

RESOLUTION NUMBER 2016-117

A RESOLUTION TO ADOPT THE RIGHT TO FARM, RANCH AND PRACTICE
FORESTRY POLICY

WHEREAS, Section 27-30-101, MCA protects an agricultural or farming operation from being deemed a nuisance as a result of changed land uses around an operation; and

WHEREAS, Section 45-8-111, MCA protects an agricultural or farming operation from being deemed a nuisance as a result of changed land uses around an operation; and

WHEREAS, Section 76-2-901, MCA protects the rights of farmers and ranchers from nuisance ordinances; and

WHEREAS, The 2016 Missoula County Growth Policy includes guiding principles, goals, objectives and action plans that promote, support, enhance, and protect farming, ranching and forestry in Missoula County; and

WHEREAS, the Board of County Commissioners signed a letter in support of consideration for adoption of a "Right to Farm" ordinance on November 21, 2012 which was reconfirmed at a public hearing regarding agricultural standards in the subdivision regulations held January 13, 2016; and

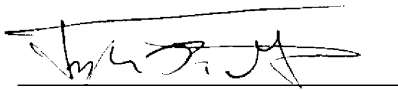
WHEREAS, a public hearing was duly advertised and held by the County Commissioners of Missoula County on August 24, 2016, in order to give the public an opportunity to be heard regarding such proposed policy; and

WHEREAS, the Board of County Commissioners finds that the Right to Farm, Ranch, and Practice Forestry Policy attached hereto is the public interest;


NOW THEREFORE BE IT RESOLVED that the Board of County Commissioners of Missoula County adopt the Right to Farm, Ranch, and Practice Forestry Policy as shown in Exhibit A.

PASSED AND ADOPTED THIS 24th DAY OF AUGUST 2016

ATTEST:


Tyler R. Gernant, Clerk and Recorder

BOARD OF COUNTY COMMISSIONERS OF
MISSOULA COUNTY

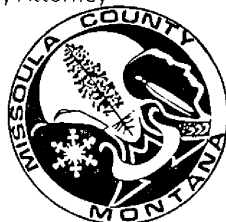

Nicole Rowley, Chair

APPROVED AS TO FORM:


John Hart, Deputy County Attorney


Jean Curtiss, Commissioner


Stacy Rye, Commissioner



Missoula County Right to Farm, Ranch, And Practice Forestry Policy

Intent. It is the intent of this policy to enhance provisions of Montana State Law related to “Right to Farm and Ranch.” This policy is not intended to replace or diminish Montana State Law regarding nuisances. Further, this policy is not to be construed in any way as modifying or abridging State or Federal Laws; rather it is only to be utilized in the interpretation and enforcement of the provisions of this policy and County regulations. It is intended that through disclosure property owners and potential purchasers will better understand the nuances of living near agricultural, ranching and forestry operations and be prepared to accept attendant conditions as the natural result of living in or near rural areas.

Policy Statement. Ranching, farming and forestry are integral elements of and necessary for the continued vitality of Missoula County’s history, economy, landscape, open space, wildlife, lifestyle and culture. Given their importance to the County and the State of Montana, it is declared the policy of Missoula County to enhance and protect ranching, farming, and forestry within the County. Missoula County will not take action to prohibit or restrict usual and customary agricultural, ranching and forestry activities on lands used for such activity.

Purpose. It is the purpose of this policy and Missoula County to:

1. Provide residents of the County proper notification of the County’s recognition and support through this policy of those persons’ or entities’ right to farm and practice farming, ranching, and forestry.
 - a. Landowners, residents and visitors must be prepared to accept the activities, sights, sounds, and odors of the county’s agricultural operations as a normal and necessary aspect of living in a County with a strong rural character and a healthy agricultural sector. The agricultural activities, sights, sounds, and odors shall not be deemed an inconvenience, eyesore or nuisance.
 - b. All persons must be prepared to encounter noises, odors, lights, mud, dust, smoke, machinery on public roads, livestock on public roads, storage and disposal of manure, and the responsible application of chemicals, fertilizers, soil amendments, herbicides, and pesticides, any one or more of which may ordinarily occur as a part of legal and responsibly managed agricultural operation. Operations may also take place at all hours of the day and night and may include the responsible use of waterways with cattle and machinery crossings.

- c. All persons must recognize the potential exposure to hazards by living in rural areas near to agricultural, ranching, and forest lands. Farm and forestry equipment, ponds, irrigation ditches, electrical powered fences, pumps and pivots, traffic, use of agricultural chemicals, territorial farm and ranch dogs, and livestock present a real threat to children and adults. Controlling children's actions is important not only for their safety, but also for the protection of agricultural, ranching and forestry operations and the livelihoods of operators.
 - d. Open irrigation waters are essential to agriculture and have legal rights of way that must not be obstructed. Open ditch operations often result in seepage and spills of storm waters at unpredictable locations and times.
2. Promote a good neighbor policy between agricultural, ranching, forest and non-agricultural and non-forest property owners by promoting this policy through a disclosure or notice statement to all existing and new residents of the potential inconveniences and discomforts which may arise from agricultural, ranching, and forestry activities.
 3. Encourage conservation and retention of productive agricultural, ranching and forest lands.
 4. Where non-agricultural land uses extend into agricultural, ranching and forest areas or exist side by side, agricultural, ranching and forestry operations are frequently the subject of nuisance complaints and on occasion have been forced to cease or curtail operations. Such nuisance complaints discourage investments in farm and forestry improvements to the County's agricultural and forestry industry as a whole. It is the purpose of this policy to reduce the loss to the County of its agricultural and forest resources by limiting the circumstances under which agricultural, ranching and forestry operations may be considered nuisances.
 5. Recognize the diversity and complexity of farming, ranching, and forestry. To facilitate diversification the County encourages, where appropriate, ancillary uses and other uses associated with agricultural, ranching, and forestry practices.

Nuisance.

1. No agricultural, ranching or forestry activity, operation, facility or appurtenances thereof, regardless of past or future changes in the surrounding area's land use or partitions and in a manner consistent with current good management practices shall be considered or become a nuisance unless the activity or practice has a substantial adverse effect on public health and safety. These practices may be subject to varying conditions which include, but are not limited to geographical location, weather, soil types and conditions, type of crop or livestock. These practices shall comply with all local, State or Federal regulations.
2. A change in crops, livestock or animal numbers does not constitute a new agricultural or forest activity and shall not be found to constitute a nuisance. This includes land lying fallow for indefinite periods of time due to conservation programs or economic conditions.

3. Missoula County shall not take action to prohibit or restrict usual and customary agricultural, ranching and forestry activities on lands used for such activity. This applies to all land use in Missoula County, including the more urban areas. Such activities are allowed 24 hours a day, 7 days a week and include, but are not limited to:
 - a. Repair, maintenance or replacement of agricultural buildings, including housing and roadside stands;
 - b. Productive use of agricultural, ranch and forest lands including, but not limited to: tilling, plowing, planting, harvesting, land management, spraying, processing or drainage; and
 - c. Repair, maintenance or replacement of fencing and fresh water ponds, irrigation and drainage ditches and structures.

Right of Practices. Missoula County recognizes an individual's right to choose the foods, crops and livestock they plant, produce, process, prepare, raise, sell, purchase, distribute, retain, preserve, store or consume in any quantity of length of time, except as otherwise prohibited by Montana State Law.

Disclosure. To the maximum extent possible, Missoula County encourages, prior to the transfer of real property by sale, exchange, gift, real estate contract, lease with an option to purchase, any other option to purchase, ground lease coupled with improvements or any other means, the delivery of the disclosure statement contained below or a copy of this county right to farm, ranch and practice forestry policy to the transferee. This is to be achieved by cooperation between the County, The Missoula County Extension Office, the local real estate organizations, and the agriculture and forestry associations, by voluntary means and when possible written agreements.

"In addition to Montana's right to farm law, MCA 27-30-101(3), or as herein modified, Missoula County maintains a right to farm, ranch and practice forestry policy. As a result of normal agricultural, ranching and forestry operation and practices, you may be subject to conditions arising from such operations, including, but not limited to odors, flies, fumes, dust, smoke, mud, light, noise, traffic, changes in appearance, the operation of machinery of any kind during any 24 hour period (including aircraft), animals, the storage and transport and disposal of manure and the application of chemical fertilizers, soils amendments, herbicides and pesticides. Missoula County has determined that the use of real property for agricultural, ranching, and forestry operations is a high priority and protected use in the County. Those conditions, inconveniences or discomforts arising from agricultural, ranching and forestry operations, if such operations are consistent with commonly accepted good management practices and comply with local, State, and Federal laws, shall not be considered a nuisance unless the activity or practice has a substantial adverse effect on public health and safety."

Interpretation of provisions. This policy shall not be construed to compromise or alter existing County, State or Federal laws.

Missoula County Right to Farm, Ranch, And Practice Forestry Policy

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