

**Ohio** | Department of Commerce  
Division of State Fire Marshal



## The Ohio Fire Code

### Fire Safety at Agritourism Facilities

Jeff Hussey, State Fire Marshal  
Tim Thompson, Division Legal Counsel

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### Agritourism



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Many agritourism facilities are exempt from the Ohio Building Code

*but*

The Ohio Fire Code applies to nearly all buildings including agritourism facilities

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**Our Goal Today** 4

We want to help you:

- Avoid becoming the subject of a Distinct Hazard enforcement case.
- Invest your funds and efforts to make your businesses safer for you and the public.
- Ensure business continuity for you and your community.
- Understand some cost-effective strategies to avoid creating a Distinct Hazard.
- How to work with local code enforcement personnel to construct a safe business.

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**Examples of Agritourism** 5

- Wedding and event barns
- Wineries
- Day camps
- Large hunting preserves
- Flea markets

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**Agricultural Zoning Certificate** 6

- Indicates land use, not building use – this leads to our problem
- Provides exemption from Ohio Building Code – *and* removes jurisdiction for BCO
- But again, this does not remove applicability of Ohio Fire Code.

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**Zoning Certificate Effect on Building Code**

Whenever a county zoning inspector under section 303.16 of the Ohio Revised Code (O.R.C.), or a township zoning inspector under section 519.16, issues a **zoning certificate** that declares a specific building or structure is to be used in agriculture, such building is not subject to sections 3781.06 to 3781.20 or 3791.04 of the O.R.C.



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**Ohio Building Code Agricultural Exemption**

(B) Sections 3781.06 to 3781.18 and 3791.04 of the O.R.C. do not apply to either of the following:

- (1) Buildings or structures that are incident to the use for agricultural purposes of the land on which the buildings or structures are located, provided those buildings or structures are not used in the business of retail trade.



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**Add'l Ohio Building Code Exemption**

(B) Sections 3781.06 to 3781.18 and 3791.04 of the O.R.C. do not apply to either of the following:

- (1) ... For purposes of this division, a building or structure is not considered used in the business of retail trade if fifty per cent or more of the gross income received from sales of products in the building or structure by the owner or operator is from sales of products produced or raised in a normal crop year on farms owned or operated by the seller.



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### Public Occupancies and Risk Management

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Many agritourism facilities look and act like an "Assembly" occupancy

- Examples include restaurants, event centers, auditoriums and theaters
- Required Building Code features ensure a level of life safety for public
- You and your family expect a reasonable level of safety in public buildings



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### Where and how does the Ohio Fire Code apply?

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#### O.F.C. 101.2.2: Activities, locations and persons subject to the Ohio Fire Code.

- The scope of this code includes, but is not limited to, property owned by the State of Ohio or other political subdivisions of the state, residential premises (one, two and three family dwellings), **and agricultural premises.**



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### Fire Code - Applicability to Agricultural Lands

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102.1.2 Agricultural uses and locations. The **construction and design** provisions of this code, including any construction permit requirements, **shall not apply** to structures:

- (i) subject to section 3781.061 of the Revised Code, or
- (ii) otherwise exempt from the building code as listed in 1301:7-7-80 of the Administrative Code because such structures are **being used for agricultural purposes** as described in section 3781.06 (B)(1) of the Revised Code.

**Exception** to paragraph 102.1.2 (i) and (ii): If the conditions at the structure constitute a **distinct hazard to life or property or the occupancy of structure constitutes a change of use or occupancy** of the structure from one of the exempt uses listed in this division to another occupancy classification subject to this code or the building code as listed in rule 1301:7-7-80 of the Administrative Code.



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**Fire Code - Distinct Hazard**

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Distinct Hazard – A legal standard, defined by case law, describing a uniquely dangerous and hazardous situation or condition.

Even though there are limited exemptions for agriculture in the Ohio Fire Code, once a Distinct Hazard is identified, an enforcement case will likely be initiated.

The key is for agritourism facilities to avoid "crossing" the Distinct Hazard threshold.

This can be done by voluntarily incorporating some reasonable level of life safety features in an agritourism facility.

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**Case Studies**

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**Recent cases involving SFM**

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- *Griffith v. Rielage*  
Franklin County Court of Common Pleas  
March 9, 2004 127 Ohio Misc. 2d 122
- *Blueberry Patch LLC v. Flowers*  
Richland County Court of Common Pleas  
January 24, 2018

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2017 OFC - Applicability to Agricultural Lands 16

Cases:

- *Griffith v. Rielage*  
Franklin County Court of Common Pleas  
March 9, 2004 127 Ohio Misc. 2d 122

"... equestrian center or facility in Hilliard, Ohio. In connection with that operation, there exists a barn on the property that houses a number of horses for breeding, raising, boarding and training. At an undetermined time in the past but in excess of 20 years ago, persons working at the facility were permitted by the owner to reside in apartments in the barn (which were further renovated over time) ..."



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2017 OFC - Applicability to Agricultural Lands 17

Cases:

- *Griffith v. Rielage*  
Franklin County Court of Common Pleas  
March 9, 2004 127 Ohio Misc. 2d 122

"... there exists no automatic fire detection system or fire protection system in the barn. In other words, there is no mechanical fire alarm system and no sprinkler system in the structure. Additionally, the evidence revealed that there exists limited and unprotected means of egress from the structure. "



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2017 OFC - Applicability to Agricultural Lands 18

Cases:

- *Griffith v. Rielage*  
Franklin County Court of Common Pleas  
March 9, 2004 127 Ohio Misc. 2d 122

"New code standards may not be applied to existing structures and conditions, except in cases where the Fire Marshal finds a "distinct hazard to life or property"



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2017 OFC - Applicability to Agricultural Lands 19

- *Griffith v. Rielage (nuisance discussion)*

"Where, as here, a situation is extant with tenants (as distinguished from owners) living and sleeping in an upper floor of an edifice that is combustible by construction, that houses combustible materials by design, and that provides for [\*130] the rapid uncontrolled spread of fire, a situation of clearly recognizable danger is presented. This situation, compounded by the lack of appropriately located hazard warning devices and a grossly inadequate means of emergency escape results in an undeniably unreasonable hazard to those residing in the structure."



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2017 OFC - Applicability to Agricultural Lands 20

- *Griffith v. Rielage (nuisance discussion)*

"Upon consideration, this court finds that the record fully supportive of a finding that the structure in question constituted a **nuisance**. This court finds that the evidence presented preponderates to support the conclusion that the condition of the structure is such that it presents a particular and unreasonable hazard to members of the public ..."



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2017 OFC - Applicability to Agricultural Lands 21

- *Griffith v. Rielage (nuisance discussion)*

"... this court finds that the record supports the conclusion that a **distinct hazard** clearly existed in this case where there are members of the public, including young children, residing in a structure that is **highly combustible** and without properly placed first floor **hazard-warning devices** or **fire-suppressant** devices, and which fails to have a means of **egress** to permit residents to effectively escape a fire when one occurs in the barn. The record also supports a finding that this condition is **not only a distinct, articulable hazard**, but it is also one that is an **unreasonable hazard impacting on members of the public** (including children who have not voluntarily chosen to live there under those conditions)."



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2017 OFC - Applicability to Agricultural Lands 22

- *Griffith v. Rielage (nuisance discussion)*

"Appellants also argue the Fire Marshal "lacked jurisdiction" over the subject property and the conditions on the property by virtue of R.C. 3781.061. Other than observing that the mentioned statute is applicable in this case because the county zoning inspector issued a zoning certificate that declared that appellants' barn was used in agriculture, appellants fail to explain how that circumstance deprived the Fire Marshal of "jurisdiction" over the property."



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2017 OFC - Applicability to Agricultural Lands 23

- *Griffith v. Rielage (nuisance discussion)*

"...be conducted the *inspection of all buildings, structures, and other places*, the condition of which may be dangerous from a fire safety standpoint to life or property, or to property adjacent to the buildings, structures, or other places." (Emphasis added.)

Thus, upon consideration, appellants' assertion that the Fire Marshal lacked jurisdiction is without merit inasmuch as his offices clearly had that authority to inspect appellants' barn (R.C. 3737.22) and the power to issue citations for violations of the fire code (R.C. 3737.42)."



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2017 OFC - Applicability to Agricultural Lands 24

- *Griffith v. Rielage (nuisance discussion)*

BUT: "Considering that the board's remediation or abatement order includes overt and specific adherence to the Ohio Basic Building Code, it is overly broad inasmuch as appellants' property is not subject to regulation promulgated under the authority of the statutes referenced immediately above. Accordingly, the [board's October 31, 2003] order and the remediation order incorporated therein are *modified* to the extent that appellants cannot be compelled to adhere to R.C. 3781.06 to 3781.20 or 3791.04 and regulations promulgated under R.C. 3781.06 to 3781.20 or 3791.04 ... [but must comply with O.F.C.]"



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2017 OFC - Applicability to Agricultural Lands 25

Cases:

- *Blueberry Patch LLC v. Flowers* (Richland County)
  - Basic Facts:
    - Converted barn/greenhouse structure: The Blueberry Patch is a greenhouse that has been turned into a combined wine bar, café with a wood-fired pizza oven, and gift shop, all without adequate fire suppression, detection, or notification and other safety precautions normally required by the Ohio Fire Code for such usages.



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2017 OFC - Applicability to Agricultural Lands 26

Cases:

- *Blueberry Patch LLC v. Flowers* (Richland County)
  - Basic Facts:
    - An upstairs loft provides further seating for the wine bar and café, without an external **exit**. The walls inside are lined with dry, untreated, reclaimed wood. And, yet, there is **no fire suppression** system, no fire **detection** system, and no fire **alarm** system. The facility is advertised to the public, and, as with any retail establishment, members of the public are welcome, sometimes in large numbers.



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2017 OFC - Applicability to Agricultural Lands 27

Cases:

- *Blueberry Patch LLC v. Flowers* (Richland County)
  - BBA and Magistrate: Upheld Citation
  - Court of Common Pleas – Upheld with modifications:
    - O.F.C. applies – “distinct hazard”
    - O.F.C. applies – change of use
    - O.F.C. applies to remedy, not O.B.C. (like Griffith case)
      - Issue: what is remedy under O.F.C.? **Full compliance or just not a distinct hazard?** All of Rule 9 and 10, or parts?



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### Other Agritourism Cases

- Silver Creek Stables – Montgomery County (Wedding Barn)
- Handled locally
  - Building Code – Local Building Code Official
  - Zoning – Township Zoning Officer
  - Fire Code – Local Fire Department in consultation with SFM



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### Conditions that may lead to a Distinct Hazard Case

- Highly flammable/combustible materials such as hay and straw
- Storage of chemicals and flammable liquids
- Inadequate egress
- Candles and open flame
- Flammable drapery and fabrics
- Pyrotechnics / fireworks / flame effects
- Unprotected cooking appliances



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### Agritourism

#### Life Safety Systems and Features to Consider \*\*

- A fire alarm system is required in Assembly-2 occupancies.
- A fire *suppression* system is required in any A-2 occupancy that is more than 5,000 square feet or that has an occupant load of 100 or more.
- If occupants loads in the facility will exceed 50 people, exit doors must swing outward or in the direction of egress travel.

\*\*exact features will depend on building specifications and layout



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### Agritourism

#### Required Fire Safety Features to Consider (cont) \*\*

- Portable fire extinguishers
- Exits, exit signage and exit lighting
- Fire apparatus access roads
- Cooking hood suppression system

**\*\*exact features will depend on building specifications and layout**

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### Fire Safety Inspectors – what is your role?

- Be aware of potential agritourism business startups
- Get involved at the planning stage
- Partner to provide voluntary plan review services
- Help your business owners avoid creating a Distinct Hazard

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### Additional Considerations

- Get all parties involved early to provide input and feedback
- Building may be uninsurable if significant hazards remain

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# Questions?

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