural Regulations shall be amended and restated in its entirety as follows:

### §513. Agricultural Regulations.

#### §513.A. Agriculture (General) Regulations.

- (a) Agriculture involving Animal Equivalent Units that are less than the amount specified under the definitions for Concentrated Animal Operations and Concentrated Animal Feeding Operations shall be considered General Agriculture.
- (b) For a General Agriculture use, involving the generation and handling of manure, a copy of the Manure Management Plan, as prepared for the operation, shall be provided to the Township of Maxatawny, as shall copies of all amendments to the Plan as they are made.
- (c) The display and sale of farm products shall be permitted provided that at least 75% of the quantity of products for sale have been produced on the property on which they are offered for sale. The sale of farm products shall be conducted from a temporary, seasonal stand, which shall not be located closer than 25 feet from the applicable street right-of-way. In addition, all off street parking shall be designated in accordance with this Zoning Ordinance.
- (d) All areas utilized for grazing purposes shall be completely fenced, so that animals cannot leave the lot, and shall be set back 50 feet from any lot line.
- (e) Any exhaust system utilized for a General Agriculture structure shall be directed away from the closest occupied residences on an adjoining lot or closest building on an adjoining lot within which people are employed, where the residence or building is located within 200 feet of the exhaust fan system.
- (f) No discharge of liquid waste and/or sewage shall be permitted into a reservoir, sewage or storm sewer disposal system, holding pond, stream or open body of water or groundwater, as prohibited by the Clean Streams Law, 35 P.S. 691.1 et seq., and the associated regulations of the Pennsylvania Department of Environmental Protection and Ordinances of Maxatawny Township adopted consistent with those regulations.

#### §513.B. Agriculture (Intensive) Regulations.

- (a) Agriculture involving Animal Equivalent Units that are equal to or exceed the amount specified under the definitions for Concentrated Animal Operations and Concentrated Animal Feeding Operations shall be considered Intensive Agriculture, as shall other highly concentrated agricultural production such as Mushroom Operations.
- (b) All Intensive Agriculture shall be conducted on lands that exceed 50 acres in size.
- (c) Intensive Agriculture activities shall be conducted in a manner consistent with accepted agriculture best management practices, and best available technologies, as issued by the Pennsylvania Department of Agriculture, the State Conservation Commission, the Pennsylvania Department of Environmental Protection, Pennsylvania State University – College of Agriculture, or similar recognized entities and shall be subject to all Local,

State and Federal Regulations. The management of mushroom waste, shall be in specific conformity with the DEP manual entitled Best Practices for Environmental Protection in the Mushroom Farm Community, and the failure to so comply will result in the mushroom waste operator being reported to the DEP for enforcement and other appropriate action, including being subject to all State and Federal Regulations for application, storage, composting and transportation.

- (d) A Nutrient Management Plan as originally submitted and later in the form approved by the Pennsylvania State Conservation Commission or a delegated Conservation District, under the guidelines of the Pennsylvania Code for applicable Intensive Agriculture operations, as then in effect, shall be provided to the Township of Maxatawny at the time of submission and again at time of approval with copy of the issued approval letter. All subsequent amendment applications and approval letters shall also be provided to the Township. Likewise, the design/construction plans as certified by an engineer, for manure storage facilities governed by the provisions of 25 Pa. Code § 83.351, as then in effect, shall be provided to the Township of Maxatawny at the time of submission to and approval by the State Conservation Commission or delegated Conservation District. An engineer certificate shall also be provided to the Township certifying that the new facility was constructed in conformity with the submitted plan.
- (e) An Odor Management Plan developed by a Certified Odor Management Specialist, as originally submitted and later in the form approved by the Pennsylvania State Conservation Commission or a delegated Conservation District under the guidelines of the Pennsylvania Code for applicable Intensive Agriculture operations, as then in effect, shall be provided to the Township of Maxatawny at the time of submission and at the time of approval, with a copy of the issued approval letter. All subsequent amendment applications and approval letters shall also be provided to the Township.
- (f) Maxatawny Township shall be provided with a copy of any required National Pollutant Discharge Elimination System (NPDES) Permit application submitted to the Pennsylvania Department of Environmental Protection. A copy of the NPDES Permit issued, and all exhibits, as approved by the Pennsylvania Department of Environmental Protection, shall also be provided to the Township. Upon completion of construction, an As Built Plan shall be provided to the Township.
- (g) A Stormwater Management Plan shall be prepared for all proposed Intensive Agriculture uses, and be provided to Maxatawny Township for review and approval.
- (h) No Intensive Agriculture building shall be built in the one hundred (100) year floodplain.
- (i) Maxatawny Township shall be provided with a copy of the Nutrient Management Plan Summary Information required to be submitted to the State Conservation Commission pursuant to 25 Pa. Code Section 83.281.
- (j) A driveway occupancy permit shall be secured from the Township after a review by the Township Engineer, or from the Pennsylvania Department of Transportation, with a copy to the Township, to establish that access onto the Township or State roads is suitable to accommodate the amounts and sizes of truck traffic that will be generated by the Intensive Agriculture operation.

- (k) No farm structure or other accessory outbuilding for Intensive Agriculture (excluding manure storage facilities governed by the provisions of 25 Pa. Code §83.351) shall be constructed or expanded closer than: 200 feet from any residential zoning district line; or, 200 feet from an existing occupied residence or existing commercial building in which people are employed located on an adjoining lot. Except that in the event of a setback agreement between the agricultural property owner and the adjoining property owner, which has been recorded with the Recorder of Deeds of Berks County, legally binding upon all successor land owners, the distance may be reduced.
- (l) No more than one (1) dwelling unit shall be permitted on lands on which Intensive Agriculture is considered dominant.
- (m) The display and sale of farm products shall be permitted provided that at least 75 percent of the quantity of products for sale have been produced on the property on which they are offered for sale. The sale of farm products shall be conducted in a temporary, seasonal stand, which shall not be located closer than 25 feet from the applicable street right-of-way. In addition, all off-street parking shall be designed in accordance with this Zoning Ordinance.
- (n) All areas utilized for grazing purposes shall be completely fenced, so that animals cannot leave the lot, and shall be setback 50 feet from any lot line.
- (o) The exhaust system for any Intensive Agriculture structure shall be directed away from the closest occupied residence on an adjoining lot or closest building within which people are employed on an adjoining lot, when the residence or building is within 500 feet of the exhaust fan system.
- (p) Whenever a lot accommodating an Intensive Agriculture use abuts a residential district, an adjoining lot with an existing occupied residence, or an adjoining lot which contains an existing commercial building in which people are employed, along a side yard or rear lot line, the owner shall provide a landscape screen in conformance with §517, between the permitted use, along the side or rear yard lot line shared with the residential district, adjoining property with existing occupied residence, or adjoining property with existing commercial building in which people are employed.
- (q) No discharges of liquid wastes and/or sewage shall be permitted into a reservoir, sewage or storm sewer disposal system, holding pond, stream or open body of water, or ground water, as prohibited by the Clean Steams Law, 35 PS § 691.1 et seq., and the associated regulations of the Pennsylvania Department of Environment Protection and ordinances of Maxatawny Township adopted consistent with those regulations.
- (r) Composting on a commercial basis is prohibited. Any on-site composting shall be limited to use on the premises upon which such compost is made.

**SECTION III**

Article V - Supplemental Regulations, §513.1 - Additional Area and Bulk Regulations shall be removed and the following substituted in its place:

“§513.B.1 Additional Area and Bulk Agriculture (Intensive) Regulations.

Minimum front yard	300 feet
Minimum side yard (each side)	200 feet

Minimum rear yard	200 feet
Maximum Impervious Coverage	10 %
Maximum building height	45 feet”

SECTION IV

Article V - Supplemental Regulations, §501.10 - Environmental Performance Standards shall be amended as follows:

The introductory paragraph to this subsection shall be amended and restated in its entirety as follows:

“All Uses shall be subject to the following standards, to the extent applicable, consistent with governing Federal and State laws and regulations, and Ordinances of Maxatawny Township adopted consistent therewith.”

A. §501.10 (a) Air Management shall be revised by adding an additional subparagraph (6), with all other provisions of §501.10 (a) remaining unchanged:

“(6) As to agricultural production, the regulation of Air Management is governed by the Nutrient and Odor Management Act, 3 Pa. C.S. §501 et seq., and the Air Pollution Control Act, 35 P.S. §4004.1, and accompanying regulations.”

B. §501.10 (b) Liquid Wastes or Sewage shall be amended and restated in its entirety as follows:

“(b) Liquid Wastes or Sewage

- (1) Effluent must meet any and all standards established by the Clean Streams Law, 35 P.S. §691.1 et seq.
- (2) Consistent with the Clean Streams Law and its regulatory standards administered by the Pennsylvania Department of Environmental Protection, and the associated regulations authorized and incorporated into the Ordinances of Maxatawny Township, no dangerous, hazardous or contaminating effluent or waste from any operations shall be discharged into a reservoir, sewage or storm disposal system, stream, open body of water, or into the ground water, so as to contaminate any water supply or damage or be detrimental to any sewage system or sewage treatment plant.”

C. The provisions of §501.10 (g) Groundwater and Surface Water Supplies and Quality shall be amended and restated in their entirety as follows:

“Consistent with the Clean Streams Law and the regulations of the Pennsylvania Department of Environmental Protection, and the Ordinances of Maxatawny Township as authorized therein, no activity shall endanger groundwater levels and quality and surface water quality in the area of the use, nor adversely affect groundwater supplies of nearby properties.”

D. The provisions of §501.10 (l) Erosion and Sedimentation Pollution Control shall be amended as follows:

The general reference to Chapter 102 regulations shall be removed, and in its place a citation to "25 Pa. Code §102.4" shall be substituted in place of the words "Chapter 102" regulations.

E. The provisions of §501.10 (m) Stormwater Management shall be amended and restated in their entirety as follows:

"For all construction in all Zoning Districts, except as otherwise excluded, a Stormwater Management Plan, shall be prepared and approved in compliance with the Stormwater Management Act, 32 P.S. §680.1 et seq., and all associated State regulations and implementation Ordinances of the County of Berks and Maxatawny Township."

F. The provisions of §501.10 (o) Floodplain shall be amended by adding the following language to the end of the existing language as follows:

"...Specifically, development within the 100-year Floodplain, shall be consistent with the Floodplain Management Act, 32 P.S. §678.101 et seq. and associated State regulations, as well as Ordinance of Maxatawny Township, which implements those regulations."

G. The provisions of §501.10 (p) Wetlands shall be amended by revising subparagraph (3) as set forth below, with all other subparagraphs of §501.10 (p) remaining unchanged:

"(3) All land designated as "wetlands" within the Township is subject to restrictions and/or permits by the Pennsylvania Department of Environmental Protection, as more fully set forth in its regulations at 25 Pa. Code §106.1 et seq., and in some instances federal authorizations from the United States Army Corps of Engineers."

## SECTION V

Article IV - District Regulations - §400, AP and AP1 - Agricultural Preservation District shall be amended as follows:

A. §400.2. (a) Permitted Uses, shall be amended and restated in its entirety as follows:

"(a) Agriculture (General), subject to §513.A. and §1003 of this Ordinance."

B. §400.5 (b) Conditional Uses, shall be amended and restated in its entirety as follows:

"(b) Agriculture (Intensive), subject to §513.B. of this Ordinance."

## SECTION VI

Article IV - District Regulations - §401, A-R - Agricultural Residential, shall be amended as follows:

A. §401.1(a) Permitted Uses, shall be amended and restated in its entirety as follows:

"(a) Agriculture (General), subject to §513.A. and §1003 of this Ordinance."

SECTION VII

Article X - Domestic Animals - §1003(d)(2)(F) shall be amended and restated as follows:

- A. "(F) The owner of large domestic animals shall be subject to §513.A and §1003 of this Ordinance."

SECTION VIII - Interpretation

The provisions of this Ordinance, so far as they are the same as those of the Zoning Ordinance and regulations in force immediately before the enactment of this Ordinance, are intended as a continuation of the earlier Zoning Ordinance and regulations and not as new enactments. Nothing in this Ordinance shall affect any act done or liability incurred, or any suit or prosecution pending under any repealed or superseded Zoning Ordinance provisions or regulations.

SECTION IX - Repealer

The remaining provisions of the Zoning Ordinance of the Township of Maxatawny, as enforced immediately before the enactment of this Ordinance, are intended to be continued, and to the extent not inconsistent herewith, are hereby reenacted and re-ordained.

SECTION X - Severability

If any sentence, clause, section or part of this Ordinance is, for any reason, found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impact any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Township of Maxatawny that this Ordinance shall have been adopted as though such unconstitutional, illegal or invalid sentence, clause, section or part thereof had not been included herein.

SECTION XI - Effective Date

This Ordinance shall become effective immediately upon enactment hereof, or as otherwise provided by applicable law.

**ORDAINED AND ENACTED** into law by the Township of Maxatawny, Board of Supervisors, this 8<sup>th</sup> day of September, 2021.

ATTEST:

Deilyn R Weber  
Secretary of Maxatawny Township

TOWNSHIP OF MAXATAWNY  
BOARD OF SUPERVISORS

Allen L. Long  
Chairperson

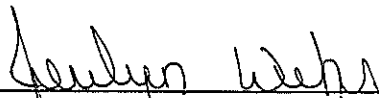
Edith C. Paul  
Supervisor  
Supervisor



**CERTIFICATION**

I, Jerilyn Wehr, Secretary/Treasurer of Maxatawny Township, Berks County, Pennsylvania, do certify that a copy of the full text of an Ordinance of the Township of Maxatawny Township, amending the Maxatawny Township Zoning Ordinance of 2012, as amended, to update definitions, rules, regulations and standards concerning agriculture has been available for public inspection during regular business hours at the Township of Maxatawny Municipal Building, 127 Quarry Road, Suite 1, Kutztown, Pennsylvania, as well as being available online at the Township website.

Date: Sept. 8, 2021

  
\_\_\_\_\_  
Jerilyn Wehr, Township Secretary