

## MODEL ORDINANCE FOR FARM MARKET

*While this model ordinance is intended to cover farm markets, garden centers, and other establishments on the farm that a retail farm produces, the State Agriculture Development Committee in its Right to Farm administration has extended the requirements of section 4:1C-9.6c to be in accordance with municipal standards for buildings and parking to development of any farm structure into which the public is invited on a regular basis.*

*This model ordinance, however, covers only farm markets, garden centers, and other establishments that retail the output of the commercial farm from the farm. Contact the State Agriculture Development Committee for guidance on ordinance provisions for other types of agricultural development projects where the facility is open to the public.*

### **Section 1. Purpose**

Direct marketing of farm products to the public is the most important marketing tool New Jersey farmers can use to increase their profitability and ensure long-term viability of the farm. It is the only way a farm operator can cover the costs of production, eliminate the middleman, and create a more vertical production structure under his/her control. The ability to use this form of marketing on the farm or from other sites is recommended by agricultural economics and marketing professionals and permitted by the Right to Farm Act.

### **Section 2. Definitions**

A. From the NJ Right to Farm Act (RTFA) (N.J.S.A. 4:1C-1-11):

**C.A.D.B.:** County Agriculture Development Board.

#### **Commercial farm:**

1. A farm management unit of no less than five acres producing agricultural or horticultural products worth \$2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964; or
2. A farm management unit less than five acres, producing agricultural or horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964.

**Farm market:**

A facility used for the wholesale or retail marketing of the agricultural output of a commercial farm, and products that contribute to farm income, except for a farm market used for retail marketing which shall generate 51 percent of the annual gross sales of the retail farm market from sales of agricultural output of the commercial farm, or which shall devote at least 51 percent of the sales area to the sale of the agricultural output of the commercial farm, except for a retail farm market that is located on land less than five acres in area, which shall produce agricultural or horticultural products worth at least \$2,500 annually.

**Farm management unit:**

A parcel or parcels of land, either contiguous or noncontiguous, owned or rented, together with agricultural or horticultural buildings, structures and facilities, producing agricultural or horticultural products, and operated as a single enterprise.

B. From the Farmland Assessment Act (N.J.S.A. 54:4-23.1 et.seq.):

**Farm stand:**

A retail farm market, no greater than 500 square feet, selling 100% products from the farm management unit, operated from temporary buildings which are annually closed to business during the off season for a period of not less than 90 continuous days.

**Section 3. Applicability**

*Two levels of market scale are involved because of the prevalence of small, ad hoc, short-term farm product sales establishments around New Jersey in the summer. Municipalities are encouraged to grant waivers to these establishments from the standards described below that are more appropriate for larger, more permanent or long term marketing facilities.*

The provisions of this chapter shall be applicable to all agricultural facilities that meet the definition of farm market. However, applicants operating only on a seasonal (part time basis) are encouraged to seek waivers from the standards that reflect conditions more appropriate to the scale of their operation.

The RTFA permits the “operation of a farm market... notwithstanding the provisions of any municipal or county ordinance.” Therefore, structures and facilities to do so shall be permitted uses in every zone with the “construction of building and parking areas in conformance with municipal standards.” The CADB, according to the DenHollander N.J. Supreme Court decision (172 N.J. 147, 796A.2d 874) is required “to deal with an

array of matters that are within the traditional jurisdiction of local authorities” in such a way that the Board takes “into account the interests of farmers, while simultaneously considering the extent of the use of agricultural management practices” (DenHollander Appellate Division decision 393, 769 A.2d427). The CADB has been confirmed in several legal decisions to be the proper venue for questions or grievances against a farm operation held by an individual or a government body, not the municipal court system.

#### **Section 4. Area and Yard Requirements**

*The following standards are offered as a guide, not absolute numbers. Area and yard requirements will depend upon site-specific conditions that often have a long history of existence on a farm pre-dating surrounding development.*

Development standards are needed for farm markets and some farm stands, but standards should be less restrictive than those required for other commercial structures because they are time-limited and usually located on a farm rather than a commercially zoned lot. Furthermore, the facility typically is located on the farm and its design is intended to preserve the farm’s rural character. Building and parking requirements more suitable for suburban commercial establishments defeat this intent while increasing the cost of design, approvals, and construction for the farm operator.

Those operations generating less than \$2,500 per year in revenue or those that are extremely seasonal such as selling sweet corn from the back of a pickup truck, should be exempt from all standards unless such activity creates a health or safety issue.

Municipalities should consult the CADB to review its proposed requirements for their appropriateness to the farm operation involved. Farm operators can appeal requirements set by the municipality to the CADB under the N.J. Agriculture Retention and Development Act (4:1C-15 (f). that requires the Board to “monitor and make appropriate recommendations” to municipal governing bodies regarding proposed regulation affecting farms in the Agricultural Development Area.

##### **A. Farm Market**

Minimum Lot Size	Governed by setback requirements
Maximum FAR (Floor Area Ratio)	Determined by volume of farm products intended for sale
Minimum Front Yard Setback	15 feet
Minimum Side Yard Setback	25 feet
Minimum Rear Yard Setback	25 feet
Maximum Building Height	35 feet
Minimum Street Frontage	50 feet

B. Farm Stand

To be determined based on the site conditions and the scale of the proposed retail facility.

**Section 5. Non-Farm Residential Setbacks**

Disturbance from the farm market or farm stand to adjacent residential properties should be minimized.

1. If a farm market or farm stand is adjacent to residential properties, there shall be a minimum distance of 50 feet between farm market and accessory structures and the property line.
2. Any refuse container for refuse generated by the farm market or farm stand shall be shielded from view from adjacent residential properties or enclosed with either a stockade type fence or coniferous shrubs, the intent being to shield the container from view.

**Section 6. Parking**

There shall be sufficient parking and safe ingress and egress for the expected level of customer traffic. Farm markets of a limited size and seasonal nature may not need the same design standards as commercial establishments. Site design in character and scale with the rural context should be encouraged.

1. Farm markets: one space per 200 feet of gross floor area or a minimum of three spaces. The parking lot shall be either gravel or paved preferably with permeable paving so as to reduce impervious cover. Driveway aprons shall be paved. Additional temporary or seasonal parking may be provided on maintained, grassed areas.
2. Farm stands: paved, gravel or grassed areas for parking that can accommodate at least three vehicles located to facilitate a safe flow of traffic.

**Section 7. Lighting**

*Municipalities should consult the Outdoor Lighting Model Ordinance in the Hunterdon County Environmental Toolbox for information and standards for lighting, but take into consideration the impact of the cost of specialized lighting fixtures that may be required due to the diverse scales of farm markets in the municipality and their expected length of season.*

The objective of these specifications is to minimize undesirable off-premises effects while at the same time to provide adequate illumination for security and safety purposes. Lighting should be appropriate to the size and duration of the farm production marketing and provide safety and security but should not create a hazard or nuisance off site.

No light shall shine onto streets and driveways in such a manner as to interfere with or distract driver vision. No light shall shine into the windows of adjacent non-farm residential land uses. No bare bulb, tube, lens or reflecting surface of an outside light shall be visible from any point off-site or at any point above the level of the source, unless screened by trees or remote distances, or for illumination of very short-term seasonal marketing operations such as Christmas trees.

Lighting related to seasonal uses such as the selling of Christmas trees shall be permitted during business hours (with the exception of security lighting).

### **Section 8. Signage**

Three types of signage are critical to the retail marketing of the output of the commercial farm: permanent site or building signage, temporary or seasonal signage on the farm, and temporary or seasonal signage off the farm. The following standards shall be used for guidance purposes, the size and location of the sign to be determined by the site conditions, and the nature of the operation:

1. One free-standing sign per road frontage. Each sign shall not exceed thirty-five (35) square feet in area. Free standing signs should be set back at least ten (10) feet from any property line.
2. Temporary or seasonal signs may be used to advertise items for sale on the premises. These signs may be located on or off the farm. These signs shall not exceed eight (8) square feet.

### **Section 9. Noise**

Farm operations are exempt from New Jersey noise regulations. However, in the interest of good neighbor relations, excessive noise shall not create a nuisance for adjacent properties. No disturbing sound except that which is incidental to a farm market shall be audible across a property line.

### **Section 10. Other Relevant Regulation**

In order to receive Right to Farm protection, a farm operation, including a retail facility on a commercial farm, must conform to “all relevant federal and state regulations.” This includes:

- A. The Uniform Construction Code as amended to cover farm buildings.

- B. Health regulations as applicable to the nature of the structure.
- C. The construction of structures, parking, and other potentially impervious cover must conform, if applicable, to the New Jersey Soil Erosion and Sedimentation Control Act and, in some cases, the New Jersey Stormwater Management Rules (N.J.A.C. 7:8). For information about the Soil Erosion and Sediment Control or stormwater management requirements of a specific project, consult the Hunterdon County Soil Conservation District.
1. The New Jersey Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.) requires that, if there is land disturbance not related to agricultural or horticultural purposes of more than 5,000 square feet of ground, a Soil Erosion and Sedimentation Plan must be developed by the farmland owner and submitted for review and certification with the Hunterdon Soil Conservation District. The plan would provide erosion protection for activities associated with the project, including the construction of structures, parking, and access lanes. Farm marketing facilities very limited in size may be approved after review of informal site and building information. With the inclusion of the appropriate Soil Erosion and Sediment Control measures on the plan, application, and payment of appropriate fee, construction is then subject to inspection by the District. Upon satisfactory completion of the project, the District will issue a Report of Compliance, which is required to obtain a Certificate of Occupancy.
  2. If the construction, expansion of, or repair to, a farm market disturbs more than one additional acre of land, or if the project requires land use permits from NJDEP (wetlands, stream encroachment, for example) and adds more than one-quarter ( $\frac{1}{4}$ ) acre of additional impervious coverage, the activation of General Permit to discharge stormwater under the New Jersey Stormwater Management rules may be needed.