

RULES AND REGULATIONS RELATIVE TO THE KEEPING OF FOWLS WITHIN THE TOWN OF MARBLEHEAD

SECTION 1: AUTHORITY

These Regulations are adopted pursuant to the authority granted to the Marblehead Board of Health by Massachusetts General Laws (M.G.L.) Part 1 Title XVI Chapter (c.) 111, Section (§) 31, which provides that “Boards of Health may make reasonable health regulations,” and M.G.L. Part 1 Title XVI c. 111, §155, “Licensing of stables in cities and large towns.”

- A. In the event of a conflict between these regulations and any other federal, state, or local law concerning the maintenance of facilities and/or the keeping of fowls, the more stringent requirements shall apply.
- B. If any section, subsection, paragraph, or provision of these regulations is declared illegal or unconstitutional by a court of competent jurisdiction, the remaining portions thereof shall remain in full effect.

SECTION 2: PURPOSE

- A. As the Marblehead Board of Health is responsible for the protection of public health, safety and welfare in Marblehead, and the health of the public is dependent upon the health and welfare of animals and the environment, these regulations are promulgated to provide for the orderly licensing and regulation of fowl, through issuance of a permit, to provide minimum standards for their well-being and safe keeping, to prevent and/or punish the improper care of said animals, and to enable residents to have the opportunity to participate in the growing national trend for responsible, small scale agricultural production and commercial enterprises involving animals that do not meet the definition of commercial agriculture.
- B. These regulations are not intended to regulate the use of land for commercial agriculture.
- C. Nothing in these regulations shall be construed as preventing the provision of more than minimum standards for the keeping of animals as defined herein.

SECTION 3: SUPPLEMENTARY DEFINITIONS

For the purpose of these regulations the following words shall have the following meanings:

Abutter: Owners of the land or property adjacent to the Applicant’s property line. A person will only qualify as an abutter, for the purpose of this regulation, if s/he possesses an ownership interest in the abutting land or property.

Structure: Any structure used to house, shelter or contain fowl including, but not limited to pens, coops, cages, and hutches.

Applicant: A person who applies for a permit from the Board of Health pursuant to these regulations to keep one or more fowl.

Board of Health or “the Board”: the Marblehead Board of Health and/or its designated agent(s).

Chicken coop: a small shelter, often wooden, in which a small number of poultry are housed.

Chronic nuisance conditions: property on which three or more nuisance activities occur or exist during any sixty-day period. Each day shall constitute a separate nuisance activity.

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

Department: the Massachusetts Department of Agricultural Resources.

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

Enforcement Officer: the Board of Health’s designated agent.

Facility: The total accommodations to be used for the keeping and care of one or more fowl, including but not limited to land and any accessory or animal structure such as, but not limited to one or more coops, cages, and/or hutches.

Fencing: Enclosure material installed for the purpose of privacy or animal containment.

Feed Management Plan (FMP): a plan for the handling of animal feed. The FMP shall address feed type, storage and removal.

Fowl: fowl shall include, but not be limited to, chickens, pigeons, capons, hens, turkeys, pheasant, guinea fowl, ducks, and geese, other than wild species. Roosters are not allowed.

Generally acceptable agricultural practices (GAAPs): Practices that the applicant can demonstrate are consistent with the Massachusetts Department of Agricultural Resources (MDAR) Bureau of Animal Health’s “Best Management Practices” and, if deemed

necessary by MDAR, the Massachusetts Society for the Prevention of Cruelty to Animals (MSPCA) and the Animal Rescue League (ARL) of Boston. GAAPs are site-specific, feasible practices that the applicant can demonstrate are consistent with the Massachusetts Department of Agricultural Resources Division of Animal Health's (MDAR's) GAAPs. The following are resources that can be consulted to establish compliance with MDAR GAAPs: MDAR: <https://www.mass.gov/service-details/agricultural-best-management-practices-bmps>; UMASS Extension: <http://ag.umass.edu/resources/agriculture-resources>; UNH Cooperative Extension: https://extension.unh.edu/resources/files/Resource000471_Rep493.pdf

Hutch: a pen, box or cage, typically with a wire mesh front, or an enclosed coop for keeping small, domesticated animals.

Licensing Authority: The Marblehead Board of Health or designee.

Manure Management Plan (MMP): A plan for the handling of manure. The MMP shall address cleaning, composting, storage, utilization, transportation and removal of manure so as to minimize nuisance complaints and threats to the health of the public and other animals.

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 fowl.

Permit to Keep Fowl: A permit issued by the Board for the keeping of one or more fowl, in accordance with the provisions of this regulation.

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

Pest Management Plan (PMP): 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.

Usable area: Land area suitable for the raising and keeping of animals such as pastures, fields and wooded uplands. This area does not include wetlands, dwellings, 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, M.G.L. c. 131 § 40 and regulations promulgated pursuant to the Department of Environmental

Protection Inland Wetlands Orders, 310 CMR 10.00 or pursuant to Section 404 of the Federal Water Pollution Control Act, 33 U.S.C. 1341.

SECTION 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 Sections 5 and 6 of this regulation.
- B. All structures must comply with the applicable setback requirements for the zoning district in which such structures are located as set forth in the Marblehead Zoning Bylaws, aside from protection accorded by M.G.L. c. 40A, § 3 and the Wetlands Protection Act, 310 CMR 10.00.
- C. All structures must comply with any applicable state building code.
- D. All permitted fowl must be confined to the property by secure fencing to prevent the escape of fowl unless the permit holder has documented in writing to the satisfaction of the Board, including obtaining any necessary permissions, arrangements for such fowl to be kept elsewhere (i.e. for grazing, pest control, etc.).
- E. In accordance with M.G.L. c. 111, § 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 operations upon agricultural and horticultural or farming lands shall not be deemed to constitute a nuisance.”

SECTION 5: PERMITTING AND APPLICATION REQUIREMENTS

A. PERMIT TO KEEP FOWLS

- 1. A permit is required for any person keeping fowls as defined in this regulation except on commercial farms which meet the requirements of M.G.L. c. 40A § 3, and/or M.G.L. c. 128, § 1A, and except as indicated in sections (i and ii) below.
 - a. Exemptions from permitting
 - i. Veterinary medical hospitals, medical research facilities, commercial pet shops, animal control centers owned and/or managed by recognized humane societies, and animal control centers managed by the Town of Marblehead shall be exempted from permitting.
- 2. Conditions for permit application

- a. Said permit shall require that all coops, hutches, or other such buildings used to house fowl shall be of durable construction and designed and maintained to allow for adequate cleaning and so as to prevent the harborage or shelter of rodents. All coops, structures or other such buildings used to house fowl shall be properly ventilated and kept dry. Floor surfaces shall be constructed as to be easily cleanable.
 - b. No person shall keep any live fowl in any building used as a dwelling.
 - c. No person shall use any building in the Town of Marblehead to house, shelter or contain fowls as defined herein until s/he has presented a petition upon a prescribed form to the Building Inspector, where applicable, and an agent of the Board of Health, and a permit to keep fowls has been granted.
 - d. The owner shall provide for tightly covered and vermin-proof storage of animal feed.
3. Application(s) for a permit to keep fowls shall be submitted on a form supplied by the Board of Health for each location where fowls are kept in Marblehead. Such application(s) shall be accompanied by the following information, and will be deemed incomplete if any information, plan, or fee is missing.
- a. Name, mailing address, phone numbers and email addresses of all owners of the property.
 - b. Location – street address of the premises to be used to keep fowls.
 - c. Number and kind of fowl to be kept.
 - d. A plot plan, with topographical information, size of lot with structures present, including primary residence, septic systems and private wells, as well as structures planned for the use of intended fowl (including fences and corrals), dimensions of the area where fowl will be kept, and distances of fowl housing and enclosures from all abutters' structures, property lines and wetlands. A hand-drawn plot plan is acceptable so long as it is of sufficient detail, including actual dimensions, and quality to allow for Board review.
 - e. A written management plan appropriate to the number and type of fowl to be kept, for the following:
 - i. Manure (MMP);
 - ii. Feed (FMP); and
 - iii. Pests (PMP).
 - f. If the permit holder intends to increase the number and type of fowl to be kept prior to the end of the permit year, the permit holder must first 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.

- g. Application fee as indicated on the Marblehead Board of Health published fee schedule.
- 4. Conditions for granting a permit to keep fowl
 - a. An Agent of the Health Department shall visit the property before any permit is granted, to determine the fitness of the property for the safe and humane keeping of fowls. Such inspection shall consist of verifying the suitability of the site, the condition of the facilities, and the suitability of the written management plans, including the MMP, FMP and the PMP, for the number of fowls intended to be housed or already housed thereon.
 - b. Verification of proper abutter notification and a hearing for new permit applications.
 - c. 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.
 - d. The permit shall expire one year after issuance, unless sooner revoked or suspended by the Board after a hearing.
 - e. 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 apply for a renewal of the permit by that time, the permit holder's application shall be treated as an application for a new permit.
 - f. 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 fowl on the property.
 - g. The permit will state the maximum allowable number and type of fowl as determined by the Board and/or the Health Agent. Determination will be made on a case-by-case basis.
- 5. Pre-existing Permits
 - a. All permits issued prior to the effective date of this regulation are valid.
 - b. All renewals of permits after the effective date of this regulation shall be subject to this regulation.

SECTION 6: MINIMUM STANDARDS FOR THE KEEPING OF FOWL

- 1. Owners shall provide fowl with sufficient good and wholesome food and water, proper shelter, protection from the weather, veterinary medical care when needed to prevent illness and suffering, and otherwise humane care and treatment.
- 2. Owners shall comply with all Federal, State, and local laws pertaining to treatment of animals, including, but not limited to, laws prohibiting abuse, cruelty, animal fighting, violence or abandonment, and those laws requiring reporting of communicable diseases.

3. All fowl shall be provided space and conditions according to the generally acceptable agricultural practices for that species as defined in this regulation.
4. All structures shall be of sound construction, well-lighted, and have adequate ventilation, either mechanical or natural, with no access points for stray animals.
5. All glass windows and ventilation openings shall be screened for fly control.
6. All shelters and corrals shall have sufficient drainage to prevent the collection of water inside said confines. No shelter or corral shall be located in an area subject to flooding.
7. All shelters and corrals shall be supplied with an adequate and potable water source.
8. All corrals shall at all times have adequate shade for the fowl, as appropriate for that species as determined by GAAPs.
9. Manure shall be stored in such a manner as to control flies and odors.
10. All feed shall be properly stored and shall be adequately protected to keep the food source free of spoilage, contaminants and rodents.
11. Appropriate measures shall be taken to minimize fire hazards.

SECTION 7: PERMIT CONDITIONS, SUSPENSION AND REVOCATION

1. It shall be a condition for maintaining any permit granted under this regulation that any holder of such permit shall grant access and permission to Health Agents to inspect all fowl and the premises where such fowl are kept at any time. The Health Agent shall provide reasonable notice of any inspections, and such inspections shall be at reasonable times.
2. The permit applicant acknowledges that the Massachusetts Department of Agriculture (MDAR) Division of Animal Health requires that if an animal exhibits symptoms consistent with and/or is diagnosed with a disease designated in its reportable disease program, it must be reported to MDAR's reportable disease program.
3. 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.
4. No person who has been convicted of any crime involving cruelty to animals shall maintain a permit under this regulation.
5. A permit issued under this regulation to any person who has been convicted of any crime involving cruelty to animals under the provisions of this regulation or a violation of any provision of M.G.L. Chapter 272 §§ 77, 80 1/2, 80A, 94 or 95 shall be void, and shall immediately be surrendered to the authority issuing such permit.

6. The permitting authority may suspend or revoke any permit granted under this regulation if the person or entity holding the permit:
 - a. Refuses or fails to comply with this regulation, or any law governing the protection, safety or keeping of animals;
 - b. Refuses to allow access to the Health Agent for inspections to determine compliance with this regulation;
 - c. Is shown to have withheld or falsified any information on the permit application.
7. No person shall erect, occupy, use, rebuild, reconstruct, alter or structurally change a structure or corral intended for housing or confining fowl without submitting an initial or revised plan to the Board or its Agent for its review and approval.
8. It is the responsibility of the applicant to comply with the Town's Zoning Bylaws and applicable sections of the building code when constructing or making changes to a structure.
9. Any person or commercial animal establishment whose permit has been denied or revoked shall cause any and all fowl covered by said permit to be placed in accordance with applicable laws within 7 days of such denial or revocation.
10. Any person or commercial animal establishment whose permit has been denied or revoked may reapply after the conditions upon which the denial or revocation were based have been corrected, and any outstanding fines have been paid to the Town of Marblehead, notwithstanding Section 8(4) above and any other laws or restrictions.

SECTION 8: HEARINGS

- A. Any hearings under this Regulation will be conducted at a scheduled Board of Health meeting.
- B. Notice of the public hearing shall be sent by the applicant to each of the persons appearing upon the assessors' most recent valuation list as the owners of the property abutting on the premises where the permit is intended to be exercised at least fourteen (14) days' prior to the hearing. The applicant shall submit a list of abutters, certified by the Marblehead Board of Assessors with a copy of the notice mailed and a sworn statement that the applicant has mailed the notice to each abutter by first class mail. The applicant will provide a copy of the letters to the Board
- 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 or the wellbeing and safety of fowl, 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 health, safety, and welfare of the public and the well-being and safety of the fowl being kept.

SECTION 9: 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.
- 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 M.G.L. c. 111, § 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, after a hearing, a permit holder is found to be in violation of any provision of this regulation.
- 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.

SECTION 10: ENFORCEMENT

- A. This regulation shall be administered and enforced by the Board and/or its authorized agents, including but not limited to, the Marblehead Police Department.
- B. The Board may make criminal complaint in any court of competent jurisdiction or may refer enforcement to the District Attorney, the Attorney General, or other appropriate law enforcement agency. The Board may also seek injunctive relief and civil penalties in any court of competent jurisdiction for violation of any regulation or in any other manner provided by M.G.L. c. 111 § 187.
- C. After written notification from the Board of Health noting violations of these regulations, the permittee shall have fourteen (14) working days, or such time as noted in the notification, to correct such violations. Failure to correct such violations shall result in that person being subject to fines and penalties as outlined in these regulations.
- D. After written notification from the Board of Health, any person housing or keeping fowl without a permit shall within seven (7) days apply for a permit or remove said animal(s) from the premises until such time as a permit is acquired.
- E. The holder of any permit thus revoked or suspended shall be notified of such action by certified mail. Any person so aggrieved may petition the Board of Health for a hearing at the next Board of Health meeting and may be permitted to keep said

fowl(s) pending the Board's finding, unless it poses a risk to the public health or safety or health or safety of the fowl(s).

SECTION 11: 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.

SECTION 12: EFFECTIVE DATE May 31, 2022

Signed this _____ day of _____, 2022

Todd Belfbecker, Chair, Marblehead Board of Health

Helaine R. Hazlett, Member, Marblehead Board of Health

Joanne G. Miller, Member, Marblehead Board of Health

Legal Notice:

Public Hearing:

Vote by Board of Health:

Certified copy to Massachusetts Department of Environmental Protection: