

TOWNSHIP OF UPPER MACUNGIE

LEHIGH COUNTY, PENNSYLVANIA

ORDINANCE NO. 2018 -0__

[Duly Adopted _____, 2018]

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 AND AGRITOURISM)

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 who produces not less than 50% of the commodities sold be a permitted by right use and precludes a municipality from regulating normal agricultural operations as a nuisance. 3 P.S. § 953(b);

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 Agritourism which are in need of 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 not customarily associated with an Agriculture use but that which retains a nexus to the agricultural operation that serves the property as a principal use. Agritainment shall be incidental to the principal agricultural operation and shall be located on the same parcel 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 those owned, in whole or in part, by entities (corporations, LLCs, partnerships) controls by the operator of the agricultural operation and the immediate family members thereof, including associated off-street parking areas on

those properties.

Activities conducted on an agricultural operation that are offered to the public or invited groups for the primary purpose of providing entertainment and/or recreation experiences. Examples of these activities include, but are not limited to:

Agricultural seasonal fairs/festivals, children's activities, corn and crop mazes, petting zoos, haunted activities,; company picnics, weddings, lawn games, hot-air balloon rides, bounce pillows, bouncy ball, football, basketball, or base-ball toss, corn, or other items at targets, yoga and other fitness activities including distance runs/races, slides, mini-golf, ladder golf, duck races, sand pit, spider web, tether ball stationary target paintball; air or propane cannons shooting apples or other fruit; non-motorized vehicles (e.g. pedal carts), and other activities that combine an agricultural setting with entertaining or recreational activities, including Agritourism activities.

Notwithstanding the preceding paragraph, Agritainment shall not include

Automated rides, carnivals, circuses, rodeos, year round fairs and festivals, games of chance, gasoline powered motorized go-carts or other gasoline motorized racing vehicles, off-road vehicle driving areas, guns and firearms shooting ranges, paint ball (excluding target ranges), catering/providing hot or cold meals and/or refreshments for off-site consumption for a fee), ~~air or propane cannons shooting apples~~, dog parks, flea markets, organized sporting events and tournaments, laser tag, flashlight tag, golf courses, golf driving ranges, zip-lining courses and canopy tours (excluding zip lines of minimal height and distance strictly intended for children), swimming pools; water slides and areas, amusement or theme park activities, ticketed or paid admission live or recorded amplified outdoor music concerts or theatrical performances (excluding strolling characters or "haunted characters"), any drive-through use, or any use similar to these

prohibited uses, regardless of any agricultural theming, elements, or connections.

“NEW” AGRITOURISM:

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 those owned, in whole or in part, by entities (corporations, LLCs, partnerships) controls by the operator of the agricultural operation and the immediate family members thereof, including associated off-street parking areas on those properties.

Activities conducted on an agricultural operation that are offered to the public or invited groups for the purpose of providing direct sales, educational, entertainment and/or recreation experiences. Examples of these activities include, but are not limited to:

(a) Farm markets, Christmas tree farms/cut your own, pick your own/direct commercial sale operations, food and drink sampling, sales and concessions, ice cream shops/bakeries, farm dining, breweries, cideries, distilleries, wineries and other activities that directly market agricultural commodities produced by the farmer in their natural or manufactured state and as permitted and protected under the Right to Farm Act;

(b) Farm tours, seminars, interactive animal displays, youth camps, school tours, farm-related museums, garden/nursery tours, winery, brewery, cidery, and distillery tastings; tasting events and tours, background music (non-paid admission), agricultural exhibits/tours, rides pulled by a tractor or other farm equipment including hayrides and wagon rides, crop identification programs, nutritional programs, culinary exhibits, display gardens, cooking contests, and other activities that involve bringing people to a farm to

provide education about farming, food production and farm life,

(c) Notwithstanding the preceding paragraph, Agritourism shall not include those uses either permitted or prohibited under the definition of Agritainment.

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								
“NEW” Agritainment (§ 27-403)	C	C	C	C	C	N	N	N
“NEW” Agritourism	P	P	P	P	P	N	N	N

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

“NEW” Agritourism	P	P	P	P	P	N
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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) **An operator of an Agricultural use that has engaged in and upon Agritainment upon properties which can be identified as existing prior to the date of enactment of this Ordinance may continue to engage in those Agritainment activities upon those properties subject to the restrictions and requirements set forth herein. This provision specifically precludes properties or parcels that may be owned by an operator but upon which Agritainment is not currently conducted.**
- (3) **A site plan prepared in compliance with Section 27-117 and that identifies the location of Agritainment activities, farm buildings, dwellings, existing and proposed driveways, access drives, parking areas and vehicle turn around areas shall be provided.**

(4) 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.

(5) Setbacks.

(a) Agritainment activities occurring within a crop area that provides a natural buffer, such as a corn maze, orchard trees or grape vines, shall be located not less than 25 feet from any residential property line. This requirement shall be increased to a distance of ~~one~~three-hundred (~~100~~300) feet for any “haunted” activities or those that involve and man-made or special effects creating noise, light or smoke.

(b) Agritainment activities that occur in buildings shall be set back in accordance with applicable setbacks for accessory use buildings in the district.

(6) No portion of the site containing Agritainment activities shall be subdivided from the parent tract.

(7) 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.

- (8) **Agritainment activities shall not begin before 8 a.m. and shall terminate no later than 10 p.m..**
- (9) **Minimum Parcel Size.** Agritainment shall be conducted on agricultural operations having at least 10 acres.
- (10) **Lighting.** Pole-mounted lights shall not exceed 25 feet in height and shall be shielded and directed towards the interior of the site.
- (11) **Exterior Storage.** All exterior storage of items related to the Agritainment use that are located within 100 feet of the lot line of a residential use shall be screened in accordance with 27-803.
- (12) **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.
- (13) **Temporary Structures.** Any structures that are temporary in nature and are used in conjunction with the Agritainment activities shall be removed not later than twenty-eight (28) days after the last scheduled date of the activity or event. As an alternative to removal of said structures, said 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.
- (14) **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. Life and Safety Inspections of grounds and structures are required annually.

- (15) **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.
- (16) **Entrance paving.** The Township may require a paved apron or a gravel scraping area 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.
- (17) **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.
- (18) Retail Sales.** The total area allocated to retail sales or the sale

of goods and merchandise such as souvenirs, gifts, trinkets and accessory items shall not exceed four thousand (4,000) square feet of total gross floor area, excluding storage areas and other areas not accessible by the general public. Retail Sales shall not include the direct commercial sale of Agricultural Commodities, as defined and to the extent permitted in and under the Right to Farm Act (Title 3 P.S. § 952 and Title 3 P.S. § 953(b)).

(19) Propane Cannons.

(a) Any activity utilizing Propane Cannons shooting fruit, vegetables other projectiles is limited to shooting at stationary targets.

(b) The targets used for these activities shall of non-metallic material.

(18) (c) Propane Cannons used for Agritainment purposes shall be outfitted with noise suppressors or silencers.

(19)(20) Traffic. The Township may require the applicant to prepare a plan for controlling traffic and circulation on the site at the expense of the Applicant. The Township may also require that applicant to provide qualified traffic-control personnel at the expense of the Applicant.

(20)(21) Control of Litter. The Township may require the applicant to prepare a plan for the removal of litter (on-site and off-

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site).

~~(21)~~(22) The owner or operator of an Agritainment use shall maintain a current emergency contingency plan and provide the plan to the Township.

“NEW” Agritourism.

- (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) An operator of an Agricultural use that has engaged in and upon Agritourism activities and which can be identified as existing prior to the date of enactment of this Ordinance may continue to engage in those Agritainment activities subject to the restrictions and requirements set forth herein.
- (3) A site plan prepared in compliance with Section 27-117 and that identifies the location of Agritourism activities , farm buildings, dwellings, existing and proposed driveways, access drives, parking areas and vehicle turn around areas shall be provided.
- (4) The Agritourism 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.

- (5) **Setbacks.**
 - a. **Agritourism activities that involve patrons harvesting fruits, vegetables, or other crops in their natural state are not required to be setback from property lines.**
 - b. **Agritourism activities occurring within a crop area that provides a natural buffer, such as a corn field, orchard trees or grape vines, shall be located not less than 25 feet from any residential property line.**
 - c. **Agritourism activities that occur in buildings shall be set back in accordance with applicable setbacks for accessory use buildings in the district.**
- (6) **No portion of the site containing Agritourism shall be subdivided from the parent tract.**
- (7) **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.
- (8) **With the exception of direct commercial sales of agricultural commodities as defined in the Right to Farm Act (Title 3 P.S. § 953(b), Agritourism activities shall not begin before 8 a.m. and shall terminate**

no later than 10 p.m.

- (9) **Minimum Parcel Size.** Agritourism shall be conducted on agricultural operations having at least 10 acres.
- (10) **Lighting.** Pole-mounted lights shall not exceed 25 feet in height and shall be shielded and directed towards the interior of the site.
- (11) **Exterior Storage.** All exterior storage of items related to the Agritourism use that are located within 100 feet of the lot line of a residential use shall be screened in accordance with 27-803.
- (12) **Conversions.** All structures constructed for the Agritourism 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.
- (13) **Temporary Structures.** Any structures that are temporary in nature and are used in conjunction with the Agritourism activities shall be removed not later than 28 days after the last scheduled date of the activity or event. In the alternative of removing said structures, said 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.
- (14) **Inspections.** The operator 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. Life and Safety Inspections of grounds and structures are required annually.

- (15) **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 Agritourism uses at that time in a calendar year when the number of such persons is greatest.
- (16) **Entrance paving.** The Township may require a paved apron or a gravel scraping area 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 Agritourism uses attract more than three hundred (300) vehicles per day on three (3) or more occasions during a calendar year.
- (17) **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.
- (18) **Retail Sales.** The total area allocated to retail sales or the sale of goods and merchandise such as souvenirs, gifts, trinkets and

accessory items shall not exceed four thousand (4,000) square feet of gross floor area, excluding storage areas and other areas not accessible by the general public. Retail Sales shall not include the direct commercial sale of Agricultural Commodities, as defined and to the extent permitted in and under the Right to Farm Act (Title 3 P.S. § 952 and Title 3 P.S. § 953(b)).

- (19) **Traffic.** The Township may require the applicant to prepare a plan for controlling traffic and circulation on the site. The Township may also require that applicant to provide qualified traffic-control personnel.
- (20) **Control of Litter.** The Township may require the applicant to prepare a plan for the removal of litter (on-site and off-site).
- (21) **The owner or operator of an Agritourism use shall maintain a current emergency contingency plan and provide the plan to the Township.**

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, 2018 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