

Engaging Community Planners and Local Elected Officials with Local Food Systems Producers to Integrate Local Food Systems into Community Plans and Policies

The Intersection of Local Food Systems and the Agricultural Exemption to Iowa County Zoning

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About the Project

Through a project¹ funded by the Leopold Center for Sustainable Agriculture at Iowa State University, community planners, local elected officials, local growers, farmers' market leaders, food distribution and aggregation business leaders, and food policy council members came together to

- Identify barriers to production, aggregation, and distribution of local foods that local governments could address through land use planning, zoning codes or other local regulations; and
- Identify policy and regulatory options that local governments can implement to capture the economic or health benefits of local food systems for their communities.

From the discussions at three focus group meetings, the following issues were identified as the most significant challenges facing the development and expansion of local food systems:

- (1) Defining and administering the agricultural exemption to county zoning found in Iowa Code 335.2.
- (2) Smart growth practices, and their impacts on agriculture in and near city limits.
- (3) Lack of recognition of local food systems as an economic development opportunity.

This bulletin presents the context and options for addressing the first issue, the agricultural exemption to county zoning.²

Local Foods Systems and the Agricultural Exemption: The Context

Iowa's County Zoning Enabling Act (Iowa Code, Chapter 335) exempts from county zoning regulations "land, farm houses, farm barns, farm outbuildings, or other buildings or structures which are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used." The Iowa Supreme Court has stated that the term

“agriculture” means “the art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock.” The courts have struggled to provide solid, predictable criteria for determining when buildings and other structures are being used for “agricultural purposes.” The Iowa courts have found that the “primary purpose and functional aspect” of the buildings is of primary importance, so that a building “primarily adapted for agricultural use by reason of the nature of the structure” will be exempt from county zoning. The courts have found exempt livestock waste stations being used in connection with hog confinement facilities and off-site grain storage facilities operated by cooperatives. Conversely, lagoons storing industrial wastewater for eventual sale and use for fertilizer have been found not to qualify for the exemption. Based on the “functional aspect” characterization, court cases have determined that the size of the operation and the entity running the operation (family farmer vs. corporate operation) are immaterial to the exemption. Qualification for the exemption must be based on a factual analysis of the use of the land or structure. An opinion issued by the Iowa Attorney General in 2001 suggests that the burden is on the party seeking the exemption (i.e., the producer) to show that the activity in question qualifies for the exemption.

The court cases decided to date all have addressed historically “typical” cash-grain or livestock agricultural activities and structures (grain bins, egg-breaking facilities, on-site livestock wastewater lagoons, etc.); however, local market farms have different land use characteristics than these operations, and therefore raise different regulatory concerns. Local market farms often produce their products on smaller parcels of land and employ more complicated and wide-ranging processing activities at the point of harvest. Moreover, the marketing and sales operations that take place on-site are different than what is customarily associated with the predominant types of agricultural operations found across Iowa. Is a harvest festival hosted by a local producer an agricultural activity eligible for exemption from county zoning? A wine-tasting room? An event hall? Counties often struggle with the regulatory issues presented by on-site processing, sales, and marketing efforts such as event hosting. Regulation of the public space for producer-hosted events can appear to local producers as needless regulation that runs afoul of the agricultural exemption, while instituting some measure of regulatory control over these activities is, in the view of county officials, legal and necessary to protect public health and safety. When written in 1947, the state code provision for the agricultural exemption did not contemplate local grower and market farms, nor has it evolved with them in mind. In short, both county officials and local producers are challenged by the uncertainty surrounding the agricultural exemption.

Local Foods Systems and the Agricultural Exemption: Policy and Regulatory Considerations

Local market farms differ from historically “traditional” agriculture in a number of characteristics:

- On-farm and value-added retail sales
- Vertical integration of food-chain operations on-site (production, processing, sales)
- Warehousing, processing, or sales that serve other farming operations in addition to those of the landowner
- Agritourism and event-related marketing (corn mazes, festivals, hayrides, wedding hosting, etc.)

Other states have wrestled with defining “agriculture” and “agricultural purposes” for these types of uses for a variety of reasons. Courts in Ohio and Pennsylvania, for example, have addressed whether recreational hayrides qualify as “agricultural activities,” with different results (Ohio, no; Pennsylvania, yes). Because of the unique features of every state’s legislation, varying interpretations of similar terms by courts across the states, and the lack of helpful guidance contained in Iowa court cases decided to date, predicting how an Iowa court may apply the current exemption to any of these characteristics is not a productive exercise. Rather, county officials and local producers should engage in collaborative efforts to see that the agricultural exemption operates with fair regulatory boundaries that promote agricultural activities while simultaneously protecting public health, safety, and welfare.

A task force of city and county elected officials, planners, local food growers, public health professionals, state legislators, and other interested parties could be assembled to make recommendations to the state legislature on ways to revise the agricultural exemption language in the Iowa Code to be conducive to local market farms and provide a greater degree of uniformity in its application across the state. The task force could look to other states for terminology and interpretations thereof conducive to local market farming operations. Such a task force could provide constructive suggestions for legislative amendments, then work through the Iowa State Association of Counties, the Iowa Farm Bureau, and other associations and interest groups to bring the issue to the legislature.

Absent any activity to change state law, local county officials and producers could convene to collaboratively develop broad guidelines that are consistent with what is known about the current interpretation of the agricultural exemption and other relevant provisions of state law (such as those addressing animal slaughtering and the application of state building codes), but at the same time act as “standards” for addressing situations for which state law has not provided sufficient guidance. These standards would be designed to address the common characteristics of local market farms prevalent in their particular county.

Such standards would inform local implementation by zoning administrators and provide a framework for local producers as they develop business plans. In the focus group meetings held for this project, county zoning administrators and producers both expressed a desire for a regulatory approach that minimizes the need to ask permission or grant waivers. Producers appreciate having a staff member who can serve as a “one-stop shop” to answer all the related regulatory questions. A set of agreed-upon standards would accomplish much of what is desired by all parties. Due to the array of business models employed among local market farms and the learning curve on local food systems facing many zoning administrators, the development and maintenance of standards would need to be an ongoing process.

Conclusion

If left unaddressed, the question of how the agricultural exemption to county zoning is applied to local market farms remains a question resolved only through repeated litigation. In order to take advantage of the economic development opportunities offered by local market farms, counties and local producers must be prepared to approach the situation in a collaborative, flexible manner.

Clarification by the legislature of the agricultural exemption, with an eye toward its impact on small-scale farms would allow all of Iowa’s 99 counties to more accurately and quickly respond to requests for small growers regarding permitting for on-site processing, sales, and marketing events. The participants in the focus group meetings exhibited an intimate familiarity with the challenges facing both sides. A task force of stakeholders, such as the focus group participants, would make a valuable contribution to discussions of legislative amendments to the agricultural exemption.

¹ For further background on the project please see Bulletin 1, Introduction and Overview

² The other issues are addressed in bulletins 3 and 4

References

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Iowa Code, sec. 335.2.

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