

AGRICULTURE CODE

TITLE 8. PROTECTION AND PRESERVATION OF AGRICULTURAL OPERATIONS

CHAPTER 251. EFFECT OF NUISANCE ACTIONS AND GOVERNMENTAL
REQUIREMENTS ON CERTAIN AGRICULTURAL OPERATIONS

Sec. 251.001. POLICY. Food security being essential, it is the policy of this state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. It is the purpose of this chapter to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be legally threatened, subject to suit, regulated, or otherwise declared to be a nuisance.

Added by Acts 1981, 67th Leg., p. 2595, ch. 693, Sec. 21, eff. Aug. 31, 1981.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 135 (H.B. [2308](#)), Sec. 1, eff. September 1, 2023.

Sec. 251.002. DEFINITIONS. In this chapter:

(1) "Agricultural operation" includes the following activities:

- (A) cultivating the soil;
- (B) producing crops or growing vegetation for human food, animal feed, livestock forage, forage for wildlife management, planting seed, or fiber;
- (C) floriculture;
- (D) viticulture;
- (E) horticulture;
- (F) silviculture;
- (G) wildlife management;
- (H) raising or keeping livestock or poultry, including veterinary services;
- (I) planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure; and

Text of paragraph as added by Acts 2023, 88th Leg., R.S., Ch. 586
(H.B. 2947), Sec. 1

(J) the commercial sale of animals, as defined by
Section 252.001 of this code

Text of paragraph as added by Acts 2023, 88th Leg., R.S., Ch. 711
(H.B. 2271), Sec. 3

(J) aquaculture.

(2) "Governmental requirement" includes any rule, regulation, ordinance, zoning, license or permit requirement, or other requirement or restriction enacted or promulgated by a county, city, or other municipal corporation that has the power to enact or promulgate the requirement or restriction.

Added by Acts 1981, 67th Leg., p. 2595, ch. 693, Sec. 21, eff. Aug. 31, 1981.

Amended by:

Acts 2005, 79th Leg., Ch. 18 (S.B. 734), Sec. 1, eff. May 3, 2005.

Acts 2023, 88th Leg., R.S., Ch. 135 (H.B. 2308), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 319 (H.B. 1750), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 586 (H.B. 2947), Sec. 1, eff. June 11, 2023.

Acts 2023, 88th Leg., R.S., Ch. 711 (H.B. 2271), Sec. 3, eff. June 12, 2023.

Sec. 251.003. ESTABLISHED DATE OF OPERATION. For purposes of this chapter, the established date of operation is the date on which an agricultural operation commenced agricultural operations. Added by Acts 1981, 67th Leg., p. 2595, ch. 693, Sec. 21, eff. Aug. 31, 1981.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 135 (H.B. 2308), Sec. 3, eff. September 1, 2023.

Sec. 251.004. NUISANCE OR OTHER ACTIONS. (a) No nuisance action or other action to restrain an agricultural operation may be brought against an agricultural operation that has lawfully been in operation and substantially unchanged for one year or more prior to the date on which the action is brought. A person who brings a nuisance action or other action to restrain an agricultural operation that is not prohibited by this section must establish each element of the action by clear and convincing evidence. This subsection does not restrict or impede the authority of this state or a political subdivision to enforce state law, including an enforcement action by the Texas Commission on Environmental Quality. For the purposes of this subsection, a substantial change to an agricultural operation means a material alteration to the operation of or type of production at an agricultural operation that is substantially inconsistent with the operational practices since the established date of operation.

(b) A person who brings a nuisance action or other action to restrain an agricultural operation and seeks damages or injunctive relief against an agricultural operation that has existed for one year or more prior to the date that the action is instituted or who violates the provisions of Subsection (a) is liable to the agricultural operator for:

(1) all costs and expenses incurred in defense of the action, including attorney's fees, court costs, travel, and other related incidental expenses incurred in the defense; and

(2) any other damages found by the trier of fact.

(c) This section does not affect or defeat the right of any person to recover for injuries or damages sustained because of an agricultural operation or portion of an agricultural operation that is conducted in violation of a federal, state, or local statute or governmental requirement that applies to the agricultural operation or portion of an agricultural operation.

Added by Acts 1981, 67th Leg., p. 2595, ch. 693, Sec. 21, eff. Aug. 31, 1981.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 135 (H.B. [2308](#)), Sec. 3, eff.

September 1, 2023.

Sec. 251.005. EFFECT OF GOVERNMENTAL REQUIREMENTS. (a) For purposes of this section, the effective date of a governmental requirement is the date on which the requirement requires or attempts to require compliance as to the geographic area encompassed by the agricultural operation. The recodification of a municipal ordinance does not change the original effective date to the extent of the original requirements.

(b) A governmental requirement of a political subdivision of the state other than a city:

(1) applies to an agricultural operation with an established date of operation subsequent to the effective date of the requirement;

(2) does not apply to an agricultural operation with an established date of operation prior to the effective date of the requirement; and

(3) applies to an agricultural operation if the governmental requirement was in effect and was applicable to the operation prior to the effective date of this chapter.

(c) A governmental requirement of a city:

(1) does not apply to any agricultural operation located outside the corporate boundaries of the city; and

(2) applies to an agricultural operation located in the corporate boundaries of the city only if the governmental requirement complies with Section [251.0055](#).

(c-1) Repealed by Acts 2023, 88th Leg., R.S., Ch. 319 (H.B. [1750](#)), Sec. 6, eff. September 1, 2023.

(c-2) Repealed by Acts 2023, 88th Leg., R.S., Ch. 319 (H.B. [1750](#)), Sec. 6, eff. September 1, 2023.

(d) This section shall be construed to maintain, to the limited degree set forth in this section, the authority of a political subdivision under prior law over nonconforming uses but may not be construed to expand that authority.

(e) A governmental requirement of a political subdivision of the state does not apply to conduct described by Section [42.09\(f\)](#), Penal Code, on an agricultural operation.

Added by Acts 1981, 67th Leg., p. 2595, ch. 693, Sec. 21, eff. Aug. 31, 1981. Amended by Acts 1995, 74th Leg., ch. 450, Sec. 1, eff. Aug. 28, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 18 (S.B. [734](#)), Sec. 2, eff. May 3, 2005.

Acts 2009, 81st Leg., R.S., Ch. 88 (H.B. [205](#)), Sec. 1, eff. May 23, 2009.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. [1016](#)), Sec. 9.22, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 319 (H.B. [1750](#)), Sec. 3, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 319 (H.B. [1750](#)), Sec. 6, eff. September 1, 2023.

Sec. 251.0055. LIMITATIONS ON CITY GOVERNMENTAL REQUIREMENTS APPLICABLE WITHIN CORPORATE BOUNDARIES. (a) A city may not impose a governmental requirement that applies to agricultural operations located in the corporate boundaries of the city unless:

(1) there is clear and convincing evidence that the purposes of the requirement cannot be addressed through less restrictive means and that the requirement is necessary to protect persons who reside in the immediate vicinity or persons on public property in the immediate vicinity of the agricultural operation from the imminent danger of:

- (A) explosion;
- (B) flooding;
- (C) an infestation of vermin or insects;
- (D) physical injury;
- (E) the spread of an identified contagious disease that is directly attributable to the agricultural operation;
- (F) the removal of lateral or subjacent support;
- (G) an identified source of contamination of water supplies;
- (H) radiation;

(I) improper storage of toxic materials;

(J) crops planted or vegetation grown in a manner that will cause traffic hazards; or

(K) discharge of firearms or other weapons, subject to the restrictions in Section 229.002, Local Government Code;

(2) the governing body of the city makes a finding by resolution, based on a report described by Subsection (b), that the requirement is necessary to protect public health; and

(3) the requirement is not otherwise prohibited by this section.

(b) Before making a finding described by Subsection (a)(2), the governing body of the city must obtain and review a report prepared by the city health officer or a consultant that:

(1) identifies evidence of the health hazards related to agricultural operations;

(2) determines the necessity of regulation and the manner in which agricultural operation should be regulated;

(3) states whether each manner of regulation under Subdivision (2) will restrict or prohibit a generally accepted agricultural practice listed in the manual prepared under Section 251.007; and

(4) if applicable, includes an explanation why the report recommends a manner of regulation that will restrict the use of a generally accepted agricultural practice that the manual indicates does not pose a threat to public health.

(c) A city may not impose a governmental requirement that directly or indirectly:

(1) prohibits the use of a generally accepted agricultural practice listed in the manual prepared under Section 251.007, except as provided by Subsections (a) and (b);

(2) prohibits or restricts the growing or harvesting of vegetation for animal feed, livestock forage, or forage for wildlife management, except as provided by Subsection (d);

(3) prohibits the use of pesticides or other measures to control vermin or disease-bearing insects to the extent necessary to prevent an infestation; or

(4) requires an agricultural operation be designated for:

(A) agricultural use under Section 1-d, Article VIII, Texas Constitution; or

(B) farm, ranch, wildlife management, or timber production use under Section 1-d-1, Article VIII, Texas Constitution.

(d) A city may impose a maximum height for vegetation that applies to agricultural operations only if:

(1) the maximum vegetation height is at least 12 inches; and

(2) the requirement applies only to portions of an agricultural operation located no more than 10 feet from a property boundary that is adjacent to:

(A) a public sidewalk, street, or highway; or

(B) a property that:

(i) is owned by a person other than the owner of the agricultural operation; and

(ii) has a structure that is inhabited.

(e) A governmental requirement of a city relating to the restraint of a dog that would apply to an agricultural operation does not apply to a dog used to protect livestock on property controlled by the property owner while the dog is being used on such property for that purpose.

(f) A city may require a person to provide a written management plan that meets the specifications described by Section 23.521(c), Tax Code, to establish that activities constitute an agricultural operation on the basis of being wildlife management activities.

Added by Acts 2023, 88th Leg., R.S., Ch. 319 (H.B. 1750), Sec. 4, eff. September 1, 2023.

Sec. 251.006. AGRICULTURAL IMPROVEMENTS. (a) An owner, lessee, or occupant of agricultural land is not liable to the state, a governmental unit, or the owner, lessee, or occupant of other agricultural land for the construction or maintenance on the land of an agricultural improvement if the construction is not expressly

prohibited by statute or a governmental requirement adopted in accordance with Section [251.005](#) in effect at the time the improvement is constructed. Such an improvement does not constitute a nuisance and is not otherwise subject to suit or injunction.

(b) This section does not prevent the enforcement of a state or federal statute.

(c) In this section:

(1) "Agricultural land" includes:

(A) any land the use of which qualifies the land for appraisal based on agricultural use as defined under Subchapter D, Chapter [23](#), Tax Code; and

(B) any other land on which agricultural operations exist or may take place.

(2) "Agricultural improvement" includes pens, barns, fences, arenas, and other improvements designed for:

(A) the sheltering, restriction, or feeding of animal or aquatic life;

(B) storage of produce or feed; or

(C) storage or maintenance of:

(i) implements used for management functions; or

(ii) equipment necessary to carry out agricultural operations.

Added by Acts 1997, 75th Leg., ch. 332, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 135 (H.B. [2308](#)), Sec. 3, eff. September 1, 2023.

Sec. 251.007. GENERALLY ACCEPTED AGRICULTURAL PRACTICES. The Texas A&M AgriLife Extension Service shall develop a manual that identifies generally accepted agricultural practices and indicates which of those practices do not pose a threat to public health, including a threat to public health posed by a danger listed in Section [251.0055\(a\)\(1\)](#).

Added by Acts 2023, 88th Leg., R.S., Ch. 319 (H.B. [1750](#)), Sec. 5, eff. September 1, 2023.

Sec. 251.008. CONFLICT WITH OTHER LAW. If there is a conflict between this chapter and other law, this chapter prevails. Added by Acts 2023, 88th Leg., R.S., Ch. 135 (H.B. [2308](#)), Sec. 4, eff. September 1, 2023. Added by Acts 2023, 88th Leg., R.S., Ch. 319 (H.B. [1750](#)), Sec. 5, eff. September 1, 2023.