Tuesday, December 10, 2019

Joint Committee on Public Health
Massachusetts State House
24 Beacon St.
Rooms 413-C & 130
Boston, MA 02133

RE: S1268/H1856 An Act relative to agricultural commission input on board of health regulations

Dear Chairs Comerford and Mahoney, and Members of the Committee:

The Massachusetts Food System Collaborative is pleased to offer this written testimony in support of S1268 and H1856, An Act relative to agricultural commission input on board of health regulations. This legislation will foster better communications between local farms and municipal regulators and provide local boards of health and health agents greater resources to protect public health.

In 2015 the Massachusetts Local Food Action Plan was developed for and accepted by the Massachusetts Food Policy Council, a 17-member entity comprising state agency, legislative, and industry representatives, established by the legislature and governor to develop recommendations, including legislative and regulatory changes, to promote sustainability and equity in the Commonwealth’s food system. The Plan represents the perspectives of thousands of residents and farms, as well as hundreds of organizations and businesses.

Many discussions during the planning process centered around regulations as applied to the local food system. As Massachusetts’ farming sector has grown, particularly in terms of sales of food directly to consumers, stress has arisen related to balancing the goals of local public health protection and the sustainability of local farms. When local health regulators lack information, and communications channels with local farmers is nonexistent, local regulations frequently have unintended consequences, including confusion, improper regulation, significant cost and administrative burdens on small farms, and inconsistent regulations among jurisdictions. In most cases these issues have been resolved favorably to both parties, after significant effort from all sides. However, the frequency with which these situations arise and the costs to farmers and local boards of health points to the need for a systemic solution.

One of the Plan’s recommendations called for the establishment of a working group to develop a proposal to improve regulatory oversight of the local food system with respect to public health. That working group, consisting of advocates and practitioners from the agriculture and public health sectors, was formed in 2016, and identified a need for better communication, more input into the regulatory process for farmers, greater access to information and resources for regulators, and increased consistency of regulations across jurisdictions.
The working group’s process resulted in a consensus set of recommendations toward the goal of improved regulatory oversight of local farms (http://mafoodsystem.org/projects/farming-public-health/), and the first recommendation states: “Through new legislation, align procedures for adopting local health regulations related to farming with procedural requirements required of other municipal entities and similar to Title V procedures already in place.” (Full text below.)

S1268 and H1856 are a significant step toward this recommendation, and we urge its passage. Massachusetts agricultural commissions are municipal bodies that represent farmers and foster agricultural sustainability in their communities. They are the representative voice of the farming community in their respective towns and cities, and should be engaged in any process that involves developing or changing regulations that impact farmers. This bill will impose the reasonable requirement that, in municipalities where agricultural commissions exist, boards of health will seek their input into proposed regulations or changes to existing regulations that would impact farming.

We believe that the Commonwealth’s agricultural economy can grow while at the same time public health can be protected. This no-cost legislation will take a step toward ensuring this balance, and we urge its passage.

Thank you for the opportunity to provide this testimony. We are available to provide further information to the Committee should questions arise.

Sincerely,

Winton Pitcoff
Director
Full text of working group recommendation:

**RECOMMENDATION #1: Through new legislation, align procedures for adopting local health regulations related to farming with procedural requirements required of other municipal entities and similar to Title V procedures already in place.**

In order to ensure a full public vetting of proposed Boards of Health regulations related to farming, as well as provide the opportunity for affected stakeholders to provide knowledge, expertise, and concerns over regulation development, Massachusetts Boards of Health should be required to abide by the following administrative procedures when creating, amending, or terminating regulations. This will require legislation in order to enact these procedures across the Commonwealth. Nothing in this recommendation is intended to reduce the authority of Boards of Health. Nothing in this recommendation would prevent a Board of Health from acting under its emergency powers to protect the public from an imminent risk. Rather, these procedures are recommended to ensure the passage of reasonable regulations.

- Definition of agriculture and agricultural activities for these purposes would be M.G.L. c. 128. s. 1A and c. 111, s.155, and farmers markets as defined in the Massachusetts State Sanitary Code.
- The regulation, shall, as currently required, be “reasonable.”
- The Board of Health proposed regulation itself shall be publicly posted at Town Hall and other posting locations commonly used by the municipality 48 hours before the meeting takes place, in accordance with the Open Meeting Law.
- A copy of any proposed local board of health regulation pertinent to farming, on-farm sales, on-farm processing, farm stands, or sale of farm products at farmers markets shall be provided to any existing Agricultural Commission within the municipality.
- The Board of Health shall provide the Agriculture Commission and the public at least thirty (30) days to review and comment on the local regulation before voting to adopt, amend, or reject the proposed regulation.
- During the review period, the Agricultural Commission may hold a public meeting or hearing on the regulation, consider public input, and provide written comments to the board of health. The Agricultural Commission comments are advisory.
- Upon a vote of a majority of members, the Agricultural Commission may waive the Agricultural Commission review period.
- The Board of Health must vote publicly on the final proposed regulation, as required by law.
- Once passed, the regulation must be advertised (e.g. in local newspaper or local website), filed with DEP, and a copy sent to the municipal Agricultural Commission.
- If the Board of Health determines the regulations are necessary to address an emergency situation, the regulations shall go into effect immediately.
- After enactment of a regulation due to an emergency situation, the Board of Health shall provide for a 30 day, post-enactment review period where the Agricultural Commission or the public can provide written comment.

(Full document available at http://mafoodsystem.org/projects/farming-public-health/.)