

**Texas Right to Farm Statute as of September 1, 2023**

**Section 251.001. POLICY.**

Food security being essential, it is the policy of this state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. It is the purpose of this chapter to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be legally threatened, subject to suit, regulated, or otherwise declared to be a nuisance.

**Section 251.002. DEFINITIONS. In this chapter:**

(1) "Agricultural operation" includes the following activities:

- (A) Cultivating the soil;
- (B) Producing crops or growing vegetation for human food, animal feed, livestock forage, forage for wildlife management, planting seed, or fiber;
- (C) Floriculture;
- (D) Viticulture;
- (E) Horticulture;
- (F) Silviculture;
- (G) Wildlife management;
- (H) Raising or keeping livestock or poultry, including veterinary services;
- (I) Planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure; and
- (J) The commercial sale of animals, as defined by Section 252.001 of this code.

(2) "Governmental requirement" includes any rule, regulation, ordinance, zoning, license or permit requirement, or other requirement or restriction enacted or promulgated by a county, city, or other municipal corporation that has the power to enact or promulgate the requirement or restriction.

**Section 251.003. ESTABLISHED DATE OF OPERATION.**

For purposes of this chapter, the established date of operation is the date on which an agricultural operation commenced agricultural operations.

**Section 251.004. NUISANCE OR OTHER ACTIONS.**

(a) No nuisance action or other action to restrain an agricultural operation may be brought against an agricultural operation that has lawfully been in operation and substantially unchanged for one year or more prior to the date on which the action is brought.

**Commented [TEDL1]:** Deleted: If the physical facilities of the ag operation are subsequently expanded, the established date of operation for each expansion is a separate and independent established date of operation established as of the date of commencement of the expanded operation, and the commencement of the expanded operation does not divest the agricultural operation of a previously established date of operation.

**Commented [TEDL2]:** Deleted: if the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation.

A person who brings a nuisance action or other action to restrain an agricultural operation that is not prohibited by this section must establish each element by clear and convincing evidence.

This subsection does not restrict or impede the authority of this state or a political subdivision to enforce state law, including an enforcement action by the TCEQ.

Commented [TEDL3]: Deleted: protect the public health, safety, and welfare or the authority of a municipality to

For the purposes of this subsection, a substantial change to an agricultural operation means a material alteration to the operation or type of production at an agricultural operation that is substantially inconsistent with the operational practices since the established date of operation.

(b) A person who brings a nuisance action or other action to restrain an agricultural operation and seeks damages or injunctive relief against an agricultural operation that has existed for one year or more prior to the date that the action is instituted or who violates the provisions of Subsection (a) is liable to the agricultural operator for:

- (1) all costs and expenses incurred in the defense of the action, including attorney's fees, court costs, travel, and other related incidental expenses incurred in the defense; and
- (2) any other damages found by the trier of fact.

Commented [TEDL4]: Deleted: but not limited to

(c) This section does not affect or defeat the right of any person to recover for injuries or damages sustained because of an agricultural operation or portion of an agricultural operation that is conducted in violation of a federal, state, or local statute or governmental requirement that applies to the agricultural operation or portion of the agricultural operation.

#### **Section 251.005. EFFECT OF GOVERNMENTAL REQUIREMENTS.**

(a) For purposes of this section, the effective date of a governmental requirement is the date on which the requirement requires or attempts to require compliance as to the geographic area encompassed by the agricultural operation. The recodification of a municipal ordinance does not change the original effective date to the extent of the original requirements.

(b) A governmental requirement of a political subdivision of the state other than a city:

- (1) Applies to an ag operation with an established date of operation subsequent to the effective date of the requirement;
- (2) Does not apply to an ag operation with an established date of operation prior to the effective date of the requirement; and
- (3) Applies to an agricultural operation if the governmental requirement was in effect and applicable to the operation prior to the effective date of this chapter.

(c) A governmental requirement of a city:

- (1) does not apply to any agricultural operation located outside the corporate bounds of the city; and
- (2) applies to an agricultural operation located in the corporate boundaries of the city only if the governmental requirement complies with Section 251.0055.

Commented [TEDL5]: Deleted: A governmental requirement of a city does not apply to any agricultural operation situated outside the corporate boundaries of the city on the effective date of this chapter. If an agricultural operation so situated is subsequently annexed or otherwise brought within the corporate boundaries of the city, the governmental requirements of the city do not apply to the agricultural operation unless the requirement is reasonably necessary to protect persons who reside in the immediate vicinity or persons on public property in the immediate vicinity of the agricultural operation from the danger of: (1) explosion, flooding, vermin, insects, physical injury, contagious disease, removal of lateral or subjacent support, contamination of water supplies, radiation, storage of toxic materials, or traffic hazards; or (2) discharge of firearms or other weapons, subject to the restrictions in Section 229.002, Local Government Code.

**Section 251.0055. LIMITATIONS ON CITY GOVERNMENTAL REQUIREMENTS APPLICABLE WITHIN CORPORATE BOUNDARIES.**

(a) A city may not impose a governmental requirement that applies to agricultural operations located in the corporate boundaries of the city unless:

- (1) There is clear and convincing evidence that the purposes of the requirement cannot be addressed through less restrictive means and that the requirement is necessary to protect persons who reside in the immediate vicinity or persons on public property in the immediate vicinity of the agricultural operation from the imminent danger of:
  - a. Explosion;
  - b. Flooding;
  - c. An infestation of vermin or insects;
  - d. Physical injury;
  - e. The spread of an identified contagious disease that is directly attributable to the agricultural operation;
  - f. The removal of lateral or subjacent support;
  - g. An identified source of contamination of water supplies;
  - h. Radiation;
  - i. Improper storage of toxic materials;
  - j. Crops planted or vegetation grown in a manner that will cause traffic hazards; or
  - k. Discharge of firearms or other weapons subject to restrictions in Section 229.002, Local Government Code;
- (2) The governing body of the city makes a finding by resolution, based on a report described by Subsection (b) that the requirement is necessary to protect public health; and
- (3) The requirement is not otherwise prohibited by this section.

(b) Before making a finding described by Subsection (a)(2), the governing body of the city must obtain and review a report prepared by the city health officer or a consultant that:

- (1) identifies evidence of health hazards related to agricultural operations;
- (2) determines the necessity of regulation and the manner in which agricultural operation should be regulated;
- (3) states whether each manner of regulation under Subdivision (2) will restrict or prohibit a generally accepted agricultural practice listed in the manual prepared under Section 251.007; and
- (4) if applicable, includes an explanation of why the report recommends a manner of regulation that will restrict the use of a generally accepted agricultural practice that the manual indicates does not pose a threat to public health.

(c) A city may not impose a governmental requirement that directly or indirectly:

(1) prohibits the use of a generally accepted agricultural practice listed in the manual prepared under Section 251.007, except as provided by Subsections (a) and (b);

(2) prohibits or restricts the growing or harvesting of vegetation for animal feed, livestock storage, or forage for wildlife management, except as provided by Subsection (d);

(3) prohibits the use of pesticides or other measures to control vermin or disease-bearing insects to the extent necessary to prevent an infestation; or

(4) requires an agricultural operation be designated for:

(a) agricultural use under Section 1-d, Article VIII of the Texas Constitution; or

(b) farm, ranch, wildlife management, or timber production use under Section 1-d-1, Article III, Texas Constitution.

(d) A city may impose a maximum height for vegetation that applies to agricultural operations only if:

(1) the maximum vegetation height is at least 12" and

(2) the requirement only applies to portions of an agricultural operation located no more than 10' from a property boundary that is adjacent to:

(a) a public sidewalk, street, or highway or

(b) a property that:

(i) is owned by a person other than the owner of the agricultural operation and

(ii) has a structure that is inhabited.

(e) A governmental requirement of a city relating to the restraint of a dog that would apply to an ag operation does not apply to a dog used to protect livestock on property controlled by the property owner while the dog is being used on such property for that purpose.

(f) A city may require a person to provide a written management plan that meets the specifications described by Section 23.521(c), Tax Code, to establish that activities constitute an agricultural operation on the basis of being wildlife management activities.

**Section 251.006. AGRICULTURAL IMPROVEMENTS.**

(a) An owner, lessee, or occupier of agricultural land is not liable to the state, a governmental unit, or the owner, lessee, or occupant of other agricultural land for the construction or maintenance on the land of an agricultural improvement if the construction is not expressly prohibited by statute or a governmental requirement adopted in accordance with Section

251.005 in effect at the time the improvement was constructed. Such an improvement does not constitute a nuisance and is not otherwise subject to suit or injunction.

(b) This section does not prevent the enforcement of a state or federal statute.

(c) In this section:

(1) Agricultural land includes:

a. Any land the use of which qualifies the land for appraisal based on agricultural use as defined under Subchapter D, Ch 23, Tax Code, and

b. Any other land on which agricultural operations may exist or take place.

(2) Agricultural improvement includes pens, barns, fences, arenas, and other improvements designed for :

a. the sheltering, restriction, or feeding of animal or aquatic life;

b. storage of produce or feed; or

c. storage or maintenance of:

i. implements used for management functions or

ii. equipment necessary to carry out agricultural operations.

**Section 251.007. GENERALLY ACCEPTED AGRICULTURAL PRACTICES.**

The Texas A&M AgriLife Extension Service shall develop a manual that identifies generally accepted agricultural practices and indicates which of those practices do not pose a threat to public health, including a threat to public health posed by a danger listed in Section 251.0055(a)(1).

**Section 251.008. CONFLICT WITH OTHER LAW.**

If there is a conflict between this chapter and other law, this chapter prevails.

**Commented [TEDL6]:** Deleted: This section does not apply to an improvement that obstructs the flow of water, light, or air to other land.

Deleted: statute ore governmental requirement to protect public health or safety.