

The following joint guidance from the Massachusetts Association of Health Boards (MAHB) and the Massachusetts Food System Collaborative is not offered as legal advice, but rather for educational purposes only. For legal advice, please contact your attorney or other legal services that may be available to you.

Considering their undeniable public health functions, namely serving as (1) the primary markets for the agricultural section of Massachusetts; (2) key acceptors of SNAP and WIC benefits; and (3) the de-facto produce grocery stores for residents in food deserts, there is no question as to why farmers' markets were deemed essential services during the current COVID-19 pandemic.¹ Public health professionals should be diligently working with farmers' market managers to ensure that markets are ready to open for the summer season. As part of the necessary collaboration between market managers and municipalities, the collective focus should now be on Phase 1 compliance, ensuring continued operation of farmers' markets through the Commonwealth's phased reopening.²

Per COVID-19 Order No. 33 (Phased Reopening Order), farmers' markets, as essential services, must immediately adopt and maintain a number workplace safety rules.³ These rules include, but are not limited to, social distancing protocols (i.e. regulation of vendor distance, signage), hygiene protocols (i.e. supplying of hand-washing stations, regular sanitation), staffing and operations protocols, and cleaning and disinfecting protocols. The Phased Reopening Order requires that farmers' markets comply with both the general workplace safety rules found within the Phased Reopening Order and the restrictions outlined in the April 27, 2020 Department of Public Health (DPH) Order.⁴ Per the Phased Reopening Order, essential services, including farmers' markets, were required to certify compliance with workplace safety rules by May 25, 2020.⁵

¹ MASSACHUSETTS DEPARTMENT OF AGRICULTURAL RESOURCES, BULLETIN: 2020-5, Farmers' Markets, Farm Stands, & CSAs Guidance Memo #5 (March 27, 2020), [available at](https://www.mass.gov/doc/mdar-bulletin-farmers-markets-covid-19) <https://www.mass.gov/doc/mdar-bulletin-farmers-markets-covid-19> (describing farmers' markets and CSAs as "primary sales outlets for many Massachusetts farms").

Merriam-Webster dictionary defines *food desert* as "an area where little fresh produce is available for sale." MERRIAM-WEBSTER, [available at](https://www.merriam-webster.com/dictionary/food%20desert?utm_campaign=sd&utm_medium=serp&utm_source=jsonld) https://www.merriam-webster.com/dictionary/food%20desert?utm_campaign=sd&utm_medium=serp&utm_source=jsonld (last visited May 29, 2020).

² OFFICE OF THE GOVERNOR, Order Implementing a Phased Reopening of Workplaces and Imposing Workplace Safety Measures to Address COVID-19, COVID-19 Order No. 33 (May 18, 2020), [available at](https://www.mass.gov/doc/may-18-2020-re-opening-massachusetts-order/download) <https://www.mass.gov/doc/may-18-2020-re-opening-massachusetts-order/download>.

³ *Id.* at 3.

⁴ *Id.* at 4; *see* DEPARTMENT OF PUBLIC HEALTH, Order of the Commissioner of Public Health for Farmers Markets, Farm Stands and CSAs (April 27, 2020), [available at](https://www.mass.gov/doc/farm-stand-order/download) <https://www.mass.gov/doc/farm-stand-order/download>.

⁵ COVID-19 Order No. 33, *supra* note 2, at 5.

Local boards of health are tasked with enforcement of the workplace safety rules, sharing concurrent authority with DPH and the Department of Labor Standards (DLS). The Governor intends to establish a uniform set of COVID-19 workplace safety rules and therefore, municipalities are specifically discouraged from adopting or enforcing any workplace health or safety rule in addition to, stricter than, or otherwise in conflict with the workplace safety rules outlined in the Phased Reopening Order.⁶ Local boards of health and DLS will be enforcing these safety rules if they receive a complaint by an employee or by a customer. The goal of enforcement is to educate and promote compliance; this includes verbal consultation with suggestions on how to comply, written warning with redirection suggestions, and/or a fine of up to \$300. If there is continued non-compliance, fines are to be issued three times prior to escalating to a Cease and Desist Letter. MAHB will publish additional guidance discussing the enforcement authority of local boards of health in more detail.

Does the wording of each line of the Department of Public Health’s “Order of the Commissioner of Public Health for Farmers Markets, Farm Stands and CSAs,” affect what businesses the line applies to, or does each line apply equally to farmers markets, farm stands and CSAs?⁷

Answer: The safest approach would be to assume that all details of the Order apply equally to farmers’ markets, farm stands, and CSAs. If there are specific questions about safety standards, please contact your local board of health, DLS, or MAHB.

Can Farmers Markets be subjected to more stringent rules than supermarkets and other food stores?

Answers: Unless a farmers’ market fails to comply with the newly issued Phased Reopening Order, farmers markets cannot be closed or “severely limited” by municipal order because the Governor has deemed them essential. However, a municipal order can place restrictions on farmers markets to the extent that such restrictions are not inconsistent with the Governor or DPH’s orders.

If a municipality determines that regulations are needed above and beyond the Governor or DPH’s Orders, then the municipality can ask the following questions to help determine whether the proposed regulation is inconsistent with the Governor or DPH’s orders:

- Is the proposed regulation so burdensome that it impacts the farmers market’s ability to function and remain open?

⁶ Id. at 6-7.

⁷ DPH Order, supra note 4.

- Is the proposed regulation more restrictive than DPH's Order in a way that makes the proposed regulation inconsistent with DPH's Order?

In each case, a town or city should use these questions, and any other relevant information, as discussion points to help determine whether the proposed regulation is overly burdensome in practice.

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