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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.

Draft – MODEL LIVESTOCK REGULATIONS FOR MA BOARDS OF HEALTH

I. Introduction – Should your BOH regulate livestock?

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. Many existing farms expanded. Many more homeowners took up gardening and keeping backyard chickens and other livestock. This phenomena has led to livestock, or greater numbers of livestock, in suburban and other areas where they were previously uncommon.

One of the results has been that Boards of Health (BOHs) have increasingly been faced with conflicts and issues with livestock – sometimes with farms, other times with non-commercial “backyard” operations.

MGL Chapter 111 provides Boards of Health (BOHs) broad authority over backyard livestock operations, and more limited authority over commercial livestock operations. In most cases, Boards of Health have sufficient authority to deal with problems without specific regulations. However where boards have seen a trend in complaints and issues, some have chosen to implement regulations.

If BOHs consider adopting and/or implementing livestock regulations, they may want to consider whether the regulations should be for non-commercial (hobby) operations, commercial operations, or both. It is recommended that regulations be targeted towards those operations which the town has found problematic. It is not fair nor appropriate to regulate a commercial poultry operation because of issues with backyard chickens – or vice versa.

II. Board of Health Authority over Livestock.

Nuisances – Boards of Health do have the authority to regulate farms as nuisances, however there are certain constraints relative to commercial farms. MGL Chapter 111 Section 125a does allow BOHs to take action against nuisance farms for issues relating to noise, odor, etc. though, the BOH may not do so when the farm is following “generally accepted agricultural practices.”

Site Assignments - MGL Chapter 111 Section 143 allows BOHs to assign locations in towns where “noisome trades” may occur. The law stipulates that farms covered in MGL Chapter 111 Section 125a, other than piggeries, are not subject to the provisions of this law.

In short, BOHs have limited authority over commercial livestock operations unless they are operating in a manner that is not consistent with generally accepted agricultural practices. They have broader authority over non-commercial hobby operations.

III. Generally Accepted Agricultural Practices – Generally Accepted Practices are those practices which most farmers should be able to apply in a given situation. They are also sometimes referred to as *normal agricultural practices*.

The terms Generally Accepted/Normal Agricultural Practices and Best Management Practices are often mistakenly interchanged--this should not be done. Generally Accepted Agricultural Practices are NOT equivalent to Best Management Practices. Where Generally Accepted Practices should be within reach of most, if not all farmers, Best Management Practices typically take some combination of financial, technical or additional assistance in order for farmers to implement them. Best Management Practices are usually not appropriate as a regulatory requirement, except where there is a resource at high risk and the requirements are accompanied by financial, technical and/or additional assistance. BOHs do not have the authority to require standards that are stricter than Generally Accepted Agricultural Practices.

There is no directory or list of Generally Accepted Agricultural Practices as:

1. Practices change over time with many organizations working to make today's best management practices, tomorrow's normal agricultural practices. Do not rely on old descriptions of practices; they very well may be out-of-date.
 2. There may be more than one generally accepted practice in a given situation.
 3. What is a generally accepted practice on one farm, may not be generally accepted on another. Size, layout, available equipment, species and variety of livestock, etc. may all be factors on what is considered normal on a given operation. In short, there is often no one practice that is acceptable for all situations.
- **How to Identify Generally Accepted Agricultural Practices** – Health agents and BOH members can't be expected to know everything, and detailed knowledge of agricultural practice is often outside their area of expertise. There are a number of resources they can turn to in order to help identify acceptable practices.
 - Agricultural Commissions – about half the towns in Massachusetts have created Agricultural Commissions. These are municipal bodies without regulatory authority, who are charged with preserving agriculture in a municipality and assisting other town boards in issues related to agriculture. Typically, Agricultural Commissions have farmers or other agricultural professionals on them, who can be of great help in identifying what are normal farming practices. www.massagcom.org/
 - USDA Natural Resource Conservation Service (NRCS) <http://www.nrcs.usda.gov/wps/portal/nrcs/site/ma/home/>
 - MA Association of Conservation Districts <http://maacd.org/>
 - UMASS Extension <https://ag.umass.edu/quick-guide-to-extension-agriculture-and-commercial-horticulture-resources>

IV. **“Watchouts” in municipal livestock regulations in Massachusetts.** Farm Bureau staff have reviewed many BOH regulations dealing with livestock. Frequently, parts of the regulations go beyond the scope of protecting public health and enter the purview of regulatory authority outside of that which has been assigned to BOHs. While the intent may be well-meaning, this is inappropriate.

- **General Authority** – the general authority of Boards of Health is to protect human health. While this can be interpreted fairly broadly, any provision of a regulation should have a direct correlation to public health. Common examples include:
 - **Humane Issues** – while there is a natural inclination for BOHs to want to ensure that livestock is treated humanely, that's not their job. It is not an issue directly related to public health. The MA Society for the Protection of Cruelty to Animals and the Animal Rescue League of Massachusetts have special state police powers and are given authority by the state to investigate animal cruelty. Concerns and issues related to the humane treatment of livestock should be directed towards these organizations.
 - **Animal Health Issues** – The MA Department of Agricultural Resources has authority over issues related to health and diseases in animals. There are animal diseases which also infect humans (zoonotic) for which vaccines exist – rabies, EEE, etc. However, as of the date of the writing of this manual, the Department of Public Health does not require mandatory vaccination of livestock as they do not see a significant benefit to public health. Boards that are inclined to include vaccination requirements for livestock should first consult the Public Health Veterinarian at the Department of Public Health.
 - **Wetlands** – Boards of Health have authority over wetlands only where there is a *direct* relationship to public health – namely drinking water wells, surface drinking water supplies and shellfish beds. BOH regulations specific to these resources are appropriate. However, general restrictions relative to wetlands with the assumption that there is a correlation are not appropriate, but fall within the purview of the Conservation Commission. Broad BOH regulations relative to wetlands run the risk of conflicting with state law which allows agricultural exemptions. While municipalities can be more restrictive than state laws, they cannot conflict with State Law.
 - **Pesticides** – BOHs may not regulate pesticide use. Under MGL 132B, only the state may regulate pesticides. Therefore, BOHs may not prohibit the use of pesticides or require the use of pesticides in a given situation.

BOHs may require that pest problems be addressed. Rather than recommend or prohibit specific methods of controlling pests, it is recommended that BOH regulations and guidance refer to Integrated Pest Management (IPM) as an approach to pest control. IPM utilizes a combination of controls to address pest problems including traps, prevention and if appropriate, pesticides. Pesticide application is typically reduced with an IPM approach.

- **Animals Per Acre** – Many regulators gravitate toward simple numbers in establishing thresholds and requirements. They are easy to understand and enforce, and can be applied to operations without concerns for subjectivity or bias. In livestock regulations, this tendency has led some boards to specify a number of animals per acre. While the number of animals on a given area of land does have some relevance to odor, runoff and health concerns, it should not be a component of livestock regulations. There are many other factors that need to be considered including:
 - Proximity to drinking water resources
 - Geography of the land
 - Proximity to sensitive populations (nursing homes, daycare, etc.)
 - Manure Management Practices
 - Feed and Grazing Management Practices
 - Pest Management Practices

Where BOHs choose to implement livestock regulations, MA Farm Bureau recommends that BOHs consider all of these factors, as well as animal density, in determining whether to allow a livestock operation or not. The onus should be put on the livestock owner to demonstrate that he or she can appropriately manage livestock at a given location. Predetermining how many animals may be kept on a given parcel of land could prohibit a landowner from using the property to its fullest potential, or allowing more livestock to be kept in a given area than is appropriate.

For instance, many stable operations keep a large number of horses on a relatively small plot of land. They truck manure away frequently, keep feed sealed away from pests, and have aggressively utilized integrated pest management programs. Conversely, if mismanaged, a single horse on a large portion of property can cause problems for neighbors.

- **Variances** – BOHs will occasionally set very strict rules with the understanding that they will allow variances where public health can be protected, even without following these rules to the letter. In many towns, variances are given out on a frequent basis. MA Farm Bureau has seen a number of problems with such scenarios:
 - While the BOH may view a variance as a common and acceptable occurrence, many members of the public view it as an exception or privilege. Where livestock operations sometimes draw a NIMBY (not in my backyard) attitude from neighbors, it is often preferable to have regulations which allow for BOH judgment from the beginning of a permit or regulatory process, rather than call for a variance.
 - BOH members change with relative frequency; regulations change less frequently. We have seen several situations where regulations were written when a liberal attitude towards variances was taken by BOH members. However, over a relatively short period of time as membership on the BOH changed, variances came to be viewed as something to be given only in rare situations.

Model Regulations for Boards of Health - NOTE – this model regulation covers non-commercial livestock operations.

Section 1-1 Authority

These regulations are adopted under the authority of MGL Chapter 111, Section 31, as reasonable health regulations designed to protect the health and of those who reside within the Town of _____. The following regulations pertain to the keeping of animals.

Section 1-2 Statement of Purpose

Whereas minimum standards to promote the protection of the public health are considered necessary for the health, safety and welfare of the community, the Town Board of Health has adopted these regulations.

Section 1-3 Definitions

Abutters: Owners of abutting land or property within one hundred (100) feet of the applicant's property line. A person will only qualify as an abutter for the purpose of this regulation if they possess an ownership interest in the abutting land.

Applicant: One who applies for a permit to keep one or more animals.

Board of Health: A municipal agency, either appointed or elected, and all of its officers charged with ensuring the protection of public health in that municipality.

Corral: An enclosure for the confining of one or more animals.

Companion Animals: Animals that are primarily kept indoors for non-commercial purposes including but not limited to dogs, cats, ferrets, pot-bellied pigs, fish, domesticated or exotic birds, guinea pigs, hamsters, and mice.

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

Facility: The total accommodations to be used for the keeping or housing and care of one or more animals, including but not limited to a barn and stable.

Fencing: Installed for the purpose of privacy or livestock containment.

Grandfathered: Pre-existing conditions to include existing infrastructure such as fencing, corrals, barns, stables, etc. that existed with a Barn & Stable permit issued by the Board of Health before the adoption of this regulation, or when property was purchased or conditions that existed before the adoption of regulations or the issuance of Barn & Stable permits by the Board of Health, are considered to be grandfathered and can remain so as long as they are not altered or enlarged without the necessary approvals.

Livestock: Animals kept for agricultural uses including but not limited to cattle, goats, sheep, swine, equines, camelids, poultry, etc. This term shall not apply to companion animals, as defined in this section.

Livestock Structure: Any structure used to house, shelter or contain livestock.

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

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.

Useable Area: Land area suitable for the keeping of animals including but not limited to pastures, fields, wooded uplands.

Wetlands: Land area or surface area so defined by Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, section 40 and regulations promulgated pursuant thereto at 310 CMR 10.00 or pursuant to Section 404 of the Federal Water Pollution Control Act, U.S.C. 1341.

Wild & Exotic Animals: Any animal not normally found or kept as a domesticated animal, and which requires 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.

Section 1-4 General Requirements

A. All applications must be submitted to the Board of Health for review and approval and meet the criteria set forth in Sections 1-5 of this regulation. Applicants must ensure that the setbacks listed below are met and are shown on the site or plot plan for approval.

B. All structures must comply with the setbacks as set forth in the Town of _____ Zoning By-Laws not withstanding protection accorded by MGL 40a S3 and the Wetland Protections Act 310 CMR Section 10.00.

C. The owners or persons in control of any buildings or premises in which animals are kept must have a manure storage and disposal plan approved by the Board of Health.

D. In accordance with Massachusetts General Law Chapter 111 Section 125 A, "...the odor from the normal maintenance or the spreading of manure upon agricultural, horticultural or farming lands, or noise from livestock or farm equipment used in normal, generally accepted farming procedures or from plowing or cultivation operations upon agricultural and horticultural or farming lands shall not be deemed to constitute a nuisance."

Section 1-5 Permit and Application Requirements

A permit is required for anyone keeping one or more animals as defined in this regulation, except on parcels of two or more acres of land which meet the requirements of MGL 40a Section 3 and/or MGL Chapter 128 Section 1a. At the time of application; the applicant shall provide the Board of Health with the following documents:

A. Application(s) for a permit for the purpose of keeping animals shall be submitted on a form supplied by the Board of Health for each location where animals are kept in the Town. Such application shall be accompanied by the following information:

1. Full name, address, and telephone number of the applicant.
2. Location - street address of the premises to be used.
3. Number and species of animals of breeding age to be kept.
4. 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), abutting structure(s), corrals, septic system, private wells and wetlands. A hand drawn plot plan is acceptable so long as it is of sufficient detail and quality to allow for proper board review.
5. A written Management Plan for the following:
 1. Manure Management Plan
 2. Storage of Feed
 3. Pest Control

B. The Board shall review the completed permit application within thirty (30) days of filing. Within twenty-five (25) days of the board reviewing the application, the Board shall issue a decision on the application.

C. Fees for permits shall be determined by the Board of Health's fee schedule and shall be subject to annual review.

D. Permits shall expire on December 31, of each year, unless sooner revoked by the Board of Health upon violation of any of the provisions of these regulations. Any permit holder must apply for a renewal of the permit at least thirty (30) days prior to the expiration of said permit. Any changes from the previous permit shall be provided on a renewal application. Brad to look at Haverhill Regs.

E. No person shall erect, occupy or use for a stable, accessory structure or corral intended for the housing or confining of animals unless and until he/she has submitted an initial or revised plan to the Board of Health for review and the same has been approved.

F. Permits are not transferable.

G. All livestock within the Town of _____ must be confined to the owned or leased property on which the animals are intended to reside or graze, and shall not be allowed to cause property damage or a pose a risk to public safety.

Section 1-6 Pre-Existing Conditions

Pre-Existing infrastructure including but not limited to fencing, corrals, barns, stables, etc. that existed and were shown on a Barn & Stable Permit issued by the Board of Health before the adoption of this regulation, or with prior approval via a variance issued by the Board of Health or which existed with such approvals when the property was purchased, are considered to be grandfathered and can remain so as long as they are not altered or enlarged without the necessary approvals from the Board of Health. Further, infrastructure which existed prior to the adoption of regulations by the Board of Health and/or the issuance of Barn & Stable permits shall be considered grandfathered provided that the property owner(s) obtain a permit from the Board of Health.

Section 1-7 Exceptions

Household pets shall be excluded from these regulations with the exception that the Board may impose a permit in situations where animals are kept in unreasonable numbers or conditions that result in an order of public nuisance or recognized hazard to the health and welfare of the community.

Section 1-9 Enforcement

A. The Board of Health may deny, suspend, revoke, or refuse to renew a permit for failure to comply with any provision of these regulations.

B. The Owner, a permit holder, their designee, or Responsible Party in charge of a Facility covered by these regulations who fails to comply with these regulations shall be subject to a fine or penalty of not greater than five dollars (\$5) per day for each violation in accordance with MGL Chapter 111. Each violation of these regulations shall be considered a separate offense.

C. The person(s) who have had a permit denied or revoked shall be ordered to remove all animals from the property within thirty (30) days of said denial or revocation or within a time frame determined by the Board of Health.

D. The continuance of any violation of these regulations beyond a date specified by the Board of Health, when the Owner and/or permit holder of the Facility has been ordered by an agent of the Board of Health to abate any such violations in a safe and sanitary manner, shall be cause for revocation of permit and/or initiation of legal proceedings to eliminate said conditions.

E. The Board of Health or its authorized agent, upon receipt of a valid complaint may reasonably conduct unannounced inspections of a Facility for the keeping of one or more animals to ensure compliance with these regulations.

Section 1-10 Right to a Hearing

Any person or persons aggrieved by a Board of Health order that has been served pursuant to any section of these regulations may request a hearing before the Board of Health by filing a written petition to the health department within seven (7) days of receipt of said order.

Section 1-11 Variance

The Board of Health may grant a variance to any provision of these regulations when, in its opinion, the strict enforcement would do manifest injustice and does not jeopardize public health or the environment. Any variance for accessory structures, corrals, fencing or stables granted by the Board of Health will transfer with the sale of the property.

Section 1-12 Severability

Each provision of these regulations shall be considered as separate to the extent that if any section, item, sentence, clause, or phrase is determined to be invalid for any reason, the remainder of these regulations shall continue in full force and effect.

Section 1-13 Adoption and Effect

These rules and regulations were adopted by a unanimous vote of the Board of Health, Town of _____, Massachusetts, on _____, and amended on _____. A summary explanation of these regulations shall be published in a newspaper of this town and a copy thereof shall be deposited in the Office of the Town Clerk.