

## **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 phenomenon 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 enough 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.

They might also consider whether it is more efficient to simply rely on MGL Chapter 111 Section 125a to deal with nuisances which arise, or whether problems/potential problems warrant specific regulations.

## **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/](http://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 to the Wetlands Act. While municipalities can be more restrictive than state law, they cannot conflict with state law. The legislature was fairly explicit in crafting agricultural exemptions thus preventing municipal bylaws from skirting agricultural exemptions.
- **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.

- **Variations** – BOHs will occasionally set very strict rules with the understanding that they will allow variations where public health can be protected, even without following these rules to the letter. In many towns, variations 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 variations was taken by BOH members. However, over a relatively short period of time as membership on the BOH changed, variations came to be viewed as something to be given only in rare situations.