

LOCAL FOOD AND COMMUNITY SELF-GOVERNANCE ORDINANCE

Frequently Asked Questions

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A copy of the proposed Ordinance



PROPOSED LOCAL FOOD AND COMMUNITY SELF-GOVERNANCE ORDINANCE OF 2020

AN ORDINANCE TO PROTECT THE HEALTH AND INTEGRITY OF THE LOCAL FOOD SYSTEM IN THE TOWN OF BROWNFIELD, OXFORD COUNTY, MAINE

§1. Title

This ordinance, adopted by the town of Brownfield (hereinafter “the Town”), shall be known and may be cited as the “Local Food and Community Self-Governance Ordinance.”

§2. Preamble

We, the People of the Town have the right to produce, process, sell, purchase, and consume local foods thus promoting self-reliance, the preservation of family farms, and local food traditions. We recognize that family farms; sustainable agricultural practices; and food processing by individuals, families, and non-corporate entities offer stability to our rural way of life by enhancing the economic, environmental, and social wealth of our community. As such, our right to a local food system requires us to assert our inherent right to self-government. We recognize the authority to protect that right as belonging to the Town.

We have faith in our citizens’ ability to educate themselves and make informed decisions. We hold that certain federal and state regulations unnecessarily impede local food production and constitute a usurpation of our citizens’ right to foods of their choice. We support food that fundamentally respects human dignity and health; nourishes individuals and the community; and sustains producers, processors, and the environment. We are therefore duty bound under the Constitution of the State of Maine to protect and promote reasonably unimpeded access to local foods.

All individuals have a natural, inherent, and unalienable right to acquire, produce, process, prepare, preserve, and consume the food of their own choosing for their own nourishment and sustenance. Furthermore, all individuals have a right to barter, trade, and purchase food and to save and exchange seed from the sources of their own choosing for their own physical health and well-being. Every individual is fully responsible for the exercise of these rights, which may not be infringed.

§3. Purpose

It is the policy of this State to encourage food self-sufficiency for its citizens. The purpose of the Local Food and Community Self-Governance Ordinance is to:

1. Through local control, preserve the ability of individuals and communities to save and exchange seed, to produce, process, sell, purchase, and consume locally produced foods;
2. Ensure the preservation of family farms and traditional foodways through small-scale farming, food production, and community social events;
3. Improve the health and well-being of citizens of this State by reducing hunger and increasing food security through unimpeded access to wholesome, nutritious foods by encouraging ecological farming;
4. Promote self-reliance and personal responsibility by ensuring the ability of individuals, families and other entities to prepare, process, advertise, and sell foods directly to

customers intended solely for consumption by the customers or their families;

5. Enhance rural economic development and the environmental and social wealth of rural communities; and
6. Protect access to local food through direct producer-to-consumer transactions.

§4. Definitions

As used in this ordinance, unless the context otherwise indicates, the following terms have the meanings stated below:

- A. **COMMUNITY SOCIAL EVENT:** An event where people gather as part of a community for the benefit of those gathering or for the community, including, but not limited to, a church or religious social, school event, potluck, neighborhood gathering, library meeting, traveling food sale, fundraiser, craft fair, farmers' market, agricultural fair, and other public events.
- B. **DIRECT PRODUCER-TO-CONSUMER TRANSACTION:** An exchange of local food within a local food system between a producer or processor and a patron by barter, trade, or purchase on the property or premises owned, leased or rented by the producer or processor of the local food; at roadside stands, fundraisers, farmers' markets, and community social events; or through buying clubs, deliveries or community supported agriculture programs, herdshare agreements, and other private arrangements.
- C. **LOCAL FOOD SYSTEM:** A food system that integrates food production, processing, consumption, direct producer-to-consumer transactions, and traditional foodways to enhance the environmental, economic, social, and physical health of the municipality and its residents.
- D. **LOCAL FOOD:** Any food or food product that is grown, produced, processed, or prepared by individuals who exchange that food directly with patrons.
- E. **PATRON:** An informed individual who acquires local food directly from a processor or producer.
- F. **PROCESSOR:** An individual who processes or prepares products of the soil or animals for food or drink.
- G. **PRODUCER:** A farmer or gardener who grows or raises any plant or animal for food or drink.
- H. **TRADITIONAL FOODWAYS:** The cultural, social, and economic practices related to the production and consumption of food and the conveying of knowledge regarding food production and preparation.

§5. Authority

This ordinance is adopted and enacted pursuant to the inherent, inalienable, and fundamental right of the citizens of the Town to self-government, and under the authority recognized as belonging to the people of the Town by all relevant state and federal laws including, but not limited to the following:

The Declaration of Independence of the United States of America, which declares that governments are instituted to secure peoples' rights, and that government derives its just powers from the consent of the governed.

Article I, §2 of the Constitution of the State of Maine, which declares *inter alia*: “all power is inherent in the people; all free governments are founded in their authority and instituted for their benefit, [and that] they have therefore an unalienable and inalienable right to institute government and to alter, reform, or totally change the same when their safety and happiness require it.”

Article VIII, Part Second of the Constitution of the State of Maine, which establishes Home Rule: “The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character.”

§1-A of Title 7 of the Maine Revised Statutes, which states *inter alia*: “The survival of the family farm is of special concern to the people of the State, and the ability of the family farm to prosper, while producing an abundance of high quality food and fiber, deserves a place of high priority in the determination of public policy. For this purpose there is established the Department of Agriculture, Forestry, and Conservation”

§1-B of Title 7 of the Maine Revised Statutes, which states *inter alia*: The [...] preservation of rural life and values in the State [is] to be the joint responsibility of all public agencies, local, state and federal, whose policies and programs substantially impact the economy and general welfare of people who reside in rural Maine, such as the development and implementation of programs that assist in the maintenance of family farms [...] and improve health and nutrition.

§284 of Title 7, Chapter 8-F, Maine Food Sovereignty Act, which states *inter alia*: “a municipality may adopt ordinances regarding direct producer-to-consumer transactions and the State shall recognize such ordinances by not enforcing those state food laws with respect to those direct producer-to-consumer transactions that are governed by the ordinance.”

§3001 of Title 30-A of the Maine Revised Statutes, which implements Home Rule and grants municipalities all powers necessary to protect the health, safety, and welfare of the residents of the Town where those powers have been conferred on the towns by the Legislature or not otherwise limited.

§6. Statements of Law

- A. **Right to Self-Governance.** Citizens the Town have the right to a form of governance which recognizes that all power is inherent in the people, that all free governments are founded on the people’s authority and consent.
- B. **Right to Acquire and Produce Food.** Citizens of the Town possess the right to save and exchange seed and to produce, process, sell, purchase, and consume local foods of their choosing.
- C. **Exemption from Licensure and Inspection.** The producers and processors of local food intended for direct producer-to-consumer transactions in the Town governed by this ordinance shall be exempt from state licensure and inspection. In accordance with Section 284 of the Maine Food Sovereignty Act, the State of Maine shall not enforce those state food laws, rules, or regulations with respect to those transactions as defined in Section 4. The transactions enumerated in Section 4 are governed by this ordinance and provide the context otherwise indicated as stated in Section 282 of the Maine Food Sovereignty Act

- D. Meat and Poultry.** This ordinance is not applicable to any meat or poultry products that are required to be produced or processed in compliance with the Maine Meat and Poultry Inspection Program.

This ordinance is applicable to shared animal ownership agreements in compliance with the federal acts as defined in Title 22, Chapter 562-A, §2511 of the Maine Revised Statutes and similar private contractual agreements, herdshare agreements, and buying clubs.

- E. Liability Protection.** Producers and processors of local food may enter into private agreements with patrons to waive any liability for the consumption of local food .

§7. Civil Enforcement.

Any individual citizen of the Town shall have standing to enforce any rights secured by this ordinance which have been threatened or contested by any person, whether natural or juridical, and may seek relief both in the form of injunctive and compensatory relief from a court of competent jurisdiction.

§8. Effect

This ordinance shall be effective immediately upon its enactment.

§9. Severability Clause

To the extent any provision of this ordinance is deemed invalid by a court of competent jurisdiction, such provision will be removed and the balance of the ordinance shall remain valid.

§10. Repealer

All inconsistent provisions of prior ordinances adopted by the Town are hereby repealed, but only to the extent necessary to remedy the inconsistency.

§11. Human Rights and Constitutionality

Nothing in this ordinance shall be construed as authorizing any activities or actions that violate human rights protected by the U.S. Constitution or the Constitution of the State of Maine.

§12. Mutual Recognition and Inter-municipal Government Collaboration

The Town hereby recognizes producers and processors of local foods in other municipalities that have also adopted a Local Food and Community Self-Governance Ordinance. Those producers and processors of local foods from other municipalities operating under a similar ordinance may also operate under this ordinance.

Frequently Asked Questions (FAQs)

- **Does the Town incur any liability by adopting the LFCSGO?**

No. The Town is immune from liability under the Maine Tort Claims Act. The Maine Municipal Association (MMA) responded to this question when the town of Solon requested a response in 2016:

"[...We] do not see any direct liability for the Town if the Town chose to adopt the ordinance. [...] In the event someone was injured or made a tort claim against the Town because they bought unlicensed food from a producer, the adoption of the ordinance would be a 'legislative act' for which the Maine Tort Claims Act provides immunity for the Town. 14MRS §8104-B."

- **Are there any costs incurred by a town with an ordinance?**

No. There is no requirement for licensure, inspection, or enforcement of non-compliance as there are no requirements for facilities.

- **Now that Maine has a food sovereignty Law, is it really necessary to adopt a municipal food ordinance?**

Yes. The Maine Food Sovereignty Act (MFSA) states that "a municipality may adopt ordinances regarding direct producer-to-consumer transactions and the State shall recognize such ordinances by not enforcing those state food laws with respect to those direct producer-to-consumer transactions that are governed by the ordinance." This only applies if a town 'opts in' by adopting an ordinance. This gives the town the opportunity to decide for itself what kind of local food system it wants and to enact local law as the town's legislative body. Essential to local control is exercising municipal authority.

- **Who created the ordinance?**

The original ordinance was drafted in 2010 by a group of five people comprised of farmers, farm patrons and farm workers. The group learned from the experience of townspeople in Shapleigh and Newfield, Maine who had adopted rights-based ordinances to protect their water resources from Nestlé's test drilling. They also drew from language being considered in Wyoming's first efforts toward a food freedom

law. Eventually, the group sought legal counsel from the Farm-to-Consumer Legal Defense Fund and local lawyers understanding of its efforts. When the ordinances began passing, the group named itself Local Food Rules (LFR) and is now a loose network of advocates across the state in nine counties where the LFCSGO has already been adopted.

The ordinance was revised by Local Food Rules members working closely with Rep. Craig Hickman, a co-sponsor of the MFSA, to accurately reflect the intent of the newly enacted law in the revised LFCSGO.

Visit LFR's website (localfoodrules.org) for additional information and resources.

- **What are the concerns about food safety?**

There are no absolute guarantees in any system and despite the vast array of FDA, USDA, and other governmental agencies oversight, there continue to be food safety problems in the industrial food chain. The source of the food, the number of hands touching the food, and the processing of the food all exacerbate the problem of maintaining food safety.

The distribution chain in a face-to-face transaction has only one link and the traceability of a problem is clear and direct. In addition, the number of individuals possibly exposed is minimized.

Food safety is always a concern and producing local food under the ordinance does not relieve anyone of personal responsibility or protect a producer from liability. That being said, the direct exchange of food between people is nothing new—it happens every time friends share a meal. There is an inherent bond of trust that exists when people know each other.

- **How can farmers' markets be included in the revised LFCSGO when the MFSA defines a "direct producer-to-consumer transaction" as "a face-to-face transaction [...] at the site of production?"**

The template is written to be broadly applicable and is designed to be customized by municipalities (a few towns have chosen not to include farmers' markets). Under the MFSA, the State of Maine is required to recognize municipal ordinances by "not enforcing those state food laws with respect to those direct producer-to-consumer transactions *that are governed by the ordinance.*"

The MFSA definition of a direct producer-to-consumer transaction includes the words "at the site of production." The MFSA definition of "State food law" says "any provision of this Title [referring to the MFSA itself] or Title 22 that regulates direct producer-to-consumer transactions." As the definitions are provisions of the MFSA, "Any provision of

this Title” in the definition of State food law, makes a difference because MFSA §284 says that “the State shall recognize such ordinances by not enforcing those state food laws with respect to those direct producer-to-consumer transactions that are *governed by the ordinance*.” This is the provision of the MFSA that regulates those transactions and it cedes governance to the ordinance. The result is that an ordinance may allow transactions beyond the site of production.

- **Are farmers’ markets required to change their policies to include producers and processors operating under the LFCSGO?**

No. A farmers’ market is a private association governed by its own bylaws. Nothing in the LFCSGO should be construed to either prohibit or require a specific producer or processor’s participation in a farmers’ market. These decisions remain under the oversight of farmers’ markets.

- **What about meat and poultry?**

The USDA threatened to take over Maine’s meat inspection program in August of 2017 if the state of Maine recognized local control regarding direct producer-to-consumer transactions that included meat and poultry. The food sovereignty law was then amended to recognize state authority to license and inspect meat production. The LFCSGO does not apply to any meat or poultry products that are required to be produced or processed in compliance with the Maine Meat and Poultry Inspection Program. The LFCSGO does apply to shared animal ownership agreements such as herdshare agreements, buying clubs, or other private contractual agreements.

- **Isn’t there a 1000 bird exemption for poultry?**

Yes. In 2013, Maine enacted the 1,000 Bird Exemption. There is not currently a facilities requirement to operate under the exemption, but processors must register with the State and there are requirements for processing and labeling included in the law. The statute can be found at:

<http://legislature.maine.gov/statutes/22/title22sec2517-C.html>

More information on the requirements of the exemption can be found in this three-page document:

http://www.maine.gov/dacf/qar/inspection_programs/documents/Fewer%20than%201000%20Bird%20Exemption.pdf