

COUNTY ORDINANCE NO. 08-08

A BILL ENTITLED

AN ACT CONCERNING the Conduct of Seafood Operations.

FOR THE PURPOSE of preserving, protecting and encouraging the development and improvement of seafood industry operations in Queen Anne's County; limiting the circumstances under which commercial seafood and fishing industry operations may be deemed a nuisance, interference or trespass; to promote a clearer understanding of seafood industry operations; and to advise purchasers and users of property adjacent to commercial seafood operations of inherent potential problems.

BY AMENDING Section 18:1-180 and 22-19 of the Code of Public Local Laws; Amending the title of Chapter 19 and adding a new Part 3, Article IV of Chapter 19 to the Code of Public Local Laws of Queen Anne's County.

SECTION I

BE IT ENACTED BY THE COUNTY COMMISSIONERS OF QUEEN ANNE'S COUNTY, MARYLAND that Section 18:1-180 of the Code of Public Local Laws of Queen Anne's County be amended as set forth on Attachment A.

SECTION II

BE IT FURTHER ENACTED that Section 22-19 of the Code be amended as set forth on Attachment B.

SECTION III

BE IT FURTHER ENACTED that the title of Chapter 19 be amended and a new Part 3, Article VI be added to Chapter 19 of the Code as set forth on Attachment C.

SECTION IV

BE IT FURTHER ENACTED that this Bill shall take effect on the forty-sixth day following its passage.

INTRODUCED BY: Commissioner Ransom

CO-SPONSORED BY: Commissioners Billups, Fordonski, Gunther and

Wargotz

DATE: March 11, 2008

PUBLIC HEARING HELD: July 22, 2008 @ 6:45 p.m.

VOTE: 5 Yea 0 Nay

DATE OF ADOPTION: July 22, 2008

EFFECTIVE DATE: September 6, 2008

Please refer to the amendment.
This Ordinance was Adopted as Amended.

ATTACHMENT A

§ 18:1-180. Preliminary subdivision requirements.

- A. "Identify" defined. In this section, "identify" means to give the name, address, and telephone number of the *person* indicated and, in the case of an engineer, planner, or surveyor, the employer of the identified *person*.
- B. In general. All plats required by this article shall be in the form and contain the basic information required by the other provisions of this section, except as expressly modified in other provisions of this article with respect to any specific type of plat.
- C. Filing. The applicant shall file with the *Planning Director* 11 copies of the application and plat(s), two copies of the property deed, and any other applicable information.
- D. Form.
 - (1) A plat shall be printed on paper to a scale of one inch equals 100 feet or one inch equals 50 feet. The top of the plat shall be oriented north and the plat shall contain a North arrow. Linear dimensions shall be given in feet and decimals of a foot. Where a line is an arc of a circle, the radius and the length of the arc shall be shown.
 - (2) The *Planning Director* may modify the requirements in Subsection D(1) of this section relating to scale and orientation if, in the *Planning Director's* opinion, the requirement places an unnecessary burden upon the applicant and the information required to be shown on the plat can be presented with equal clarity by the modified scale or orientation.
- E. Title block; contents.
 - (1) The title block shall contain the information required under this subsection.
 - (2) The name of the *subdivision* shall be indicated, if the property is within an existing *subdivision*, or the proposed name of the *subdivision*. A proposed name may not duplicate the name of any *subdivision* plat previously recorded in the *County*. The *developer* may provide a temporary *subdivision* name, which shall be the name by which the property is generally known in the community.
 - (3) The map, block, parcel/ lot number.
 - (4) Land affected by *subdivision*.
 - (a) A plat shall identify the owners of all land to be affected by the *subdivision* and provide a *citation* of the instruments by which title to the land was conveyed to the owners.
 - (b) If the land is affected by a trust of any kind, such information shall be provided with respect to each trustee and each beneficiary of the trust. The nature and extent of the interest of each shall be indicated, and a copy of all trust instruments shall be attached.
 - (5) The title block shall contain the names and addresses of all engineers, planners, surveyors, and other professional *persons* or offices responsible for *subdivision* design, design of *public improvements*, and surveys.

- (6) A revision block for all revisions made to the plat and the date of each revision shall be included.
- (7) For *subdivisions* in or adjacent to the AG, CS, or NC Districts, a right-to-farm statement shall be included. The statement shall provide that there shall be no basis, under this Chapter 18:1, for recourse against the effects of any normal farming operations conducted in accordance with standard and acceptable *best management practices*. Normal agricultural effects include, but are not limited to, noise, odor, vibration, fumes, dust, spray drift, or *glare*.

(8) A right-to-fish statement shall be included on all subdivision plats. The statement shall state that there shall be no basis under this Chapter 18:1 for recourse against the effects of any commercial seafood industry operation that is conducted in a manner consistent with generally accepted commercial seafood and fishing industry management practices as defined by § 19-13 of the Code of Public Local Laws of Queen Anne's County.

ATTACHMENT B

§ 22-19. General conduct and personal behavior.

- A. Posting notices. Attaching or posting of notices, signs or any other objects on park property is prohibited except by permit (Class e offense).
- B. Audio devices and noise. No person may play an audio device or create excessive noise so as to disturb the peace (Class e offense).
- C. Fireworks and explosives. No person may possess and discharge any fireworks or other explosive pyrotechnics on park property without the expressed written permission of the Director (Class b offense).
- D. Littering, dumping and storage. (See definitions of "garbage," "refuse" and "rubbish" Queen Anne's County Code, Ch. 19, ~~Nuisances; Right to Farm~~ Nuisances; Conduct of Agricultural and Seafood Operations, Art. I, Definitions.)
 - (1) Garbage must be properly disposed of in trash receptacles (Class e offense).
 - (2) Any discharge of waste materials on the lands or waters of County parks is prohibited (Class b offense).
 - (3) Dumping of household or commercial trash and refuse is prohibited on any County property whether or not said dumping occurs in a trash receptacle (Class b offense).
 - (4) No person may store material of any description on park property except by written authorization from the Director (Class e offense).
 - (5) Glass containers are prohibited (Class e offense).

ATTACHMENT C

CHAPTER 19: NUISANCES; RIGHT TO FARM Conduct of Agricultural and Seafood Operations

Part 2 Right To Farm [Adopted 8-20-1999 by Ord. No. 99-08]

ARTICLE V Conduct of Agricultural Operations

§ 19-8. Findings and policy.

- A. It is the declared policy of the County to preserve, protect, promote and

encourage the preservation and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations can become the subject of lawsuits. As a result, agricultural operators are sometimes forced to cease or curtail their operations. Others are discouraged from making investments in agricultural improvements to the detriment of the economic viability of the County's agricultural industry as a whole. It is the purpose of this Part 2 to reduce the loss to the county of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to constitute a nuisance, trespass or other interference with the reasonable use and enjoyment of land, including but not limited to smoke, odors, flies, dust, noise, chemicals or vibration; provided that nothing in this Part 2 shall in any way restrict or impede the authority of the state and of the County to protect the public health, safety and welfare.

- B. It is in the public interest to promote a clearer understanding between agricultural operations and nonagricultural neighbors concerning the normal inconveniences of agricultural operations which follow generally accepted agricultural practices and do not endanger public health or safety.

§ 19-9. Limitation of actions.

- A. A private action may not be sustained with respect to an agricultural operation conducted on agricultural land on the grounds that the agricultural operation interferes or has interfered with the use or enjoyment of property, whether public or private, if the agricultural operation was, at the time the interference is alleged to arise, conducted substantially in accordance with generally accepted agricultural practice.
- B. Notwithstanding any provision of this section, no action alleging that an agricultural operation has interfered with the reasonable use or enjoyment of real property or personal well-being shall be maintained if the plaintiff has not sought and obtained a final judgment of the Agricultural Reconciliation Committee as defined in § 19-10 herein.

§ 19-10. Establishment of Agricultural Reconciliation Committee; membership.

- A. There is hereby established the Queen Anne's County Agricultural Reconciliation Committee, which shall arbitrate and mediate disputes involving agricultural operations conducted on agricultural lands and issue opinions concerning whether or not such agricultural operations are conducted in a manner consistent with generally accepted agricultural practices.
- B. Composition.
 - (1) The Agricultural Reconciliation Committee shall be composed of five persons appointed by the Queen Anne's County Commissioners. The Committee shall be composed of:
 - (a) At least two members from the agricultural community;
 - (b) At least one member from a municipality
 - (c) At least one member from a real estate interest; and;
 - (d) One other member from the community not actively engaged in agriculture.
 - (2) A representative of the University of Maryland Cooperative Extension Service and a member of the Queen Anne's County Soil Conservation District shall be appointed by the Commissioner to serve as ex officio, nonvoting members of the Committee. In any dispute, if requested by the Committee, or if in their own opinions their

participation is helpful, they may present facts and educational information to the Committee and make recommendations. Their recommendations shall be considered by the Committee.

- C. The Committee members shall serve four-year terms; however, the initial appointments shall be staggered.
- D. The Committee shall meet at least one time per year. Members shall serve as volunteers with no monetary compensation.

§ 19-11. Resolution of disputes and procedure for complaints; investigation and declaration.

A. Nuisances which affect public health.

- (1) Complaints. A person may complain to the Queen Anne's County Health Department to declare that a nuisance exists which affects public health.
- (2) Investigations. The County Health Officer or his agent or designee may investigate any complaint of nuisance received against an agricultural operation. When a previous complaint involving the same condition resulted in a determination by the Health Officer that a nuisance condition did not exist, the Health Officer may investigate the complaint, but the Health Officer may also determine not to investigate such a complaint. The Queen Anne's County Health Department may initiate any investigation without a citizen complaint.
- (3) Declaration of nuisance. If the Health Officer determines that a nuisance exists, the Health Department may declare the existence of a nuisance. In determining whether a nuisance condition exists in connection with an agricultural operation, the Health Officer shall apply the criteria provided in this Part 2. Further, the Health Officer may consider the professional opinion of the Queen Anne's County Cooperative Extension Service of the University of Maryland or other qualified expert in the relevant field in determining whether the agricultural operation being investigated is conducted in accordance with accepted agricultural practices.

B. Resolution of disputes regarding agricultural operations.

- (1) Should any controversy arise regarding an interference with the use or enjoyment of property from agricultural operations conducted on agricultural land, the parties to that controversy shall submit the controversy to the Agricultural Reconciliation Committee.
- (2) Any such controversy may be submitted in writing to the Agricultural Reconciliation Committee within one year of the alleged adverse impacts.
- (3) The Agricultural Reconciliation Committee will conduct its proceedings in an informal manner. The Committee has the power but is not required hereunder to hold hearings, to compel testimony under oath and to compel the production of documents. In each case, the Agricultural Reconciliation Committee shall issue orders settling or otherwise resolving controversy arising out of agricultural operations, including but not limited to the invasion of property and personal rights by agricultural operations conducted on agricultural land.
- (4) Orders of the Agricultural Reconciliation Committee shall be binding on the parties as a matter of law, but their enforcement shall be suspended by operation of law if, within 30 days of the date of the Committee's judgment, a party appeals such order to the Circuit Court for Queen Anne's County.

Part 3 Right to Conduct Seafood Operations

ARTICLE VI Conduct of Seafood Industry Operations

§ 19-12. Findings and policy.

- A. It is declared policy of Queen Anne's County to preserve, protect and encourage the preservation and improvement of its waterways for the harvesting of seafood. It is the purpose of this chapter to reduce the loss to the County of its commercial seafood and fishing industry by limiting the circumstances under which commercial seafood and fishing industry operations may be deemed to constitute a nuisance or trespass, and to limit interference with the reasonable practices associated with the handling, harvesting, buying, selling, loading, unloading, transporting and processing of commercial seafood, including, but not limited to, boats leaving and returning at various hours, painting, preparation and cleaning of crab pots, use of chemicals, paints, dust and power tools, maintenance of boats and any and all other equipment, the running and operation, noise, smell and presence of machinery and equipment associated with commercial seafood operating at any and all hours; provided that nothing in this chapter shall in any way restrict or impede the authority of the state and of the County to protect the public health, safety and welfare.
- B. It is in the public interest to promote a clearer understanding between seafood industry operators and residential neighbors concerning the normal inconveniences of seafood industry operations are generally accepted seafood industry practices.
- C. This chapter is not intended to and shall not be construed as in any way modifying or abridging local, state or federal laws relating to health, safety, zoning, licensing requirements, environmental standards (including those standards which relate to air and water quality), and the like.
- D. An additional purpose of this chapter is to promote a good neighbor policy by advising purchasers and users of property adjacent to or near commercial seafood operations of the inherent potential problems associated with such purchase or use. These potential problems include, but are not limited to, boats leaving and returning at all hours, painting crab pots, use of chemicals, paints, dust and power tools, the maintenance of boats and any and all other equipment, the running and operation, noise, smell and presence of machinery and equipment associated with commercial seafood operating at various hours. It is intended that, through mandatory disclosures, purchasers and users will better understand the impact of living near commercial seafood operations and be prepared to accept attendant conditions as the natural result of living in or near areas which have such operations. This chapter shall be effective regardless of whether disclosure was made in accordance with the provisions of § 18:1-180.

§ 19-13. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

– COMMERCIAL SEAFOOD OPERATION – Includes, but is not limited to, all matters

relating to the harvest of seafood in Queen Anne's County, including boats leaving and returning at all hours, painting of crab pots, the use of bait, salt, paints, dust and power tools, the maintenance of boats and any and all other equipment, the running and operation, noise, smell and presence of machinery and equipment associated with commercial seafood operating at any and all hours; including the activities of workers and the operation of boats, generators, ice making, refrigerated trucks, chum trucks, boilers, steam generators, cooking, fork lifts, heating equipment, cooling equipment, soft crab shedding equipment, tanks, pallets, cooking baskets and drums.

- GENERALLY ACCEPTED SEAFOOD INDUSTRY PRACTICES - Those methods used in connection with the commercial seafood and fishing industries which do not violate applicable federal, state or local laws or public health safety and welfare and which are generally accepted commercial seafood and fishing practices in the commercial seafood and fishing industry. Generally accepted
- seafood industry practices includes those methods which are authorized by various governmental agencies, bureaus and departments. If no generally accepted seafood industry practices exist or there is no method authorized by those agencies mentioned herein which governs a practice, the practice is presumed to be a generally accepted seafood industry practice.

- HEALTH OFFICER - The Director of Environmental Health for the Queen Anne's County Health Department or his designee.
- County Health Department or his designee.

- LAND - All real property within the boundaries of Queen Anne's County and all territorial waters, rivers, bays and creeks located within Queen Anne's County.
- County.

§ 19-14. Limitation of actions.

- A. A private action may not be maintained with respect to a seafood industry operation on the grounds that the seafood industry operation interferes or has interfered with the use or enjoyment of property, whether public property owned by the County or private, if the seafood operation is conducted substantially in accordance with generally accepted seafood industry practices.

- B. Notwithstanding any provision of this section, no action alleging that a seafood industry operation has interfered with the reasonable use or enjoyment of real property or personal well-being shall be maintained if the plaintiff has not sought arbitration through Seafood Reconciliation Committee.

§ 19-15. Establishment of Seafood Reconciliation Committee; membership.

- A. There is hereby established the Queen Anne's County Seafood Reconciliation Committee, which shall arbitrate and mediate disputes involving seafood industry operations and issue opinions concerning whether or not such seafood operations are conducted in a manner consistent with generally accepted seafood industry practices.

- B. Composition.
 - (1) The Seafood Reconciliation Committee shall be composed of five persons appointed by the Queen Anne's County Commissioners. The Committee shall be composed of:

- (a) At least two members from the seafood industry;
 - (b) At least one member from a municipality;
 - (c) At least one member from a real estate interest; and;
 - (d) One other member from the community not actively engaged in the seafood industry.
- (2) A representative of the Maryland Watermen's' Association and a representative of the State of Maryland Department of Natural Resources shall be appointed by the Queen Anne's County Commissioners to serve as ex officio, nonvoting members of the Committee. In any dispute, if requested by the Committee, or if in their own opinions their participation is helpful, they may present facts and educational information to the Committee and make recommendations. Their recommendations shall be considered by the Committee.
- C. The Committee members shall serve four-year terms; however, the initial appointments shall be staggered.
- D. The Committee shall meet at least one time per year. Members shall serve as volunteers with no monetary compensation.

§ 19-16. Resolution of disputes and procedure for complaints; investigation and declaration.

A. Nuisances which affect public health.

- (1) Complaints. A person may complain to the Queen Anne's County Health Department to declare that a nuisance exists which affects public health.
- (2) Investigations. The County Health Officer or his agent or designee may investigate any complaint of nuisance received against a seafood operation. When a previous complaint involving the same condition resulted in a determination by the Health Officer that a nuisance condition did not exist, the Health Officer may investigate the complaint, but the Health Officer may also determine not to investigate such a complaint. The Queen Anne's County Health Department may initiate any investigation without a citizen complaint.
- (3) Declaration of nuisance. If the Health Officer determines that a nuisance exists, the Health Department may declare the existence of a nuisance. In determining whether a nuisance condition exists in connection with a seafood operation, the Health Officer shall apply the criteria provided in this Part 3. Further, the Health Officer may consider the professional opinion of the Maryland Department of Natural Resources, the University of Maryland, or other qualified expert in the relevant field in determining whether the seafood operation being investigated is conducted in accordance with accepted seafood industry practices.

B. Resolution of disputes regarding seafood operations.

- (1) Should any controversy arise regarding an interference with the use or enjoyment of property from seafood industry operations conducted on any land within Queen Anne's County, the parties to that controversy shall submit the controversy to the Seafood Reconciliation Committee.
- (2) Any such controversy may be submitted in writing to the Seafood Reconciliation Committee within one year of the alleged adverse impacts.

- (3) The Seafood Reconciliation Committee will conduct its proceedings in an informal manner. The Committee has the power but is not required hereunder to hold hearings, to compel testimony under oath and to compel the production of documents. In each case, the Seafood Reconciliation Committee shall issue orders settling or otherwise resolving controversy arising out of seafood industry operations, including but not limited to the invasion of property and personal rights by seafood operations conducted on all real property within the boundaries of Queen Anne's County and all territorial waters, rivers, bays and creeks located within Queen Anne's County.
- (4) Orders of the Seafood Reconciliation Committee shall be binding on the parties as a matter of law, but their enforcement shall be suspended by operation of law if, within 30 days of the date of the Committee's judgment, a party appeals such order to the Circuit Court for Queen Anne's County.