



**GARDINER CITY COUNCIL  
AGENDA ITEM INFORMATION SHEET**



<b>Meeting Date</b>	12/04/2019	<b>Department</b>	Code Enforcement
<b>Agenda Item</b>	4.11 Consider and Approve Food Sovereignty Ordinance Choices Sent from ORC		
<b>Est. Cost</b>	N/A		

**Background Information**

Attached is a memo from the Ordinance Review Committee regarding Food Sovereignty Ordinances.

The ORC explored the creation of a local ordinance that would exempt certain producer to consumer sales from state food laws.

Out of this discussion came two choices should the City Council choose to move forward with adopting a local ordinance. Option 1 is more restrictive and limits producer to consumer sales to the actual place of production. Option 2 is more liberal and allows producer to consumer sales at farmers markets as long as the producer is present.

This agenda item is strictly a discussion matter for the City Council and should it be decided that a local ordinance is desired the ORC will fine-tune the proposed ordinance.

<b>Requested Action</b>	'I move to send Option (1 or 2) back to the Ordinance Review Committee for further review.'
<b>City Manager and/or Finance Review</b>	The City Manager recommends the above option.
<b>Council Vote/ Action Taken</b>	
<b>Departmental Follow-Up</b>	

<b>City Clerk Use Only</b>	1 <sup>st</sup> Reading _____	Advertised _____	<b>EFFECTIVE DATE</b> _____
	2 <sup>nd</sup> Reading _____	Advertised _____ w/in 15 Days	
	Final to Dept _____	Updated Book _____	Online _____

To: The City Council  
From: The Ordinance Review Committee  
Subject: Food Sovereignty Provisions  
Date: November 14, 2019

The Maine Legislature passed the Maine Food Sovereignty Act (Title 7 M.R.S.A. Chapter 8-F). This act allows (but does not require) municipalities to adopt local ordinances which exempt producer to consumer sales of certain agricultural products from state food laws. The expressed purpose of the act is to encourage food self-sufficiency for residents by making it easier for small-scale farming and food production activities.

The Ordinance Review Committee was asked to explore the creation of a local ordinance that would exempt certain producer to consumer sales from state food laws. There is ongoing "discussion" as to what the limits of the act are with respect to where and how these transactions can occur. Proponents of food sovereignty including the legislative sponsors of the act take a broad view of local authority under the act (see letter from Troy Jackson) while the Maine Municipal Association has taken the view that local authority is more limited in this regard (see MMA sample ordinance and guidance).

The Ordinance Review Committee worked with Jon Pottle to develop two alternative ordinance proposals if the City Council wants to consider adopting a local food sovereignty ordinance. The two ordinances are similar except with respect to where the sale of products can occur. Both options have similar definitions and requirements for providing notice that the product does not meet state food laws. Option 1 is more restrictive and limits producer-to-consumer sales to the actual place of production. This reflects the MMA guidance. Option 2 is more liberal and allows producer-to-consumer sales at farmers markets as long as the producer is present. This is in addition to sales at the place of production. This reflects to a limited extent the arguments made by Senator Jackson. Neither option allows what we might call "uncontrolled" sales of products by third parties where the producer is not directly involved in the transaction.

The two options are put forward to start the policy discussion with the City Council as to whether the City wants to consider a local food sovereignty ordinance and, if so, what it might look like. Depending on the feedback from the Council, the ORC will then fine-tune a proposed ordinance if the Council wants to move forward with this concept.

# LEGAL NOTES

## Food Sovereignty Revisited

Since we first reported on the new Maine Food Sovereignty Act a few months ago (see "Local Food Sovereignty," *Maine Townsman*, Legal Notes, December 2017), we've received a number of requests for a sample food sovereignty ordinance.

As we wrote then, MMA does not have and does not anticipate preparing a one-size-fits-all model ordinance, in part because different communities are apt to have differing ordinance objectives. Instead, we recommended (and still do) that interested municipalities work with local legal counsel to draft an ordinance that both meets local objectives and conforms to the statute.

On this last point, we've seen a number of food sovereignty ordinances enacted before the new law took effect. We've also seen several sample food sovereignty ordinances posted on food sovereignty websites. *None of the ordinances we've seen so far comply with the limitations in the Maine Food Sovereignty Act.* Moreover, municipalities have no legal authority to exceed these limitations.

Specifically, the Act *excludes meat and poultry products* (see 7 M.R.S.A. § 285). Municipalities cannot legally exempt meat or poultry sales from State food safety laws, and any ordinance that purports to do so is legally invalid in that respect.

Also, the Act applies only to *face-to-face sales between producer and consumer and only at the site of production of the food or food product* (see 7 M.R.S.A. § 282(1)). In other words, only direct sales between producer and consumer at the farm or facility where the food or food product was produced can be exempted from State food safety laws. Farmers' markets and other non-farm venues such as fairs, festivals and so forth do not qualify for the exemption. Again, any ordinance that purports to exempt any type or situs of sales other than those expressly authorized by the Act is legally invalid to that extent.

It is critical that local food sovereignty advocates and anyone drafting a food sovereignty ordinance understand these statutory limitations. It is also crucial that they be incorporated into the ordinance, preferably by citations to the Act itself. The failure to understand and incorporate these limitations in the ordinance will likely lead to broad misconceptions

about the law and to widespread non-compliance. It will also likely result in intervention and enforcement action by State food safety authorities.

For those municipalities that adopted food sovereignty ordinances before the current law was enacted, we strongly recommend that these ordinances be updated by amendment to comply with the Act's limitations.

The Maine Food Sovereignty Act can be found at 7 M.R.S.A. §§ 281-286. (By R.P.F.)

## New Road Weight Limits Info Packet Now Available

Just in time for March and mud season in Maine, a newly revised "Information Packet" on road weight limits and seasonal road closings is now available from MMA Legal Services.

The revised packet includes a new sample Ordinance Restricting Vehicle Weight on Posted Ways and an updated publication from MDOT's Local Roads Center with practical suggestions for posting local ways.

All of our Information Packets and Guides – over 65 of them, from A (aircraft excise tax) to Z (zoning variances) – are available free to members in the Member Center of our website at [www.memun.org](http://www.memun.org). (By R.P.F.)

## Defective Notice Is Curable

A recent Maine Supreme Court decision illustrates that even if required notice of a land use proceeding is not given, such procedural defects can be cured and the decision salvaged.

In *Bryant v. Town of Wiscasset*, 2017 ME 234, abutters appealed the planning board's site plan approval of a fireworks storage building to the appeals board. The appeals board denied the appeal but remanded the case to the planning board for further findings. The planning board then held two hearings but failed to give the abutters personal notice of either. The abutters again appealed, claiming a violation of their right to procedural due process and demanding a reversal of the planning board's approval.

Despite the pending appeal, the planning board held yet another hearing after giving the abutters personal notice. The board reaffirmed its approval after hearing the abutters' objections for the second time. According to the Law Court, this

## MUNICIPAL CALENDAR

**APRIL 1** — Municipal assessments are controlled by this date (36 MRSA §502).

■ Monthly/Quarterly expenditure statement and claim for General Assistance reimbursement to be sent to Department of Human Services, General Assistance Unit, DHS #11, Augusta, ME 04333 (22 MRSA §4311).

**APRIL 16** — Patriot's Day, third Monday in April, a court holiday (4 MRSA §1051).

**ON OR BEFORE APRIL 21** — Every employer required to deduct and withhold tax shall, for each calendar quarter, file a withholding return and remit payment as prescribed by the State Tax Assessor (36 MRSA §5253).

remedial action by the planning board, and the resulting lack of prejudice to the abutters, cured the procedural defect. The Court accordingly upheld the board's decision.

The *Bryant* decision is also noteworthy because it upholds the right of a board member to represent himself if he has a conflict of interest, provided he has declared his interest and recused himself from voting. (The applicant in this case was also a member of the planning board.) The Court wrote that any other reading of the conflict of interest law would deprive board members of the right to present their own applications and "would discourage capable people from serving as members of municipal boards." (By R.P.F.) ■

## PROFESSIONAL DIRECTORY



A. E. HODSDON  
ENGINEERS  
10 Common Street  
Waterville, ME 04901

[www.aehodsdon.com](http://www.aehodsdon.com)  
207-873-5164



Troy D. Jackson  
President of the Senate

THE MAINE SENATE  
129th Legislature

3 State House Station  
Augusta, Maine 04333

**DATE:** March 25, 2019

**TO:** Governing Bodies of Maine's Municipalities

**FROM:** Troy D. Jackson, Senate President  
Craig V. Hickman, House Chair, Committee on Agriculture, Conservation and Forestry

**RE:** **Purpose and Intent of the Maine Food Sovereignty Act with Ordinance Template**

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We are the cosponsors of "An Act To Recognize Local Control Regarding Food Systems," as amended by "An Act To Amend the Law Recognizing Local Control Regarding Food Systems and Require Compliance with Federal and State Food Safety Regulations," known and cited as the Maine Food Sovereignty Act (MFSA) of 2017.

We understand that there remains confusion regarding the purpose and intent of the MFSA and its application in municipal ordinances across the State. We understand that, under the guidance of the Maine Municipal Association, some Select Boards and Town Managers have relegated the drafting of these ordinances to municipal attorneys. We have seen a narrowing of the purpose and intent of the MFSA in some of these ordinances. We write to make clear that the MFSA is a permissive statute that ought to be freely construed.

#### **Purpose of the Maine Food Sovereignty Act**

The explicit purpose of the MFSA is to recognize local control of food systems by **preserving the right of individuals to define their own food and agriculture systems within their municipalities**. It is the policy of this State to encourage food self-sufficiency for its citizens. Through local control, the MFSA shall:

- 1) Preserve the ability of communities to produce, process, sell, purchase and consume locally produced foods;
- 2) Ensure the preservation of family farms and traditional foodways through small-scale farming and food production;

- 3) Improve the health and well-being of citizens of this State;
- 4) Promote self-reliance and personal responsibility by ensuring direct producer to consumer exchange of food;
- 5) Enhance rural economic development and the environmental and social wealth of rural communities.

*(See §283. Statement of Policy; Local Control and Rural Economic Development of Title 7, Chapter 8-F.)*

The MFSA decentralizes decision-making regarding direct producer-to-consumer transactions to municipalities pursuant to Maine Home Rule Authority. The MFSA ensure that residents are engaged in the process of working with Select Boards, Town Councils and City Councils to define the terms and conditions of their own food systems and draft ordinances that best reflect the food needs of their respective communities.

#### **Intent of the Maine Food Sovereignty Act**

While the MFSA includes a definition of “direct producer-to-consumer transaction,” that definition is not prescriptive. Indeed, in the enacting clause of the MFSA, the context indicates otherwise, and with the exception of meat and poultry, the 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.**” *(See §284 of Title 7, Chapter 8-F.)*

In other words, municipalities have the express authority to enact ordinances regarding local food systems, to define those producer-to-consumer transactions that are governed by such ordinances, and the State shall recognize them.

There is no requirement in the MFSA to write the ordinances in any particular way. Its intent is to recognize what people do, not tell them what to do. Its intent is permissive, not prescriptive. Its intent is to embrace and assert the fundamental right of individuals to acquire the food of their own choosing from the sources of own choosing for their own health and well-being. Ordinances may be drafted to fit the needs of individuals in municipalities across the State. Ordinances are limited to direct producer-to-consumer transactions only and may not include meat and poultry. *(See §285 of Title 7, Chapter 8-F.)*

#### **Local Food and Community Self-Governance Ordinance Template**

We have worked with a group of farmers and eaters on a draft template entitled Local Food and Community Self-Governance Ordinance of 2018 (LFCSGO) to ensure that there is a template in circulation that is aligned in purpose and intent with the MFSA. It can be found at: <http://localfoodrules.org/ordinance-template/>.

#### **Success of the Maine Food Sovereignty Act**

*[This sample ordinance is provided by MMA Legal Services. We strongly encourage municipalities to consult their municipal attorney prior to enacting any ordinance.]*

**Municipality of \_\_\_\_\_**  
**Local Food Sovereignty Ordinance**

**Sec. 1 Short Title**

This ordinance shall be known and may be cited as the “Local Food Sovereignty Ordinance.”

**Sec. 2. Authority and Purpose.**

This Ordinance is intended to provide residents increased access to local food, to support the ability of residents to produce, sell, purchase and consume locally produced foods, and to reduce governmental regulation of local foods to the extent permitted by and pursuant to 7 M.R.S. § 281 - § 286.

**Sec. 3. Definitions**

As used in this ordinance, the following words have the meanings stated below:

**Direct producer-to-consumer transaction.** "Direct producer-to-consumer transaction" means a face-to-face transaction involving food or food products at the site of production of those food or food products.

**Food or food products.** "Food or food products" means food or food products intended for human consumption, including, but not limited to, milk or milk products, meat or meat products, poultry or poultry products, fish or fish products, seafood or seafood products, fresh produce, cider or juice, acidified foods or canned fruits or vegetables.

**State food law.** “State food law” means any provision of Title 7 or Title 22 of the Maine Revised Statutes that regulates direct producer-to-consumer transactions.

**Site of production.** “Site of production” means the premises where a food or food product is grown, raised, processed or produced such as a farm, home kitchen, farm-based kitchen or

similar location controlled by the producer, grower or processor. The term does not include a farmers' market, community social event, or other venue unless the market, social event or venue is itself the site of production of the food or food product.

#### **Sec. 4. License and Inspection Exemptions**

A. Notwithstanding any other provision of the Ordinances of this municipality to the contrary, producers, growers, and processors of food or food products in the municipality are exempt from State food law licensure and inspection requirements with respect to their direct producer-to-consumer transactions conducted exclusively at the site of production of those food products.

B. Pursuant to 7 M.R.S. § 285, the exemption provided in section 4(A) above does not apply to any transactions involving meat, meat products, poultry or poultry products, as those terms are defined in 22 M.R.S. § 2511. All such transactions remain subject to state inspection and licensing pursuant to Chapter 562-A of Title 22 of the Maine Revised Statutes and the rules adopted thereunder.

#### **5. Severability.**

Should any section or provision of this ordinance be declared to be invalid by a court of competent jurisdiction, such decision shall not invalidate any other section or provision of this ordinance.

#### **6. Effective Date.**

This ordinance shall become effective upon its adoption.

## **OPTION 1 – More Restrictive Treatment**

### **CHAPTER 11 Local Food Sovereignty**

- SECTION 595. Authority and Purpose  
596. Definitions  
597. License and Inspection Exemptions  
598. Notice Required  
599. Severability

#### **Section 595. Authority and Purpose**

This ordinance entitled “Local Food Sovereignty” is enacted pursuant to the City’s home rule authority, as provided in 30-A M.R.S. § 3001, the Maine Constitution, Article VIII, Part Second, and 7 M.R.S. § 284, all as may be amended from time to time.

These provisions relating to local food sovereignty are intended to provide residents with increased access to local food, to support the ability of residents to produce, sell, purchase and consume locally produced foods, and to reduce governmental regulation of local foods to the extent permitted by and pursuant to 7 M.R.S. § 281 - § 286.

#### **Section 596. Definitions**

As used in this chapter, the following words have the meanings stated below:

**596.1. Direct Producer-to-Consumer Transaction:** A face-to-face transaction involving food or food products at the site of production of those foods or food products.

**596.2. Food or Food Products:** Food or food products intended for human consumption, including, but not limited to, milk or milk products, meat or meat products, poultry or poultry products, fish or fish products, seafood or seafood products, fresh produce, cider or juice, acidified foods, or canned fruits or vegetables.

**596.3. State Food Law:** Any provision of Title 7 or Title 22 of the Maine Revised Statutes that regulates direct producer-to-consumer transactions.

**596.4. Site of Production:** Any site of production pursuant to 7 M.R.S. § 281 et. seq, including the premise where a food or food product is grown, raised, processed, or produced such as a farm, home kitchen, farm-based kitchen or similar location controlled by the producer, grower or processor.

#### **Section 597. License and Inspection Exemptions**



**597.1.** Notwithstanding any other provisions of the ordinances of the City of Gardiner to the contrary, producers, growers, and processors of food or food products are exempt from State food law licensure and inspection requirements with respect to their direct producer-to-consumer transactions.

**597.2.** Pursuant to 7 M.R.S § 285, the exemption provided in **597.1** does not apply to any producer-to-consumer transactions involving meat, meat products, poultry, or poultry products as those terms are defined in 22 M.R.S § 2511. All such transactions remain subject to state inspections and licensing pursuant to Chapter 562-A of the Maine Revised Statutes and the rules adopted thereunder.

**Section 598. Notice Required**

Any producer, grower, or processor of food or food products exempted under **597.1** that offers those products for sale or by other transaction to the public at the site of production shall provide written notice to potential customers at the place of the transaction that the products so offered have been exempted from State food law licensure and inspection requirements. This notice may be provided by posters, handbills or product labeling.

**Section 599. Enforcement; Violations**

This ordinance shall be enforced by the Code Enforcement Officer. Violation of this ordinance shall be a civil violation subject to a fine of not less than \$\_\_\_ dollars nor more than \$\_\_\_ dollars for each offense. Each act of violation and every day that any such violation shall occur shall constitute a separate offense. In addition to the fines provided herein, the City may seek any other relief or remedy available, including but not limited to injunctive relief or abatement regarding any violation of this ordinance.

**Section 599A. Severability**

Should any section or provision of this chapter be declared to be invalid by a court of competent jurisdiction, such decision shall not invalidate any other section or provision of this chapter.

**OPTION 2 – More Liberal Treatment**

**CHAPTER 11 Local Food Sovereignty**

- SECTION 595. Authority and Purpose  
596. Definitions  
597. License and Inspection Exemptions  
598. Notice Required  
599. Severability

**Section 595. Authority and Purpose**

This ordinance entitled “Local Food Sovereignty” is enacted pursuant to the City’s home rule authority, as provided in 30-A M.R.S. § 3001, the Maine Constitution, Article VIII, Part Second, and 7 M.R.S. § 284, all as may be amended from time to time.

These provisions relating to local food sovereignty are intended to provide residents with increased access to local food, to support the ability of residents to produce, sell, purchase and consume locally produced foods, and to reduce governmental regulation of local foods to the extent permitted by and pursuant to 7 M.R.S. § 281 - § 286.

**Section 596. Definitions**

As used in this chapter, the following words have the meanings stated below:

**596.1. Direct Producer-to-Consumer Transaction:** A face-to-face transaction involving food or food products at the site of production of those foods or food products or at a farmers market in the City of Gardiner if the person who produced or oversaw the production of the foods or food products is present during the transaction at the farmers market.

**596.2. Food or Food Products:** Food or food products intended for human consumption, including, but not limited to, milk or milk products, meat or meat products, poultry or poultry products, fish or fish products, seafood or seafood products, fresh produce, cider or juice, acidified foods, or canned fruits or vegetables.

**596.3. State Food Law:** Any provision of Title 7 or Title 22 of the Maine Revised Statutes that regulates direct producer-to-consumer transactions.

**596.4. Site of Production:** Any site of production pursuant to 7 M.R.S. § 281 et. seq, including the premise where a food or food product is grown, raised, processed, or

produced such as a farm, home kitchen, farm-based kitchen or similar location controlled by the producer, grower or processor.

**Section 597. License and Inspection Exemptions**

**597.1.** Notwithstanding any other provisions of the ordinances of the City of Gardiner to the contrary, producers, growers, and processors of food or food products are exempt from State food law licensure and inspection requirements with respect to their direct producer-to-consumer transactions.

**597.2.** Pursuant to 7 M.R.S § 285, the exemption provided in **597.1** does not apply to any producer-to-consumer transactions involving meat, meat products, poultry, or poultry products as those terms are defined in 22 M.R.S § 2511. All such transactions remain subject to state inspections and licensing pursuant to Chapter 562-A of the Maine Revised Statutes and the rules adopted thereunder.

**Section 598. Notice Required**

Any producer, grower, or processor of food or food products exempted under **597.1** that offers those products for sale or by other transaction to the public at the site of production or at a farmers market shall provide written notice to potential customers at the place of the transaction that the products so offered have been exempted from State food law licensure and inspection requirements. This notice may be provided by posters, handbills or product labeling.

**Section 599. Enforcement; Violations**

This ordinance shall be enforced by the Code Enforcement Officer. Violation of this ordinance shall be a civil violation subject to a fine of not less than \$ \_\_\_ dollars nor more than \$ \_\_\_ dollars for each offense. Each act of violation and every day that any such violation shall occur shall constitute a separate offense. In addition to the fines provided herein, the City may seek any other relief or remedy available, including but not limited to injunctive relief or abatement regarding any violation of this ordinance.

**Section 599A. Severability**

Should any section or provision of this chapter be declared to be invalid by a court of competent jurisdiction, such decision shall not invalidate any other section or provision of this chapter.

## **Maine Revised Statutes**

Title 7: AGRICULTURE AND ANIMALS  
Chapter 8-F: MAINE FOOD SOVEREIGNTY ACT

### **§281. SHORT TITLE**

This chapter may be known and cited as “the Maine Food Sovereignty Act

### **§282. DEFINITIONS**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Direct producer-to-consumer transaction. “Direct producer-to-consumer transaction” means a face-to-face transaction involving food or food products.
2. Food or food products. “Food or food products” means food or food products intended for human consumption, including, but not limited to, milk or milk products, meat or meat products, poultry or poultry products, fish or fish products, seafood or seafood products, cider or juice, acidified foods or canned fruits or vegetables.
3. State food law. “State food law” means any provision of this Title or Title 22 that regulates direct producer-to-consumer transactions.

### **§283. STATEMENT OF POLICY; LOCAL CONTROL AND RURAL ECONOMIC DEVELOPMENT**

It is the policy of this State to encourage food self-sufficiency for its citizens. The department shall support policies that:

1. Local control. Through local control, preserve the ability of communities to produce, process, sell, purchase and consume locally produced foods;
2. Small-scale farming and food production. Ensure the preservation of family farms and traditional foodways through small-scale farming and food production;
3. Improved health and well-being. Improve the health and well-being of citizens of this State by reducing hunger and increasing food security through improved access to wholesome, nutritious foods by supporting family farms and encouraging sustainable farming and fishing;

4. Self-reliance and personal responsibility. 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; and
5. Rural economic development. Enhance rural economic development and the environmental and social wealth of rural communities.

#### **§284. HOME RULE AUTHORITY**

Pursuant to the home rule authority granted to municipalities by Title 30-A, section 3001 and by the Constitution of Maine, Article VIII, Part Second, and notwithstanding any provision of state food law to the contrary, except as contained in section 285, 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. [2017,

#### **§285. DEPARTMENTAL AUTHORITY; LIVESTOCK AND POULTRY**

Notwithstanding any provision in this chapter to the contrary, the department shall implement and enforce all provisions of Title 22, chapter 562-A and the rules adopted thereunder that are necessary to ensure that the requirements of the State's meat and poultry products inspection and licensing program are at least equal to the applicable requirements specified under applicable federal acts, as defined by the United States Department of Agriculture or other federal agencies, without exception. [2017, c. 314, §1

#### **§286. COMPLIANCE WITH FOOD SAFETY REGULATIONS**

An individual who grows, produces, processes or prepares food or food products for purposes other than direct producer-to-consumer transactions in a municipality that adopts or amends an ordinance pursuant to section 284 shall grow, produce, process or prepare the food or food products in compliance with all applicable state and federal food safety laws, rules and regulations.