



BOH Guide: #53 BOH Local Regulations

Board of Health and Local Health Department Standard Operating Procedures (SOP)

This **Checklist** highlights many of the steps needed currently to adopt local BOH Regulations under M.G.L. c. 111 Section 31. The checklist is designed to be used in tandem with the **BOH SOP and Appendices**. BOXES CAN BE CHECKED WITH the CURSOR.

BOH Authority to Adopt Local Regulations under M.G.L. c. 111 Section 31

1. Local BOH Regulations have the same legal authority as State laws and regulations, but only in their community.
2. The power to adopt and enforce local BOH regulations comes from the State, not the city or town.
3. Local BOH Regulations cannot be less strict than State regulations and laws.
4. The Local Regulations must be reasonable and based on local public health conditions and concerns.
5. There are some State and Federal regulations that may restrict the BOH from passing a local regulation to prohibit something based on the health impacts of an action that is regulated by other agencies, such as cell towers, highways, power lines, etc. that State and Federal governments have found to be safe enough.
6. The maximum fine that can be levied for a single infraction under Local Regulations is \$1,000. It is likely the fine may be per day, per infraction.
7. In a Public Health emergency, the BOH can immediately adopt a Local Regulation to protect the public health without notice of a hearing, issue orders based on the local regulation to address the emergency, and take any other actions deemed immediately necessary. As time permits, the BOH must go back and retroactively follow regular procedures for enacting local Regulations, filing, and enforcing them.

Requirements for adopting Local BOH Regulations

BOH Meeting:

- Posting:** Open Meeting Law (OML) must be followed. BOH majority may not deliberate outside of posted meetings. No exceptions. Even emergency meetings must be posted asap and then followed up by a regularly posted meeting.
- Hearings:** Posted, formal hearings are not required for Local Regulations except for Title 5 regulations, which require a hearing before being adopted. The hearing notice must be posted in the local newspaper at least two successive weeks before the hearing. Though not required for other Local Regulations, a hearing is always a good idea before adopting any Local Regulation.
- Written:** Local Regulations must be in writing and approved at a BOH Meeting.
- Minutes:** Minutes of the meetings must be kept and then approved. Approval of minutes may be given at the same meeting if the minutes are complete and accurate and reference the approval of the Local Regulation.
- Agricultural Commission:** Prior to enacting a Local Regulation that might impact farmers, farms, livestock, or farmers' markets, the BOH must provide the local agricultural commission with a copy of the proposed regulation. They shall have 45 days to review and comment, though the Ag Commission is not required to take any action.

Attestation and Notice:

- Town/City Clerk:** Approved Local Regulations along with a copy of the approved minutes must be given to the Town/City Clerk for attestation and filing.
- Posting:** A summary of the Local Regulations must be posted in a local newspaper once, and ideally should be posted on the BOH website if available.

Filing:

- BOH File:** Approved Local Regulations should be kept in a file in the BOH office for reference.
- DEP Filing:** Attested copies of the Local Regulation must be filed by mail with DEP, which is mandated to collect all local regulations in a community under M.G.L. c. 27A, § 8 and M.G.L. c. 21A, § 13. Inclusion of the approved meeting minutes is a good idea to confirm the attestation.

MassDEP
 Watershed Permitting Program
 100 Cambridge Street, Suite 900
 Boston, MA 02114
 Attn: Central Register

Date Valid:

- Activation:** The Local Regulation can stipulate a future activation date, or it can be in force immediately. The date cannot be retroactive but if the violation still exists, it can apply.
- Enforcement:** Until a summary of the Local Regulations is posted in a local newspaper and the attested copy is filed with DEP, the Local Regulation is technically not enforceable in a court of law.

(Resources:

[Resources - Massachusetts Association of Health Boards \(mahb.org\)](http://Resources - Massachusetts Association of Health Boards (mahb.org))

[Legal-Handbook-3rd-Edition-2021.pdf \(mahb.org\)](http://Legal-Handbook-3rd-Edition-2021.pdf (mahb.org))

[Record Keeping Responsibilities and Requirements: \(mass.gov\)](http://Record Keeping Responsibilities and Requirements: (mass.gov))

Massachusetts Department of Environmental Protection

Model Local Regulation

- I. **PURPOSE** The purpose of this regulation is to provide for the protection of the public health, safety, welfare ,and the environment based on local conditions.

- II. **AUTHORITY** This regulation is adopted under M.G.L. Chapter 111, Section 31, which gives the Board of Health (hereinafter designated as “the Board”) authority to make reasonable health regulations, violations for which shall be punished by a fine of not more than 1000 dollars. This regulation is also adopted under M.G.L. Chapter 111, Section 122, which directs the Board of Health to examine into all nuisances, sources of filth, and causes of sickness within its town, which may, in its opinion, be injurious to the public health and to destroy, remove, or prevent the same. This regulation is also adopted under M.G.L. Chapter 111, Section 143. **These regulations supersede all previous Local Regulations related to this matter.**

- III. **DEFINITIONS** Unless the context or subject matter requires otherwise, the following words and phrases shall, for the purposes of this document, have the meanings specified in this section. Words and phrases used in the present tense include the future; words and phrases used in the masculine gender include the feminine and neuter; and the singular number includes the plural and the singular. Words and phrases not defined in this section shall have their conventional meanings unless expressly stated otherwise.

- IV. **GENERAL RULES AND REGULATIONS**

- V. **REGISTRATION, PERMITTING AND FEES**

- VI. **FINES, PENALTIES, AND ENFORCEMENT**

- VII. **VARIANCES**

- VIII. **SEVERABILITY** If any provision of these regulations is declared invalid or unenforceable the other provisions shall not be affected thereby, but shall continue in full force and effect.

- IX. **EFFECTIVE DATE**

Signed this _____ day of _____, 202. _____

ATTESTATION: