

**TOWNSHIP OF UPPER MACUNGIE**

**LEHIGH COUNTY, PENNSYLVANIA**

**ORDINANCE NO. 2018 -01**

[Duly Adopted Month, Day, Year]

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE TOWNSHIP OF UPPER MACUNGIE, LEHIGH COUNTY, PENNSYLVANIA, AMENDING CHAPTER 27 (ZONING) OF THE CODE OF THE TOWNSHIP OF UPPER MACUNGIE, KNOWN AS THE UPPER MACUNGIE TOWNSHIP ZONING ORDINANCE AND THE SECTIONS OF CHAPTER 27 AS HEREINAFTER SET FORTH. SPECIFICALLY, THIS ORDINANCE AMENDS;

**SECTION §27-202.**

**TERMS DEFINED**

**SECTION §27-306**

**TABLE OF PERMITTED USES BY DISTRICT**

**SECTION §27-403.4**

**ADDITIONAL REQUIREMENTS FOR ACCESSORY USES (AGRITAINMENT)**

ALL OF WHICH ARE FULLY SET FORTH IN THE BODY OF THIS ORDINANCE AND ALL OF WHICH ARE IN ACCORDANCE WITH THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE, ACT 247 OF 1968, P.L. 805, NO. 247, AS REENACTED AND AMENDED, 53 P.S. §10609.

**WHEREAS**, the Municipalities Planning Code (MPC) “ensure[s] that municipalities enact zoning ordinances that facilitate the present and future economic viability of existing agricultural operations in this Commonwealth and do not prevent or impede the owner or operator’s need to change or expand their operations in the future in order to remain viable.” 53 P.S. § 10105;

**WHEREAS**, the Municipalities Planning Code (MPC) precludes a municipality from enacting a zoning ordinance that regulates the activities related to commercial agricultural production if it exceeds the requirements under the Right to Farm Act or the Agricultural Area Security Law. 53 P.S. § 10603(b), (h);

**WHEREAS**, the Municipalities Planning Code (MPC) requires that “[z]oning ordinances shall encourage the continuity, development and viability of agricultural operations. Zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present unless the agricultural operation will have a direct adverse effect on the public health and safety. Nothing in this subsection shall require a municipality to adopt a zoning ordinance that violates or exceeds the provisions of the [Nutrient Management Act (NMA), Agricultural Area Security Law (AASL), or the Right to Farm Act (RFL)].” 53 P.S. § 10603(h);

**WHEREAS**, the Right to Farm Act defines a normal agricultural operation in broad and anticipatory terms to include the “activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities” and “includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry.” 3 P.S. § 952;

**WHEREAS**, the Right to Farm Act defines an agricultural commodity to include:

Any of the following transported or intended to be transported in commerce:

- (1) Agricultural, aquacultural, horticultural, floricultural, viticultural or dairy products.
- (2) Livestock and the products of livestock.
- (3) Ranch-raised fur bearing animals and the products of ranch-raised fur bearing animals.
- (4) The products of poultry or bee raising.
- (5) Forestry and forestry products.
- (6) Any products raised or produced on farms intended for human consumption and the processed or manufactured products of such products intended for human consumption. 3 P.S. § 952;

**WHEREAS**, the Right to Farm Act mandates that direct commercial sales of agricultural commodities by a landowner be a permitted by right use and precludes a municipality from regulating normal agricultural operations as a nuisance. 3 P.S. § 953;

**WHEREAS**, the Agricultural Area Security Law precludes a municipality from enacting “ordinances which would unreasonably restrict farm structures or farm practices” 3 P.S. § 911;

**WHEREAS**, the Pennsylvania Farmland and Forest Land Assessment Act of 1974 allows an owner of agricultural land to engage in direct commercial sales, recreational and agritainment activities on the tract without losing eligibility for the preferential tax program. 72 P.S. § 5490.2, .3(f), .8(f);

**WHEREAS**, the Pennsylvania General Assembly amended the Liquor Code in 1994 to recognize the “interest of promoting tourism and recreational development in Pennsylvania” through limited winery licenses. 47 P.S. § 5-505.2(a) and notes;

**WHEREAS**, Section 27-108 of the Upper Macungie Township Zoning Ordinance provides that “the Board of Supervisors may amend, challenge or repeal any or all portions of this Chapter on its own motion or upon agreeing to hear a written request for any person, entity or the Planning Commission.”; and

**WHEREAS**, the Upper Macungie Township Board of Supervisors has identified certain definitions; certain uses and certain requirements related in whole, or in part, to Agritainment which need defining and amending and/or updating; and

**WHEREAS**, the Upper Macungie Township Board of Supervisors finds that the proposed amendments will promote, protect and facilitate the public health, safety and welfare; and

**WHEREAS**, pursuant to Section 609 of the Municipalities Planning Code, 53 P.S. § 10609, the Township of Upper Macungie is authorized and empowered to enact amendments to the Upper Macungie Township Zoning Ordinance after public hearing thereon pursuant to public notice; and

**WHEREAS**, the Board of Supervisors of the Township of Upper Macungie has conducted a public hearing pursuant to public notice concerning the following amendments to the Upper Macungie Township Zoning Ordinance; and,

**WHEREAS**, after public hearing pursuant to public notice, the Board of Supervisors of the Township of Upper Macungie desires to ordain and enact the amendments to the Upper Macungie Township Zoning Ordinance set forth hereinafter.

**NOW THEREFORE, BE IT ORDAINED AND ENACTED** by the Board of Supervisors of the Township of Upper Macungie, County of Lehigh, Commonwealth of Pennsylvania, as follows:

## **SECTION 1. DELETIONS, AMENDMENTS, INSERTIONS AND CHANGES**

The following Sections denoted by Section numbers are **amended**, with such amendments being denoted by bold underlining. (**bold underlining**)

The following Sections or parts thereof denoted by Section numbers are **added**, with such additions being denoted by the word “**NEW**” preceding the addition which shall be denoted by bold text (**bold text**).

The following Sections or parts thereof denoted by Section numbers are **deleted**, with such deletions being denoted by brackets and strikethrough (~~strikethrough~~).

For purposes of Codification, all Sections noted herein follow the Sections as set forth in the Code of Ordinance of the Township of Upper Macungie, revised through October 1, 2009.

## **SECTION 2. BODY OF THE ORDINANCE**

**A. Section 27-202. Terms Defined.**

**“NEW” AGRITAINMENT:**

**An accessory use customarily associated with an Agriculture use and incidental to it located on the same parcel as the principal Agriculture use or an adjacent parcel owned by the same person(s) or a member(s) of their immediate family (spouse, sibling, child, grandchild, parent, grandparent), including associated off-street parking areas on those properties. The use provides a combination of entertainment, education, recreation, and/or active involvement elements with experiences and characteristics related to the Agriculture use and operation of the property. Such Agritainment use(s) must be directly related to, remain secondary and clearly incidental to, and be compatible with, the principal Agriculture use and operations.**

**B. Section § 27-306 Table of Permitted Uses by District.**

Types of Uses (See definitions in Part 2)	Residential Districts							
	RU3	RU1.5	R1	R2	R3	R4	R5	OSP
Accessory Uses								
<b>“NEW” Agritainment (§ 27-403)</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>N</b>	<b>N</b>	<b>N</b>

Types of Uses (See definitions in Part 2)	Business Districts					
	NC	HC	LI	LI(L)	GI	RT
Accessory Uses						
<b>“NEW” Agritainment (§ 27-403)</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>N</b>

**C. Section §27-403. Additional Requirements for Accessory Uses.**

**Section §27-403.4. Special Standards.** Each accessory use shall comply with all of the following standards listed for that use:

**“NEW” Agritainment.**

- (1.) Use. The use(s) shall, individually and in the aggregate, be purely accessory and incidental to an Agriculture use and shall not become the primary use of the parcel(s)
- (2.) A site plan which clearly depicts each use and activity shall be provided with the application. The site plan shall also comply with Section §27-117. The site plan shall identify the location of Agritainment activities, farm buildings, dwellings, existing and proposed driveways, access drives, parking areas and vehicle turn around areas shall be provided with the Conditional Use Application.
- (3.) The Agritainment use(s) shall be operated by the owner of the property or a member of his/her immediate family (spouse, sibling, child, grandchild, parent, grandparent), or by an operator of the Agricultural use, or by an occupant of the Agriculture use upon which it is located.
- (4.) Setback Distances:
  - a. Activities that involve patrons harvesting fruits, vegetables, or other crops in their natural state are not required to be setback from property lines.
  - b. Activities (including parking areas) or structures, included for use as an Agritainment Use shall comply with the following minimum setback distances.

Front Yard: 50 feet

Side Yard: 100 feet from a lot line of a residential use

50 feet from a lot line of all other uses

Rear Yard: 100 feet from a lot line of a residential use  
50 feet from a lot line of all other uses

All Yards: 400 feet from any existing residence not owned by  
the applicant

- c. The above setback distances shall not apply to any existing structures upon the property utilized as a component of any activities offered within the context of an Agritainment Use.

(5.) Maximum Lot Coverage:

Maximum Building Coverage: 25%.

Maximum Impervious Surface: 40%.

- (6.) Screening Requirements: During the Conditional Use Process, The Township may require the applicant to install a 15-foot wide vegetative screen along the property line that abuts any parking area. The retention of existing vegetation and/or a natural crop buffer, if applicable, may be included as part of the required vegetative screen.

- (7.) No portion of the site containing the farm-based entertainment activity shall be subdivided from the parent tract.

- (8.) Activities which attract, or are expected to attract, more than fifty (50) persons on any given day shall not be conducted or occur on more than forty-five (45) calendar days in a calendar year.

- (9.) Prime Agricultural Soils shall be identified by the applicant. No areas of prime agricultural soil shall be occupied by an activity in a way that renders the land incapable of being converted to agricultural use.

- (10.) The Township shall establish a maximum period of time during which the activity may occur, based upon the potential of disturbance to the neighboring properties and

- possible traffic congestion. In so doing, the Township may limit duration and/or hours of operation.
- (11.) The applicant shall provide an estimate of the maximum number of persons who may be present on a property at any one time to the Township during the conditional use. The property owner or/or operator shall develop procedures to keep a reasonably accurate tally of the number of such persons who are present at any given time, and shall ensure that the maximum number is not exceeded.
- (12.) Minimum Parcel Size. Agritainment shall be conducted on agricultural operations having at least 10 acres.
- (13.) Access. Driveway entrances and exits for the public shall require a driveway permit.
- (14.) Noise. The use shall meet the environmental protection requirements of Part 5 (particularly § 27-508, Noise), except that when the use is located in a residential district, the maximum sound levels in § 27-508 shall be reduced by 10 dBA.
- (15.) Lighting. Pole-mounted lights shall not exceed 25 feet in height and shall be shielded and directed towards the interior of the site.
- (16.) Exterior Storage. All exterior storage and display of items related to the Agritainment use that are located within 100 feet of the lot line of a residential use shall be screened from public view in accordance with 27-803.
- (17.) Conversions. All structures constructed for the Agritainment use shall be of the nature that they can reasonably be converted to accommodate a permitted agricultural use, or shall be removed upon the close of the activity.
- (18.) Temporary Structures. Any structures that are temporary in nature and are used in conjunction with the Agritainment activities shall be removed not later than 28 days after the last scheduled date of the activity or event. Such structures may be relocated

- to a designated and screened storage area on another portion of the parcel. This provision shall not apply to utilities and fences.
- (19.) Inspections. The applicant shall demonstrate that structures to be occupied by the public shall not pose any danger to life or safety due to fire, collapse, panic, or similar danger. Annual Fire Safety Inspections of grounds and structures are required a minimum of 30 days prior to commencement of an Agritainment event or use.
- (20.) Parking. In addition to all off-street parking spaces required in connection with the primary Agriculture uses, the property shall provide at least one off-street parking space for every two persons anticipated to be present in connection with Agritainment uses at that time in a calendar year when the number of such persons is greatest.
- (21.) Entrance paving. The Township may require a paved apron or a tire cleaning pad at any or all entrances/exits to prevent tracking of mud or debris onto any public roadway, and shall so require a paved apron or a gravel scraping area whenever the Agritainment uses attract more than three hundred (300) vehicles per day on three (3) or more occasions during a calendar year.
- (22.) Collection of Admission or Parking Fees. Any booth or other structure used for the collection of admission and/or parking fees shall be set back and arranged to prevent vehicle back-ups on adjoining roads during peak arrival periods. Any other collection of fees (*e.g.*, roaming parking lot attendants) shall be accomplished in a manner to prevent vehicle back-ups on adjoining roads.
- (23.) Signs. See Part 7. The total number and size of signs for both the principal Agriculture use of the property and the Agritainment use of the property, shall not exceed the maximums established for the most restricted permitted principal

nonresidential use in the zoning district.

- (24.) Other Sales. Sales of goods and merchandise other than food is limited to those items that are produced on the premises, or are customarily incidental to the Agriculture use(s) and directly related thereto, such as incidental souvenirs. The total area devoted to such retail sales shall not exceed two thousand (2,000) square feet.
- (25.) Traffic. The Township may require the applicant to prepare a plan for controlling traffic and circulation on the site and at streets and intersections within one mile of the site that are anticipated to be used by patrons traveling to and from the site. The Township may also require that applicant to provide qualified traffic-control personnel and to reimburse the Township for any unusual municipal expense it incurs in controlling traffic due to the activity
- (26.) Control of Litter. The Township may require the applicant to prepare a plan for the removal of litter (on-site and off-site).
- (27.) Public Safety Services. The Township may require the applicant to prepare and implement a plan for the provision of adequate public safety services, including trained volunteers and paid professionals, whether public or private. These plans shall be reviewed and approved by the Planning Director, and filed with the local law enforcement agency, servicing fire company, and emergency medical services provider at least thirty (30) days before the commencement of the Agritainment activities or any change in the plan.

### **SECTION 3. EFFECTIVE DATE**

This Ordinance shall become effective five (5) calendar days after the date of enactment.

### **SECTION 4. SEVERABILITY**

In the event that any provision, section, sentence, clause or part of this ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this ordinance, it being the intent of this Township that such remainder shall be and shall remain in full force and effect.

**SECTION 5. REPEALER**

All other Ordinances or parts of Ordinances inconsistent herewith shall be and the same expressly are repealed.

**ENACTED AND ORDAINED** the \_\_\_\_\_ day of June, 2017 by the Board of Supervisors of the Township of Upper Macungie, Lehigh County, Pennsylvania, in a lawful session duly assembled.

**ATTEST:**

**TOWNSHIP OF UPPER MACUNGIE  
LEHIGH COUNTY, PENNSYLVANIA  
BOARD OF SUPERVISORS**

\_\_\_\_\_  
**Secretary**

\_\_\_\_\_  
**Chairman**