



## MASSACHUSETTS FARM BUREAU FEDERATION, INC.

*"The Voice of Agriculture"*

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Beginning in the early 2000s, local agriculture began to grow in popularity both in Massachusetts and elsewhere. The interest in the "Buy Local" movement has spurred an increase in the number of farmers markets, commercial farms, and backyard "hobby farms." Massachusetts has seen an approximately 30% increase in the number of farms, many of them small-scale and farmed by folks who are new to agriculture and many existing farms have expanded. Many more homeowners took up gardening and keeping backyard chickens and other livestock. This phenomena has led to greater numbers of livestock, in suburban, and other areas where they were previously uncommon.

Due to the upsurge in farming many Boards of Health (BOHs) have increasingly been faced with conflicts and issues with livestock – sometimes with farms, other times with non-commercial "backyard" operations.

Massachusetts law provides (BOHs) broad authority over backyard livestock operations, and more limited authority over commercial livestock operations. In most cases, BOHs have sufficient authority to deal with problems without specific regulations. However, since BOHs have seen an upward trend in complaints and issues, some have chosen to implement regulations.

Unfortunately, many BOHs don't have much expertise in the keeping of livestock. Consequently, due to the lack of experience wording these types of regulations numerous boards have written some really bad regulations which put unnecessary and often onerous requirements on livestock owners. In some cases, poor regulations have become the model for other towns.

Massachusetts Farm Bureau recognizes that there is often a legitimate need for BOHs to become involved in livestock issues. However, it is in everyone's best interest if their involvement is consistent with state law, sound science, and good animal husbandry.



## MODEL BOH REGULATION FOR THE KEEPING OF LIVESTOCK

This model regulation was developed jointly between the MA Association of Health Boards and the MA Farm Bureau Federation.

### Regulation of the [city/town] Board of Health Minimum Standards for the Keeping of Animals

#### 1. AUTHORITY:

This Regulation is pursuant to the authority granted to the [city/town] Board of Health by Massachusetts General Laws Chapter 111, Section 31, which provides that "Boards of Health may make reasonable health regulations," and Massachusetts General Laws Chapter 111, Section 155.

#### 2. PURPOSE:

- a. This regulation is promulgated to provide minimum standards for the keeping of animals in [city/town] by enabling residents to have the opportunity to participate in the growing national trend for responsible, small scale agricultural protection while protecting public health, safety and welfare in [city/town].
- b. This regulation is not intended to regulate the use of land for commercial agriculture. Commercial agriculture may be limited by [city/town] zoning [ordinance/bylaw] to activities of five (5) acres or more or on parcels of two (2) acres or more if the sale of products produced from the agricultural use on the parcels annually generates at least \$1,000 per acre based on gross sales dollars in areas not zoned for agriculture in accordance with Massachusetts General Laws Chapter 40A, Section 3.

#### 3. DEFINITIONS:

For the purpose of this regulations, the following words shall have the following meanings:

Abutter: Owners of the abutting land or property within three hundred (300) feet of the area of the Applicant's property where animals are kept. A person will only qualify as an abutter, for the purpose of this regulation, if he or she possesses an ownership interest in the abutting land or property.

Animal: All animals and livestock which are kept as domesticated animals but excluding the following: household pets as defined herein; research laboratory animals otherwise regulated; and non-exempt wild animals as regulated by Massachusetts General Laws Chapter 131,



Section 23 and 321 CMR 9.00.

Animal Structure: Any structure used to house, shelter or contain livestock and animals.

Applicant: A person who applies for a permit to keep one or more animals pursuant to this regulation.

Board or Health or "the Board": The [city/town] Board of Health and/or its designated agent(s).

Cockerel: Young male chicken.

Corral: Any pen or enclosure for confining one or more animals.

Domesticated animals: Animals of a species of vertebrates that have been domesticated by humans to live and breed in a tame condition and depend on humankind for survival. Domesticated animals shall include, but not be limited to any equine or bovine animal, goat, sheep, swine, dog, cat, poultry or other domesticated beast or bird.

Dwelling: Any building, structure or shelter used or intended for human habitation.

Facility: The total accommodations to be used for the keeping and care of one or more animals, including but not limited to land and any accessory or animal structure such as, but not limited to a barn and/or stable.

Fencing: Enclosure material installed for privacy or livestock and/or animal containment.

Feed management plan: A plan for the keeping and management of feed.

Generally acceptable agricultural practices: Practices that the applicant can demonstrate are consistent with the Massachusetts Department of Agricultural Resources Division of Animal Health's (MDAR's) Generally Acceptable Agricultural Practices (GAAPs). The following are some potential resources, but are not an exhaustive list, that can be consulted to establish compliance with the MDAR GAAPs: MDAR, <http://www.mass.gov/eea/agencies/agr/>; the USDA Natural Resource Conservation Service, <http://www.nrcs.usda.gov/wps/portal/nrcs/site/ma/home/>; the MA Association of Conservation Districts, <https://massacd.wordpress.com/>; UMASS Extension, <http://ag.umass.edu/resources/agriculture-resources>; UNH Cooperative Extension, [https://extension.unh.edu/resources/resource/471/Housing\\_and\\_Space\\_Guidelines\\_for\\_Livestock](https://extension.unh.edu/resources/resource/471/Housing_and_Space_Guidelines_for_Livestock).

Household pets: Animals that are primarily kept indoors for non-agricultural purposes, including but not limited to dogs, cats, ferrets, pot-bellied pigs, fish, domesticated or exotic



birds, guinea pigs, hamsters, and mice.

Keeping of Animals Permit or "Permit": A permit issued by the Board for the keeping on one or more animals in accordance with the provisions of this regulation.

Livestock: Animals kept for agricultural purposes, including but not limited to cattle, goats, sheep, swine, equines, camelids, poultry and other fowl. **[Note that in cities and/or towns where homes are in areas too densely populated a city or town may want to exempt roosters and cockerels from the definition of livestock; however, this is not always the case. This should be decided on a case by case basis after a discussion.]**

Manure Management Plan (MMP): A plan for the handling of manure. The MMP shall address cleaning, composting, storage, utilization and removal of manure.

Permit holder: Any person who has met the conditions of this regulation and has received a permit issued by the Board of Health to keep animals.

Person: Every individual, partnership, corporation, firm, association, group, or other entity including a city, town, county, or other governmental unit, owning property or carrying on an activity regulated by this regulation.

Pest Management Plan: A plan, which adequately defines the measures that shall be taken by the owner to minimize the presence of rodents, insects and pests, and to minimize the creation of odors and other nuisances.

Rooster: An adult male chicken.

Stable: An accessory building or structure used for the shelter and/or feeding of one or more animals.

Stall: A compartment in a stable used for the keeping of one or more animals.

Usable area: Land area suitable for the raising of animals such as pastures, fields and wooded uplands. This area does not include wetlands, swellings, or any other area(s) as may be restricted by town, state or federal law, regulations or guidelines.

Wetlands: Land area or surface area so defined by the Wetlands Protection Act, Massachusetts General Law, Chapter 131, Section 40 and regulations promulgated pursuant to 310 CMR 10.00 or by the **[city/town] Wetlands Protection [ordinance/bylaw]** or pursuant to Section 404 of the Federal Water Pollution Control Act, 33 U.S.C. 1341.

Wild and exotic animals: Any animal not normally found or kept as a domesticated animal, and which require a permit to keep issued by either a federal or state wildlife agency,



including but not limited to deer, poisonous reptiles, alligators, monkeys, lions and tigers as defined as non-domesticated by Massachusetts General Laws, Chapter 131, Section 23 and 321 CMR 9.00.

#### 4. GENERAL REQUIREMENTS:

- a. All applications must be submitted to the Board of Health for review and approval and shall meet the criteria set forth in Section D and E of this regulation.
- b. All new structures must comply with the applicable setback requirements for the zoning district in which such structures are located as set forth in the **[city's/town's] Zoning [Ordinances/Bylaws]**, aside from protection accorded by Massachusetts General Law, Chapter 40A, Section 3 and the Wetlands Protection Act, 310 CMR 10.00.
- c. All permitted animals must be confined to the property for which a permit is granted unless the permit holder has documented in writing to the satisfaction of the Board, including obtaining any necessary permissions, arrangements for such animals to be kept elsewhere (i.e. for grazing, pest control, etc.).
- d. In accordance with Massachusetts General Law, Chapter 111, Section 125A, "... the odor from the normal maintenance of livestock or the spreading of manure upon agricultural and horticultural or farming lands, or noise from livestock or farm equipment used in normal, generally accepted farming procedures or from plowing or cultivation operation upon agricultural and horticultural or farming lands shall not be deemed to constitute a nuisance." This law applies to commercial farming operations.

#### 5. PERMIT AND APPLICATION REQUIREMENTS

- A. A permit is required for anyone keeping one or more animals as defined in this regulation, except on commercial farms which meet the requirements of Massachusetts General Law, Chapter 40A, Section 3 and/or Massachusetts General Laws Chapter 128, Section 1A, and except as indicated in section b below.
- B. The keeping of less than \_\_\_\_\_ chickens shall not require a permit. **[N.B. This is a Board of Health decision.]**
- C. The keeping of roosters, cockerels and non-exempt wild animals, in accordance with Massachusetts General Law Chapter 131, Section 23 is prohibited within **[city/town]**. **[N.B. See above definition of livestock. Roosters and cockerels should only be prohibited in areas where homes are in areas too densely populated. This should be considered by the Board on a case by case basis,**



**depending on the density of the municipality and the location of the proposed site.]**

- D. Application(s) for a permit shall be submitted on a form supplied by the Board of Health for each location where animals are kept in **[city/town]**. Such application(s) shall be accompanied by the following information, and will be deemed incomplete if any information, plan or fee is missing.
- i. Name, mailing address, phone number and email of all owners of the property, including an emergency contact number.
  - ii. Location – street address of the premises to be used.
  - iii. Maximum number and species of animals to be kept.
    - i. If the permit holder intends to increase the number of animals or change in species of animals to be kept prior to the end of the permit year, the permit holder must notify the Board of Health, and the Board may require a public hearing if the Board believes that the increase will materially change the application upon which the permit is based.
    - ii. This section shall not apply to farmers when commercially breeding animals.
  - iv. A plot plan, with dimensions of the area where animals will be kept. Also required on the plot plan are the locations of the primary residence, structure(s) (including fences), abutting structures(s), corrals, septic systems, private wells and wetlands. A hand-drawn plot plan is acceptable so long as it is of sufficient detail and quality to allow for Board review.
  - v. A written management plan for the following:
    - i. Manure management
    - ii. Storage of feed
    - iii. Pest management
  - vi. Application fee as indicated on the current Board of Health schedule of fees.
- E. The permit shall not be transferable as to other animals, or assignable or transferable for the use of other persons or the use of other premises.
- F. The permit shall expire on \_\_\_\_\_, unless sooner revoked or suspended by the Board after a hearing.
- G. A permit holder must apply for a renewal of the permit at least thirty (30) days prior to the expiration of the permit. If a permit holder fails to timely apply for a renewal



of the permit, the permit holder's application shall be treated as an application for a new permit. A permit will not be denied without cause in the form of valid complaints and/or violations of this regulation or other laws.

- H. If the permit holder is not the owner of the property, documentation must be provided indicating that the property owner is not opposed to the keeping of animals on the property.
- I. All permits issued prior to the effective date of this regulation are valid and may be renewed prior to the effective date of this regulation, subject to the prior regulation, provided conditions and agreements contained in the original application have not changed, and that no conditions exist that would be injurious to the public health, safety or welfare. All renewals of permits after the effective date of this regulation shall be subject to this regulation. **["Grandfathering" section. This section should be deleted if there is no current regulation or permit already in place.]**

## 6. HEARINGS

- A. All **["new applications and variance requests" or "variance requests" choose one option.]** will be considered by the Board only after the Board conducts a public hearing.
- B. Notice of the public hearing relative to shall be provided to all abutters by first class mail at the applicant's expense and by legal notice in a local newspaper of general circulation by the **[city/town]** Board of Health. Both forms of notice shall provide for at least fourteen (14) days' notice prior to the public hearing. The applicant shall submit a list of abutters, certified by the **[city/town]** Board of Assessors with the **["application or variance request" or "variance request" choose one option.]** and a sworn statement that the applicant has mailed notice to each abutter by first class mail.
- C. The applicant must demonstrate that the issuance of a permit shall not be detrimental in any way to the public welfare and would not endanger the health or safety of the municipality, and that all applicable requirements of this regulation have been satisfied. The Board may impose conditions, safeguards and other limitations on a permit consistent with the public health, safety and welfare.



- D. It shall be a condition of any permit issued under this regulation that the permit holder shall comply with all applicable federal, state and local laws, regulations and other requirements.

## 7. CONSTRUCTION AND CONSTRUCTION CHANGES

- A. No person shall erect, occupy, use rebuild, reconstruct, alter or structurally change a stable, accessory structure or corral intended for housing or confining of animals without submitting an initial or revised plan to the Board for its review and approval. This section shall not apply to repairs.
- B. It is the responsibility of the applicant to comply with **[city's/town's]** Zoning **[Ordinance/Bylaws]** and applicable sections of the building code when conducting construction or construction changes referenced in Section A above.

## 8. PENALTIES

- A. If there is a violation of this regulation, a designated agent of the Board of Health may issue a written order ("Order") to the person or persons having control of the premises and to the permit holder (if different) to correct the offending deficiencies within a reasonable specified time.
- B. As an alternative to an Order or if a person does not comply with an Order and such Order is not modified or withdrawn, the Board may commence an enforcement action to correct such violation(s).
- C. In accordance with Massachusetts General Law Chapter 111, Section 31, any violation of this regulation shall be subject to fines. Each day the violation continues shall be considered a separate offense. Nothing contained herein shall preclude the Board from seeking equitable relief to enforce this regulation.
- D. The Board may suspend, revoke or deny a permit if a permit holder is found to be in violation of any provision of this regulation after a hearing.
  - a. Arrangements for re-homing the animals shall accompany any suspension, revocation or denial of a permit.
- E. Any person to whom an Order has been served pursuant to this Section shall have the opportunity to request a hearing before the Board. A request must be made in writing within fourteen (14) days after the Order has been served. For the purposes





of this Section, an Order shall be deemed to have been served on the date of mailing, except as stated otherwise on the Order. At the hearing, the person served with the Order shall be given an opportunity to present evidence and show why an Order should be modified or withdrawn.

**9. VARIANCES**

- A. Variance to any section of this regulation may be requested in writing to the Board. When such a request is received, a hearing shall be scheduled in accordance with Section 5 above.
- B. Variances shall be granted only under the following conditions:
  - a. Strict enforcement of this regulation will constitute a manifest injustice, and
  - b. The granting of the variance shall not in any way impair the public health and safety or the environment.
- C. The Board may impose any conditions, safeguards and other limitations on a variance when it deems it appropriate to protect the public health and safety or the environment.

**10. SEVERABILITY**

- A. If any provision of this regulation is declared by a court of competent jurisdiction to be invalid or not enforceable, the other provisions shall not be affected thereby, but shall continue in full force and effect.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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Effective date: \_\_\_\_\_