

# CHAPTER 20

## NUISANCES AND NOISOME TRADES

### BOARD OF HEALTH ROLE AT A GLANCE

The local board of health (BOH) is responsible for the assignment of sites for the operation of noisome trades within their community and to hold hearings prior to assignment as part of this process. The BOH must conduct inspections of nuisances such as, sources of filth and sickness and conduct the appropriate enforcement action to eliminate the nuisance.

### BOARD OF HEALTH RESPONSIBILITIES - NUISANCES

- Examine all nuisances, sources of filth and causes of sickness which may be injurious to the public health within the town or harbor (M.G.L. c. 111 §122).
- Conduct inspections of alleged nuisances and issue orders to the owner or occupant of any private premise to remove any nuisance(s), source of filth or cause of sickness found on the premise within 24-hours or within such other time as the board considers reasonable. The owner can be fined up to \$1,000.00 for each day he knowingly violates such orders (M.G.L. c.111 §123). Orders must be in writing and served on the owner of the property in compliance with M.G.L. c.111 §124.
- If the owner does not comply with the order of the BOH, the board may abate the nuisance. The owner is responsible for any and all expenses incurred by the municipality or town (M.G.L. c. 111 §125).
- In the case of a farm, the odor from the normal maintenance of livestock or the spreading of manure on agricultural and horticultural or farming lands, or noise from the livestock or farm equipment used in normal, generally acceptable farming procedures or from plowing or cultivation operations upon such land shall not be deemed a nuisance (M.G.L. c. 111 §125A).
- Pursuant to M.G.L. c.111 §125A, if in the opinion of the BOH, a farm constitutes a nuisance, the board shall issue a written order to abate the nuisance within ten days of receipt of the board's notice. The order shall be served on the owner or occupant in compliance with M.G.L. c.111 §124.
- The owner or operator of the farm has ten days in which to file a petition for review of the order in the district court for the district in which the farm lies. If a petition is filed, the order is suspended, pending the determination of the court. The court shall give notice of the filing of the petition to the local board of health and shall after hearing all pertinent evidence and determining the facts, affirm., deny, annul, alter or modify the order. (M.G.L. c.111 §125A)

- If no petition is filed, or upon final order of the court, the board should proceed with regard to the farm nuisance as provided in M.G.L. c.111 §§ 122, 123 and 125, or in the order of the court.

## BOARD OF HEALTH RESPONSIBILITIES - NOISOME TRADES

The BOH is responsible for assigning sites where “noisome trades” may take place. Noisome trades generally refer to a trade or type of employment which may result in a nuisance or be harmful to the community’s inhabitants or their estates, or which may lead to unpleasant and/or injurious odors. Such businesses include piggeries, slaughterhouses, junk yards, garbage and rubbish collection sites, and chemical plants.

- Assign sites for noisome trades (M.G.L. c. 111 §143). This assignment may only be made after a hearing. This statute expressly states that the operation of a piggery is a noisome trade and requires a site assignment.
- Request consultation and assistance from the Department of Environmental Protection (DEP) (M.G.L. c. 111 §143).
- Record site assignments with the town clerk (M.G.L. c. 111 §143).
- Issue orders of prohibition to any person responsible for the premise where noisome trades are being exercised M.G.L. c.111, §143). The failure to comply with the order within 24-hours will result in a fine of not less than fifty nor more than five hundred dollars. (M.G.L. c. 111 §146).
- If the site assignment subsequently becomes a nuisance, it may be revoked by order of the Superior Court in a complaint of any person.
- Issue annual permits for the removal or transportation of offal, garbage, rubbish or other offensive substances and register persons who transport such waste through the municipality. The board may promulgate appropriate regulations (M.G.L. c. 111 §31A).

## STATE RESPONSIBILITIES

- DEP shall advise, upon request by the BOH, the assignment of places for the exercise of a noisome trade. Any person aggrieved by the action of a BOH in assigning certain places for a noisome trade, may appeal to DEP within 60 days of the approval of an assignment.
- DEP may, after a hearing, rescind, modify or amend such assignment (M.G.L. c. 111 §143).
- An appeal of DEP’s order is by petition for a jury in Superior Court (M.G.L. c.111 §147), within three days after service of order.

-If the order is affirmed by the court, the board shall recover costs for the city or town (M.G.L. c. 111 §150).

-If the order is annulled and the petitioner has not been authorized by the board to operate his/her trade pending and during the court proceedings, he/she may recover damages and costs from the city or town (M.G.L. c. 111 §150).

-If the petitioner was given permission by the BOH to operate during the court proceedings, and the order is annulled and the order is altered, he/she shall not recover damages, and the court may render judgment as to whether costs may be recovered (M.G.L. c. 111 §150).

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