

Regulatory Guidance for Agricultural Operations in Montgomery County, MD

Montgomery County Office of Agriculture
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Acronyms:

[DPS](#): Montgomery County Department of Permitting Services

[DHHS](#): Montgomery County Department of Health and Human Services

[MDH](#): Maryland Department of Health

[MDA](#): Maryland Department of Agriculture

[UME](#): University of Maryland Extension

[MSCD](#): Montgomery Soil Conservation District

[USDA](#): United States Department of Agriculture

[FDA](#): United States Food and Drug Administration

1. General Information

a. Allowable Farming Activities

“Farming”, as defined in [Section 59.3.2.6](#) of the Montgomery County Code, is allowed as a permitted use (i.e. by right) in the Agricultural Reserve (AR) zone, the rural residential zones, and the residential detached (single-family home) zones. “Urban farming”, as defined in [Section 59.3.2.9](#), is allowed as a limited use (i.e. if it meets the use standards listed in that section) in all other zones (residential townhouse and multi-unit, commercial, employment, and industrial). Some of the differences between urban farming and farming include:

- Urban farming does not allow the keeping of livestock or horses, only fowl and bees,
- Urban farming prohibits roosters and limits fowl to one per 1,000 ft² of lot area,
- The minimum lot area for urban farming is 2,500 ft²
- Only manual or walk-behind farm equipment are allowed under urban farming

b. Determining the Zone and Allowable Uses for a Property

To find out what zone your property is located in, visit [MC Zoning](#), locate the property by entering the address in the search bar at the top-right, and find the zone information on the left-side panel. The zoning of a property is independent from how it is assessed for tax purposes (see Section 12: Agricultural Use Assessment). A property may be agriculturally zoned but not agriculturally assessed and vice-versa. To find out what uses (agricultural or otherwise) are allowed in each zone, see the Use Table in [Section 59.3.1.6](#) of the County Code.

c. Protections for Farming

In the AR zone, farming is the preferred use (see [Section 59.4.2.1](#) of the County Code). This means that agricultural operations are permitted at any time, including the operation of farm machinery. An agricultural use cannot be restricted on the grounds that it interferes with other uses permitted in the zone. Additionally, [Section 40-12B](#) of the County Code states that when property within, adjoining, or confronting the AR zone is being sold, the seller must disclose to the buyer that, in this zone, state and county law protect usual and customary agricultural activities that are in regulatory compliance and not conducted negligently.

d. Environmental Requirements

Because agricultural nutrient applications are one source of nitrogen and phosphorus pollution in the Chesapeake Bay, state law requires agricultural operations that generate \$2,500 or more in gross annual income or have farm animals that collectively weigh 8,000 lbs. or more to have a current [nutrient management plan](#) (NMP). Based on the soil test results and crop yield goals for a specific farm, a NMP specifies the maximum amount of nitrogen and phosphorus the farm operator may apply to each crop (including hay and pasture) in each field, whether as inorganic fertilizer or an organic nutrient source (e.g. manure, compost). These allowable nutrient amounts are intended to maximize yields without impacting water quality. The NMP also provides recommendations for the amount of lime that should be applied to each field to optimize the soil pH. Farmers can become certified to write their own NMPs or have one written for free by a UME [nutrient management advisor](#) or for a fee by a private nutrient management consultant. To request a free nutrient management plan from UME, contact Cristina Rivero at mcrivero@umd.edu or Kelly Nichols at kellyn@umd.edu.

If you are applying nitrogen or phosphorus to 10 or more acres of your own farmland, you are required to maintain a current MDA Nutrient Applicator's Voucher by attending a two-hour MDA-approved [nutrient management training](#) every three years, unless you are certified to write your own NMP.

If you would like to apply a restricted use pesticide to land you farm, you will need to first obtain a [Private Pesticide Applicator Certificate](#) from MDA.

For more information on how to meet each of these requirements and other environmental permits you might need, see [A Farmer's Guide to Environmental Permits](#).

2. [Agricultural Buildings/Structures](#)

a. Building Permit

Buildings that will be exclusively used for agricultural production, storage, or processing (e.g. barn, high tunnel, winery, dairy plant) are exempt from the [DPS commercial building permit](#) (see [8-1\(d\)\(2\)](#) in the County Code). However, new buildings that the public will have access to (e.g. farm market, tasting room) are not exempt from this permit. An equestrian facility, building, or structure intended for use by participants or spectators at an equestrian event is explicitly required by the Code to have a building permit. Structures that require a building permit generally also require a [DPS Use and Occupancy Certificate](#).

Although the authority to determine whether a proposed structure is agricultural or not lies within DPS, they rely on our office's recommendation. To make this recommendation, we ask applicants to send us a farm plan describing the proposed structure, its intended uses, and the current or proposed agricultural activities on the property.

Since November 2020, an existing agricultural building can be converted into an agritourism use, including a tasting room, without the need for a building permit as long as the maximum

occupancy is under 100. Since August 2021, a new agritourism building, although not exempt from the building permit, is exempt from the platting and subdivision requirements.

b. Trade Permits

Agricultural and agritourism structures are not exempt from any of the DPS trade permits.

- i. If you would like to install or modify electrical circuits in an agricultural structure, you will need an [electrical permit without a parent building permit](#).
- ii. If you would like to add heating, cooling, or ventilation to the structure, you will need a [commercial mechanical permit](#).
- iii. If the property is not served by municipal sewer and you would like to add an amenity that requires wastewater treatment (e.g. toilet, sink, shower, dishwasher), you will need a septic permit (see Section 11: Well and Septic).

c. Erosion and Sediment Control (E&S) Law

If the installation of a structure (including a building, parking area, or lane) will disturb 5,000 ft² or more of land area or involve the movement of 100 yd³ or more of soil, you will need to comply with the state's Erosion and Sediment Control (E&S) Law. You can do this in two ways:

- i. If the structure will only be used agriculturally (not by the public) and the area of disturbance will be less than or equal to one acre, the [Montgomery Soil Conservation District](#) (MSCD) can provide free E&S guidance for the project through a new or updated Soil Conservation and Water Quality (AKA conservation) Plan. To request first-time assistance from the MSCD, contact Karen Walker, their Administrative Assistant, at karen.walker@md.nacdnet.net or 301-590-2855. Once your request is approved by the MSCD Board during their monthly meeting, a conservation planner will be assigned to you.
- ii. If the public will have access to the structure (even if it is only a parking area or lane), you will need to hire an engineer and apply to DPS for either an [Engineered Sediment Control Permit](#) or a [Small Land Disturbance Activity Permit](#). This will automatically trigger the Forest Conservation Law requirements.

d. Stormwater Management (SWM) Law

If the installation of a structure (including a building, parking area, or lane) creates 5,000 ft² or more of impervious surface, you will need to comply with the state's Stormwater Management (SWM) Law requirements.

- i. If the structure will only be used agriculturally (not by the public) and its impervious footprint will be less than or equal to one acre, the [Montgomery Soil Conservation District](#) (MSCD) can assist.
 - If SWM requirements can be met through infiltration practices (this is the case when there is enough pervious surface under a certain slope surrounding the structure), an engineered SWM plan is not required.

- If an engineered SWM plan is required, the MSCD’s engineer, Charley Chen, can produce one for free, which would then need to be approved by DPS.
- ii. If the public will have access to the structure (even if it is only a parking area or lane), you will need to hire an engineer to produce a SWM plan and apply to DPS for [Stormwater Management Concept Approval](#).

Areas used regularly for customer parking, regardless of the type of surface (even if completely covered by grass) are considered an impervious surface by the County Code and therefore subject to SWM compliance.

e. Development Standards

Structures on a property other than the principal residential/commercial building are referred to as accessory structures. Farm structures (other than fencing) are usually considered accessory structures and must meet the standard method development requirements for accessory structures for the zone the property is in (see [Article 59-4](#) of the County Code). These standards include setbacks (minimum distances) to the property lines and in some cases to neighboring dwellings. To find out what zone your property is located in, see Section 1.b: Determining the Zone and Allowable Uses for a Property.

In all zones except the Agricultural Reserve (AR) zone, all accessory structures must be located behind the rear building line of the principal building. In all zones, any accessory structure used for the housing, shelter, or sale of animals or fowl other than a household pet must be a minimum of 25 feet from any property line and a minimum of 100 feet from a neighboring dwelling. This applies to both stationary and mobile animal structures.

If your property is located in a zone where only [urban farming](#) is allowed, not [farming](#) (see Section 1: General Information), all accessory structures must be at least 15 feet from any property line and have a maximum height of 14 feet, and the total floor area of all accessory structures except greenhouses must be 10% or less of the total property area.

Accessory structures are also required to meet setbacks from wells and septic systems. Please contact Heidi Benham (heidi.benham@montgomerycountymd.gov), Well and Septic Division Chief at DPS, to find out how to meet these setbacks on your property.

f. Agricultural Fencing

Agricultural fences (e.g. livestock fencing, deer fencing) are exempt from a fence permit. Agricultural fences up to 8 feet in height are exempt from building line and setback requirements (see Section 2.d: Development Standards) if:

- i. The property is agriculturally assessed for tax purposes (see Section 12: Agricultural Use Assessment),
- ii. The property is in the Agricultural Reserve (AR) or a rural residential zone, or
- iii. If in another zone, the fence is behind the front building line of the principal dwelling unless the property adjoins a national historical park.

Any type of fencing in a non-agriculturally assessed property can be exempt from the building line and setback requirements if it is 6.5 feet or less in height and the property does not abut a Commercial/Residential, Employment, or Industrial zone. See [Subsection 59.6.4.3.C](#) of the County Code for additional exemptions.

g. Tents

Temporary tents for events may require a [building permit](#) and/or [Use and Occupancy Certificate](#) (U&O) from DPS. See this [DPS tent guidance document](#) for more information.

- i. Tent area of 200 ft² or less, used for 1–3 consecutive days: No building permit or U&O
- ii. Tent area of over 200 ft², used for 1–3 consecutive days: No building permit, but requires a U&O
- iii. Tents used for 4 or more consecutive days: Building permit and U&O required

3. [Poultry and Rabbits](#)

Although fowl (e.g. chickens, ducks, turkeys) may be kept in all zones of the county, in zones where only “[Urban Farming](#)” is allowed (not “[Farming](#)”), roosters are prohibited and a maximum of one fowl per 1,000 ft² of lot area may be kept. See Section 1: General Information.

a. [Registering your Poultry Flock](#)

If you have poultry (chickens, turkeys, waterfowl, game birds, ostriches, emus, and domestic/captive pigeons/doves), you must register the flock once with MDA by emailing a completed [Maryland Poultry Registration Form](#) to animalhealth.mda@maryland.gov.

You are exempt from this registration if you: 1) have five or fewer birds for less than 120 days in a 12-month period, 2) do not have other poultry on the property, and 3) do not move the poultry from the property, participate in shows, or sell them.

b. [Coops and Other Farm Animal Structures](#)

Coops and other farm animal shelter/housing structures are considered accessory structures and therefore must comply with the standard method development requirements for accessory structures for the zone the property is in (see [Article 59-4](#) of the County Code). In all zones except the Agricultural Reserve (AR) and Rural Neighborhood Cluster (RNC) zones, all accessory structures must be located behind the rear building line of the principal building. In all zones, farm animal structures must be a minimum of 25 feet from any property line and a minimum of 100 feet from a neighboring dwelling. This applies to both stationary and mobile animal structures.

If your property is located in a zone where only urban farming is allowed, not farming, all accessory structures must have a maximum height of 14 feet, and the total floor area of all accessory structures except greenhouses must be 10% or less of the total property area.

c. Selling Eggs

In order to sell eggs, you will need to submit to MDA a completed [Egg Producer/Packer Application Form](#). If you have fewer than 3,000 chickens, there is no fee and therefore you may email the form to egg.inspection@maryland.gov. You will need to apply every year by December 15th. First-time registrants can submit the application at any time. See the links on the right side of this [MDA page](#) for information on the safety standards and egg carton labelling requirements.

d. Slaughtering Poultry and Rabbits

You may slaughter on-farm up to 20,000 of your own poultry or rabbits without inspection by the USDA Food Safety and Inspection Service (FSIS) as long as you only sell within the state of MD and sell only whole poultry or parts (not ground meat). If you participate in MDA's voluntary [Poultry and Rabbit Processing Program](#), you may sell anywhere within the state (e.g. stores, restaurants, farmers' markets). If you do not participate in this program and slaughter your own poultry or rabbits, you may only sell directly to consumers on the farm. In either case, you must follow the [MDA Poultry and Rabbit Processing Requirements](#). If you would like to sell poultry or rabbit meat out-of-state or sell ground meat, you will need to have the animals processed at a [USDA-inspected animal processing facility](#).

e. Selling Poultry and Rabbit Meat

If you 1) raise poultry or rabbits and slaughter fewer than 20,000 per year, 2) sell only your own meat directly to consumers on the farm, and 3) participate in the Poultry and Rabbit Processing Program, you do not need any county or state permits or licenses to sell the meat.

If you would like to sell your poultry or rabbit meat to customers outside of the farm (e.g. to a store/restaurant or at a farmers' market or roadside farm stand), you will need to obtain an On-Farm Meat Storage License from MDH via this [application form](#) (select "On-Farm Meat Storage" option under "On-Farm Home Processing"). See the "Processing" section in this [MDH page](#) for more information.

To sell the meat at a farmer's market or roadside stand in Montgomery County, in addition to the MDH On-Farm Meat Storage License, you will need a [Farm Market/Farmer's Market License](#) from DHHS. To sell the meat at a farmers' market outside of the county, contact the health department in that county to find out what permit/license they require.

If you would like to sell your meat at farmers' markets in multiple counties without having to obtain permits from each county's health department, you may sell from a refrigerated truck/trailer or ice-packed coolers if you obtain a [Producer Mobile Farmer's Market License](#) from MDH (via this [application form](#)).

4. Farm Animals Other Than Poultry and Rabbits

a. Slaughter

The slaughter of cattle, hogs, sheep, and goats is regulated by the USDA. Therefore, to sell the meat you must have these animals slaughtered, processed, and packaged at a [USDA-inspected animal processing facility](#).

An animal may be slaughtered at a custom-exempt slaughter facility (inspected by the USDA only four times per year) if the meat will be used exclusively by the owner of the animal, his/her household, and any non-paying guests or employees. This means that you may sell a whole, live animal to a customer (or a share of an animal to multiple customers), transport the animal to a custom-exempt facility, and have the customer(s) pick up and pay for the order. The customer(s) must pay the facility directly and the animal must have been sold to the customer(s) prior to transporting it to the facility.

The slaughter of farm-raised bison, deer, elk, pheasant, and other game animals is regulated by the FDA. You may slaughter these animals on the farm without inspection if you only sell the meat on-farm. To sell the meat off-farm, you will need to have the animals slaughtered at a USDA-inspected animal processing facility.

If you would like to build a slaughterhouse, you would need to first make sure you could meet the requirements of [Section 59.3.2.8](#) in the County Code. The Code allows slaughterhouses only as a conditional use in the Agricultural Reserve (AR), Rural (R), and Rural Cluster (RC) zones. This means that the applicant must not only meet the Code's standards, but also receive approval from the Office of Zoning and Administrative Hearings, which involves an opportunity for the public to comment on the application. If this approval is granted, you would then need to obtain a [Grant of Inspection](#) from the USDA Food Safety and Inspection Service (FSIS). For more information about how to build a USDA-inspected slaughterhouse and to get technical assistance, visit the Flower Hill Institute's [Meat and Poultry Processing Technical Assistance Program](#) page.

b. Meat Sales

After having your livestock slaughtered at a USDA-inspected facility, to return the meat to the farm, you will need to obtain an On-Farm Meat Storage License from MDH via this [application form](#) (select "On-Farm Meat Storage" option under "On-Farm Home Processing"). See the "Processing" section in this [MDH page](#) for more information). If you will only sell the meat directly to consumers on the farm or to stores/restaurants, no additional licenses/permits are required.

To sell the meat at a farmers' market or a roadside stand in Montgomery County, in addition to the MDH On-Farm Meat Storage License, you will need a [Farm Market/Farmer's Market License](#) from DHHS. To sell the meat at a farmers' market outside of the county, contact the health department in that county to find out what permit/license they require.

If you would like to sell your meat at farmers' markets in multiple counties without having to obtain permits from each county's health department, you may sell from a refrigerated truck/trailer or ice-packed coolers if you obtain a [Producer Mobile Farmer's Market License](#) from MDH (via this [application form](#)).

5. [Equestrian Facilities](#)

An equestrian facility is defined in the County Code as a "structure or land that is used primarily for the care, breeding, boarding, rental, riding, or training of horses or the teaching of equestrian skills." Such facilities are allowed as a limited use in the Agricultural Reserve (AR), R, RC, RNC, RE-2, RE-2C, RE-1, and R-200 zones if they meet the standards outlined in [Section 59.3.2.4](#). These standards include limits on the number/density of horses, events, and other requirements.

If you own a stable with one or more horses that provides services to the general public, such as offering lessons, boarding horses, providing a rental service, or serving as a rescue or sanctuary stable, you are required to have a current State of MD stable license. This requires undergoing inspections by the MDA Horse Industry Board. The state stable license is valid for one year and must be renewed annually on or before July 1. Visit the [Horse Industry Board page](#) for more information.

You may also be required to obtain a county stable license and undergo county inspections. Contact the Montgomery County Animal Services Division at 240-773-5900 to see if that is a requirement for your farm.

6. [Selling Your Edible Farm Products](#)

a. [Non-Potentially Hazardous Edible Products](#)

No county or state health department permits or licenses are needed to sell the following raw agricultural products on your property:

- Whole, fresh, unprocessed raw produce, herbs, nuts, or honey (the harvest cut is the only one allowed for produce and herbs to be considered whole)
- Shelled eggs registered with the Maryland Department of Agriculture (see section 3.c.)
- Live crustaceans
- Cottage foods (see the [MDH Cottage Foods website](#) for a list of foods that qualify)

However, if you grow produce, you may be subject to produce safety requirements (see Section 7: Produce Safety).

b. [Potentially Hazardous Edible Products](#)

If you would like to sell any edible products other than those listed in the bulleted list above at a farmers' market or roadside stand in Montgomery County, you will need to apply to DHHS for a [Farm Market/Farmer's Market License](#). You will also need this license if you want to sell

potentially-hazardous edible products on the farm other than meat from animals you raise (see Sections 3 and 4 for requirements for selling meat).

c. On-Site Farm Market

An on-site farm market for the sale of agricultural products is allowed in all zones of the county as an accessory agricultural use if it meets the standards outlined in [Subsection 59.3.2.10.C](#) of the County Code.

- In the Agricultural Reserve (AR), rural residential, and some residential zones, one of the requirements is that the products sold be produced on-site or on a property under control of the market operator, except that a maximum of 25% of the display and sales area may be used for products produced at a farm not under control of the market owner.
- In all other zones, all the products sold must be produced on-site.
- The construction of a farm market is usually exempt from a building permit but may require compliance with the state's Erosion and Sediment Control Law and Stormwater Management Law (see Section 2: Agricultural Structures).

d. Selling on Outside Property

If you would like to sell any type of product on a private or public property other than your own, you will need to apply to DPS for a [Site-Specific Vendor License](#). If you will sell fruits, vegetables, herbs, cut flowers, small trees, or plants, you should first apply to our office for an [Agricultural Producer Certificate](#) and submit this certificate with your application for the Site-Specific Vendor License (and select the "Agricultural Producer" option in the Vendor License application form). You must email all required documents (listed in the application form) all at once to DPS.vendor-license@montgomerycountymd.gov.

e. Selling in the Public Right-of-Way

In all zones except the AR, R, RC, RNC, and IH zones, the Agricultural Producer Certificate (in conjunction with the Site-Specific Vendor License) also allows you to sell in a public right-of-way (i.e. publicly-owned road and strip of land adjacent to the road) if you meet the standards of the Agricultural Vending use outlined in [Subsection 59.3.2.11.A](#). In the AR, R, RC, RNC, and IH zones, agricultural producers are not allowed to sell on the public right-of-way.

7. Produce Safety

If you grow produce, you may be required to comply with the [Produce Safety Rule of the Food Safety Modernization Act \(FSMA\)](#), an FDA law that is enforced by MDA. There are exemptions for farmers growing only produce that is rarely consumed raw or that receives commercial processing, those selling under a certain average annual amount, and those growing produce only for personal use. Exempt farmers are required to submit the appropriate [FSMA exemption form](#) to MDA annually and all produce farmers are required to submit the [FSMA Inventory](#)

[Registration Form](#) once. Non-exempt farmers are required to meet food safety training, testing, and record-keeping requirements. For more information on the requirements and training opportunities, visit the [UME Produce Safety website](#) and the links on the right side of the [MDA FSMA website](#).

8. Processed and Value-Added Farm Products

a. Cottage Foods (Unregulated)

State law allows for the production of certain non-potentially hazardous foods in a residential kitchen (e.g. hot-filled acid-fruit jams, baked goods, acid fruit leathers, tea blends), referred to as “[cottage foods](#)”, without any food licenses. To qualify for this exemption, you need to:

- Produce only foods listed in the MDH “[Guidelines for Cottage Food Businesses](#)” document,
- Produce the foods in a private home kitchen and store them in that residence,
- Prepackage them with a label according to the MDH Guidelines for Cottage Food Businesses,
- Sell directly to the consumer for off-site consumption from a residence, by delivery (in person or by mail), at a farmers’ market, bake sale, or public event, or sell to a retail food store if the food remains inside the original packaging,
- Sell only within the state of MD, and
- Generate a maximum of \$50,000 per year from the sale of cottage foods.

b. Regulated Products

All other processed, non-animal farm products require a county or state health department license to produce. A property cannot produce both cottage foods (unregulated) and regulated products. If any regulated products will be produced, all products must be included in the health department license.

c. Retail Production

If the majority (51% or more) of the processed product will be sold directly to the consumers (either as-is or after being turned into prepared foods), you will need a DHHS-licensed Food Service Facility (see Section 9: Food Service).

d. Wholesale Production

If the majority of the processed product will be sold to outside retailers (e.g. stores, restaurants), the licensing falls under MDH. Here there are two options: the [On-Farm Home Processing License](#) or the [Processing License](#), both obtained via this [application form](#) (see the “Processing” section in this [MDH page](#) for more information).

To qualify for the On-Farm Processing License:

- You need to own the property where the processing will take place,

- The property must be in the Agricultural Reserve zone or you need to submit to MDH a zoning verification letter from DPS stating that your agricultural activities are allowed in your zone,
- The property needs to be agriculturally assessed by the State Dept. of Assessments and Taxation (SDAT),
- The processing must take place in a residential kitchen on the property, and
- You must produce only certain allowable foods, generally ones that do not require refrigeration (e.g. canned acid foods, acidified foods, dried vegetables, flavored honey).

If you do not meet the above requirements, you will need to obtain a Processing License, which requires using a licensed food service facility on- or off-site (see Section 9: Food Service). Foods that require a Processing License include baked goods with potentially hazardous toppings or fillings, fermented foods, fruit butters, and cut fruits and vegetables.

Please see this helpful [MDA page](#) for a comprehensive list of processed agricultural products and the regulatory requirements for each.

9. [Food Service](#)

[Cottage foods](#) (foods that may be prepared in a home kitchen – see Section 8) may not be sold for on-site consumption, only for off-site consumption from your home, by delivery, to a retail store, at a farmers’ market, or at an off-site public event. Therefore, if you would like to offer food service to your visitors, you have three options:

a. On-Site Kitchen

If you would like to prepare food in a building on your property and offer it to the public (with or without charge), you will need to work with DHHS to establish a licensed [Food Service Facility](#), (as well as apply for all DPS permits if construction is necessary). Although stand-alone food service facilities are not allowed in the Agricultural Reserve zone, a facility serving as an accessory use to the farming activities on the property is allowed.

There are three tiers within the Food Service Facility License, based on the food-borne illness risk of the food being prepared:

- 1) Low priority (commercially pre-packaged hazardous foods served directly to the consumer or non-potentially hazardous foods prepared on-site)
- 2) Moderate priority (food goes through the temperature “danger zone” of 41–135°F once)
- 3) High priority (food goes through the danger zone more than once)

As part of the Food Service Facility License application, you will need to submit a [Hazard Analysis Critical Control Point \(HACCP\) plan](#). You will also need to have one or more employees obtain a Food Service Manager Certificate and a Food Allergen Awareness Training Certificate given that someone with these certificates must be present whenever the facility is in operation.

b. Operating a Food Truck

If you would like to have your own food truck on the property, you will not need a licensed food service facility on the property as long as the food truck has a facility elsewhere as its base of operation (e.g. restaurant or shared-use commercial kitchen). You will need to apply to DHHS for a [Mobile Food Service License](#). This license also requires a HACCP plan and that at least one employee have a Food Service Manager Certificate and a Food Allergen Awareness Training Certificate.

c. Outside-Owned Food Trucks or Catering Companies

If you only invite outside-owned food trucks or catering companies to sell/serve food on your property, you will not need any licenses or permits as the regulatory compliance responsibility lies with those businesses.

10. Dairy

If you would like to produce milk that will be consumed by humans either as fluid milk (i.e. Grade A milk) or processed dairy products (e.g. cheese, butter, yogurt, ice cream), you will need to apply to MDH for a [Milk Producer's Permit](#). In addition, if there are no compliant milk storage and processing facilities already on the property, you will need to submit to MDH an [Application to Construct Dairy Farm Facilities](#), an [Application to Modify or Install a Milking System on a Dairy](#), and most likely an [Application to Install a Refrigerated Bulk Milk Storage Tank Permit](#), regardless of whether the milk will be consumed as fluid milk or processed dairy products.

MD law requires that fluid milk sold for human consumption be pasteurized (i.e. raw milk is not allowed for sale). Unpasteurized milk can be used to make hard cheeses (i.e. aged 60 days). If you will pasteurize the milk and/or produce yogurt or butter on your property, you will need a [Grade A Milk Processor License](#). If you will process the milk into cheese, you will need either a [Manufacture Grade Milk Processor License](#) (if using pasteurized milk) or a [Farmstead Cheese Producer License](#) (if using raw milk). If you will make ice cream, you will need to submit a [New Frozen Dessert Application](#). See the "Information for New Dairy Processing Facilities" section of this [MDH page](#) for guidance.

Additionally, in order to sell dairy products for on-site consumption (e.g. ice cream), you will need to apply to DHHS for a "[Food Service Facility](#)" license.

If you will process only milk you produce, this is allowed under the County Code definition of [farming](#) and does not require an "[agricultural processing](#)" conditional use application.

11. Agritourism

Accessory agricultural education and tourism is allowed under [Subsection 3.2.6.F](#) of the "Farming" use in the zoning ordinance. Although the authority to determine whether a proposed agritourism activity falls within this definition lies with DPS, this department relies on our office's assessment.

To determine that a proposed activity will conform to the definition of “accessory agricultural education and tourism”, our office needs to verify that the activity will be accessory to the agricultural activity on the property. This means that the area devoted to agritourism must be smaller than the area devoted to agricultural production on the property and there needs to be a meaningful connection between the agricultural and agritourism activities. To make this assessment, we ask applicants to send us a farm plan describing the agricultural operation, proposed agritourism activities, and the connection between the two.

12. Farm Alcohol Production (FAP)

a. Zoning Requirements

Farm breweries, wineries, cideries, distilleries, and meaderies are allowed under the “Farm Alcohol Production” (FAP) use in the County Zoning Code ([Section 59.3.2.10.B](#)), which is considered an accessory agricultural use. It is allowed as a limited use (i.e. if it meets the standards listed in Section 59.3.2.10.B) in six zones: the Agricultural Reserve (AR), Rural (R), Rural Cluster (RC), Rural Neighborhood Cluster (RNC), Residential Estate-1 (RE-1), and Residential Estate-2 (RE-2) zones.

The zoning requirements for FAP include, but are not limited to:

- 1) The property must be assessed agriculturally by the State Department of Assessments and Taxation (SDAT)
- 2) Minimum property size
 - a. Breweries and distilleries: 25 acres
 - b. Wineries and cideries in the RE-1 and RE-2 zones: 25 acres
 - c. Wineries and cideries in the AR, R, RC, and RNC zones: no minimum property size
- 3) Minimum acreage devoted to growing ingredients used in the alcohol production
 - a. Breweries and distilleries:
 - i. 1 acre on-site and
 - ii. Must source most of their ingredients regionally if available at competitive prices
 - b. Wineries and cideries:
 - i. 5 acres of fruit production on-site or on abutting/confronting property owned/leased by the business owner and
 - ii. 20 acres total on all properties owned/leased by the business owner or source most of the fruit from MD
 - c. All FAP businesses must provide a plan on how they will increase their ingredient production/sourcing of ingredients from county farms

Although allowed as a limited use, FAP requires approval from DPS and our office via the [Application for Farm Alcohol Production form](#). This application should be filled out once you have obtained the necessary [MD Alcohol, Tobacco, and Cannabis Commission \(ATCC\) licenses](#). However, you should contact our office as soon as possible so we can let you know whether the

property you have in mind is suitable and outline everything that will be required, thus giving you an idea of the total cost and timeline before you make any investments or commitments.

b. Wastewater Treatment

One of the most important things to consider when looking for a property for FAP is adequate septic capacity (unless served by public sewer service). A deep-trench septic field (or sand mound system, if a trench system is not possible) is required for any building that will include bathrooms, alcohol production, or food preparation. An approved percolation (perc) test for a six-bedroom house is not sufficient to support the production of alcohol and other associated demands.

The wastewater generated from rinsing alcohol production equipment cannot be directed into the septic system. It must be held in a storage tank (usually built underground) and then either hauled away or applied to crops on the property following the recommendations of a current agricultural nutrient management plan (see Section 1.d. General Information – Environmental requirements).

c. Food Service

An on-site [licensed food service facility](#) is not a requirement for FAP, as you have other options for making food service available (see Section 9: Food Service), but if you would like to serve foods like prepackaged charcuterie/cheeses or unpackaged breads/pizza, such a facility is required. Please see the [FAP Guidance Sheet](#) on our website for more important information to know before starting a FAP business.

d. Off-Site Sales

Farm alcohol businesses are allowed to directly sell their beverages to customers on properties other than their own up to 32 days per year with the following permits from the ATCC:

- 1) [MD Form 384](#) (Off-Site Permit):
 - a. Mail to Maryland Alcohol, Tobacco, and Cannabis Commission, Regulatory & Research Section, 1215 E Fort Ave, Ste 300, Baltimore, Maryland 21230.
 - b. Include a check (\$100 for breweries and wineries, \$250 for distilleries).
 - c. Expires on December 31st each year, regardless of when it's obtained.
 - d. Allows you to sell off-site 32 days per year (it can be eight four-day events, 32 one-day events, etc.). To sell at a farmers' market or non-profit festival (e.g. county fair), you need to submit this form, but selling at those events doesn't count towards the 32 allowed days per year.
- 2) [MD Form 386](#) (Intent to Participate in an Off-Site Event Form):
 - a. Email to planned.promotions@maryland.gov.
 - b. Free to file.
 - c. Must be submitted on the 20th day of the month preceding each off-site event.

13. Agricultural Processing

The “Agricultural Processing” use in the County Code ([Section 59.3.2.2](#)) is a conditional use (i.e. it is allowed if it meets the standards listed in Section 59.3.2.2 and receives approval from the Office of Zoning and Administrative Hearings) in three zones—Agricultural Reserve (AR), Rural (R), and Rural Cluster (RC) and is a permitted use (i.e. allowed by right) in the three industrial zones.

This use applies if you are processing agricultural products generated off-site. If you are processing only products grown or raised on-site, that is considered accessory agricultural processing and falls under the “Farming” use ([Section 59.3.2.6](#)). For example, processing milk into dairy products, grains into flour, or trees into lumber falls under the “Farming” use if all the milk, grains, or trees are grown/raised on-site; otherwise, it falls under the “Agricultural Processing” use. The production of mulch and compost falls under “Farming” if 50% or more of the feedstock materials are generated on-site; otherwise, it falls under “Agricultural Processing”. Slaughtering and processing farm animals falls under “Farming” if all the animals are raised on-site; otherwise, it falls under the “Slaughterhouse” use ([Section 59.3.2.8](#)), which is a conditional use allowed only in the AR, R, and RC zones (see Section 4.a: Farm Animals Other Than Poultry and Rabbits—Slaughter).

14. Nurseries

Growing ornamental (horticultural) crops falls under the “Farming” use in the County Code ([Section 59.3.2.6](#)). Under this use, you may also sell, deliver, and install ornamentals grown on-site, as well as temporarily selling ornamentals grown off-site if they take up a maximum of 2 acres or 20% of the property, whichever is less.

If you exceed these limits for selling off-site ornamentals, the use then falls under the “Nursery (Retail)” or “Nursery (Wholesale)” use ([Section 59.3.2.7](#)). Both of these are allowed as a conditional use (i.e. if they meet the conditional use standards listed in Section 59.3.2.7 and receive approval from the Office of Zoning and Administrative Hearings) in the Agricultural Reserve (AR) zone, the three rural residential zones—Rural (R), Rural Cluster (RC), and Rural Neighborhood Cluster (RNC)—and four of the residential zones—Residential Estate-1 (RE-1), Residential Estate-2 (RE-2), Residential Estate-2C (RE-2C), and Residential Estate-200 (RE-200). Both “Nursery” uses are also allowed as a permitted (i.e. allowed by right) or limited use (i.e. allowed if they meet the limited use standards in Section 59.3.2.7) in some of the commercial/residential, employment, and industrial zones.

15. Well and Septic

Unless your property is serviced by municipal sewer, each farm structure/building with an amenity requiring wastewater treatment (e.g. toilet, sink, shower, etc.) usually requires its own septic field. A septic system can only be built in an area where soil tests have shown that there is enough percolation capacity and depth to the water table during a certain time of the year.

You can contact Heidi Benham (heidi.benham@montgomerycountymd.gov), Well and Septic Division Chief at DPS, to find out if there are any current soil tests on record for your property showing areas suitable for a septic field.

If there are no records, you will need to get the soil tests. The percolation tests can be done at any time of the year, but the water table tests must be done during the timeframe established by DPS each year based on rainfall (typically Feb. 1 to April 15). Soil testing is an expensive process, as it requires submitting a [soil testing permit application](#) to DPS, hiring an engineer to develop a site test plan, having the land staked by a licensed surveyor, hiring an excavator to drill test holes and set up an appointment for a DPS inspector to evaluate the test holes, and paying the DPS fees.

Once you find a location that passes the percolation and water table tests, you will need to apply to DPS for a [septic permit](#), hire an engineer to prepare a septic permit plan, install the septic system, have it inspected by DPS, and pay the DPS fees.

Building a well requires applying to DPS for a [well permit](#), hiring an engineer to develop a site plan, hiring a well driller to drill the well, having DPS inspect the well, and paying the DPS fees. For a list of well and septic engineers and well drillers, visit the “Technical Assistance” section of our [Programs and Services](#) page.

16. Agricultural Use Assessment

The State Department of Assessments and Taxation (SDAT) assigns a use assessment to each property (e.g. agricultural, residential, commercial), based on how the property is being used, in order to tax it at the appropriate rate. Properties that are assessed agriculturally are taxed at a lower rate per acre than ones assessed residentially. A property’s assessment is independent of its zone. A property may be agriculturally zoned but not agriculturally assessed and vice-versa.

a. Obtaining an Agricultural Use Assessment

If you have one or more [approved agricultural activities](#) on the property, your property may be eligible for the [agricultural use assessment](#). To apply for this assessment, you need to submit to SDAT an [Application for Agricultural Use Assessment](#) and an [Agricultural Declaration of Intent](#).

- i. Properties with 20 acres or more:* Eligible for this assessment if they have at least 5 acres of land actually devoted to approved agricultural activities.
- ii. Properties with at least 3 acres but less than 20 acres:* Need to have at least 3 acres actually devoted to agriculture.
 - If they have fewer than 5 acres actually devoted to agriculture, they must also generate at least \$2,500 in gross annual income from approved agricultural activities.
 - If they have at least 5 acres actually devoted to agriculture, the income test is not required.
- iii. Properties with less than 3 acres:* It is very difficult for these properties to obtain the agricultural use assessment, since one of the following conditions must be met:

- The property has agricultural activity and you own an adjoining property that is eligible for the agricultural use assessment (limited to only two parcels of less than 3 acres).
- You receive at least 51% of your gross income from the active agricultural use of the property.
- The property is used agriculturally and is part of a "family farm unit." This term means that the owner of a larger farm may separate out of that larger parcel not more than 1 smaller parcel for each immediate family member. These smaller parcels must remain in active agricultural use, they must be contiguous to the larger parcel, and they must be owned by the immediate family member.

In Montgomery County, the maximum area that can receive the agricultural use assessment is six times the area that is actually devoted to agriculture. For example, if there are 20 acres devoted to agriculture on a 401-acre property, 120 acres are eligible to be assessed agriculturally and the remaining 281 acres will be assessed residentially. Land under a Forest Conservation Management Agreement or a private woodland management plan is not used in these calculations. The area used for a residence is excluded from the agricultural use assessment and assessed residentially. SDAT usually reserves one acre for the homesite.

According to [COMAR Section 18.02.03.06](#), a forested property of 5 acres or more may receive the agricultural use assessment if enrolled in the [Forest Conservation and Management Program](#). The landowner would need to: 1) hire a [registered professional forester](#) to prepare a forest stewardship plan for the property and 2) sign a Forest Conservation Management Agreement with the MD Dept. of Natural Resources (DNR).

b. Selling Agriculturally-Assessed Property

When a property that is agriculturally-assessed is sold and it is determined that the agricultural use will no longer continue, an agricultural transfer tax of 1–6% will be levied against the property. The seller is usually expected to pay this tax. However, if it is the intent of the buyer to continue the agricultural use, an [Agricultural Declaration of Intent](#) may be executed at settlement, which if approved by SDAT will reduce the amount of transfer tax owed.

In accordance with provisions of section 8-209 of the State of Maryland Tax-property article, the property must remain in agricultural use for a period of at least five consecutive full taxable years following the date of the declaration. If the land does not remain in agricultural use, the owner must notify SDAT. Failure to comply with these requirements during the first five years following the transfer will require the imposition of the agricultural transfer tax, which will be based upon a current fair market value appraisal and a 10% penalty.

17. Urban Agriculture Property Tax Credit

Urban farms can benefit from an 80% reduction in the amount of County property tax they pay if they meet all of the following criteria:

- The property is between ½ acre and 3 acres in size and is in a residential zone. Multiple, contiguous residential parcels owned by the same owner may be combined to meet the requirements of the law.
- The property is used solely for “Urban Farming”, as defined in [Section 59.3.2.9](#) of the County Code. The owner may live in a house on the property.
- The owner of the property receives more than \$5,000 in gross income from the sale of agricultural products grown or raised on the property. This requirement may be met by donating more than \$5,000 of agricultural products to a charitable organization registered with the Maryland Secretary of State.
- The property is within 1,000 feet of a Metro Station Policy Area.

The maximum number of years a property may receive the credit is 10 years. The tax credit will be terminated for years during which the property owner does not have more than \$5,000 of gross income from farming the property.

To obtain this tax credit, the owner must apply to our office each year using the [Montgomery County Urban Agriculture Property Tax Credit Application Form](#). The application is due on April 1 for the tax year that begins on the following July 1.

For more information, please visit the [Urban Agricultural Property Tax Credit webpage](#).

18. Taxes on Agricultural Equipment and Inputs

a. MD Sales and Use Tax

Farmers are exempt from the MD sales and use tax when buying or renting farm equipment, supplies, and livestock used for agricultural purposes, including aquaculture. To take advantage of this exemption, the farmer needs to ask the seller to complete his/her portion of the Maryland Sales and Use Tax Agricultural Exemption Certificate, located on the last page of the Comptroller of Maryland’s [Sales and Use Tax Exemptions for Agriculture document](#). The seller keeps a copy for his/her records. The specific types of items that are exempt are described below.

i. Equipment

This includes equipment used to raise livestock and poultry, prepare, irrigate or tend the soil, or plant, service, harvest, store, clean, dry or transport seeds or crops. Replacement and maintenance components for this equipment, such as hydraulic oil, are also exempt from the tax.

Equipment used to process agricultural products is also exempt from the tax. See the Comptroller of Maryland’s [Sales and Use Tax Exemptions for Production Activities document](#) for more information.

ii. Supplies

When sold for agricultural purposes, seeds (including plants and seedlings), fertilizer, lime, fungicide, herbicide and insecticide are exempt. Baler twine, wire, and containers used by a farmer to transport farm products to the market are also exempt.

iii. Farm animals

The sale of livestock and other agricultural animals, including poultry, horses (except riding, show or race horses), 4H animals, and aquaculture species, is exempt from the tax, as are sales of feed or bedding for livestock.

Farmers are also exempt from collecting sales tax when selling agricultural products (except flowers, sod, decorative trees, and other ornamentals).

b. Tax Deductions

Conservation equipment like no-till drills, liquid manure injection equipment, GPS devices, and other conservation tools are tax deductible. The Maryland Income Tax Subtraction Modification for Conservation Equipment allows farmers to subtract eligible equipment purchases from taxable income on Maryland individual and corporate tax returns. For more information, please review the [MDA Maryland Income Tax Subtraction Modification for Conservation Equipment brochure](#).

c. Energy Tax Relief Program

The Office of Agriculture administers the Fuel-Energy Tax Program for Certified Agricultural Producers, through which qualified agricultural producers pay the County's energy tax at a lower residential rate rather than the industrial rate. Any producer with property encumbered by an AEP, MALPF, or RLP farm preservation easement or enrolled with one or more specified county, state, or federal programs or agencies is eligible for this reduced fuel-energy tax rate.

The types of agricultural energy sources that are eligible for this program are:

- Electricity used for agricultural purposes that is metered separately from the meter on your house
- Dyed diesel fuel that is delivered to your farm for off-road use
- Liquid petroleum (LP) gas that is delivered to the farm for non-residential use
- Natural gas and coal used for agricultural purposes

If you believe you qualify for this program and are not enrolled, please review our [Energy Tax Relief Program FAQ Document](#) and these [Instructions for Determining the Tax Rate You Are Being Charged](#). To enroll in the program, you will need to submit the [Montgomery County Energy Tax Relief Program Application](#). If approved, you will receive a letter from our office certifying you as an agricultural producer. Once you are enrolled in the program, you will automatically receive this letter from us every two years.

19. Registering a Business

If you will sell taxable or non-taxable products or services, you will first need to:

- 1) [Register your business with the State Department of Assessments and Taxation](#)
- 2) Complete all other applicable requirements listed in the “Start Your Business” section of the [Maryland Business Express website](#) (required for most businesses), including:
 - a. Obtaining a Federal [Employer Identification Number \(EIN\)](#) from the IRS,
 - b. Filing the [Federal Beneficial Ownership Information Report](#), and
 - c. Obtaining a [Use & Sales Tax license](#) from the Maryland Comptroller.
- 3) Optional: Register the trade name of your business with the Maryland Department of Assessments & Taxation (if you have a business name that you want to protect).
- 4) Apply for a [Montgomery County Business/Traders license](#) from the Montgomery County Circuit Court License Department.