

HOUSE No. 571

The Commonwealth of Massachusetts

PRESENTED BY:

James R. Miceli

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act regulating the keeping of swine in the town of Tewksbury.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>James R. Miceli</i>	<i>19th Middlesex</i>	<i>1/19/2011</i>

HOUSE No. 571

By Mr. Miceli of Wilmington, a petition (accompanied by bill, House, No. 571) of James R. Miceli (by vote of the town) relative to the keeping of swine in the town of Tewksbury. Municipalities and Regional Government.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3818 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act regulating the keeping of swine in the town of Tewksbury.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. As used in this act the following terms shall have the following meanings:-

2 “Agricultural operation” the operation of keeping swine

3 “Approving authority” the board of health of the town of Tewksbury or its designated
4 representatives.

5 “Abutters” any land owner or lessee whose property is within 500 feet of the swine
6 operation and then abutters.

7 “Agroecology” the management of agricultural systems with a strong emphasis on
8 ecological and environmental perspectives.

9 “Environmental assessment” an inspection by the town’s conservation administrator
10 where the entire agricultural operation, land owned and leased is physically inspected and
11 environmental concerns or pollution is documented. The administrator shall document concerns
12 and violations, and shall certify there is no illegally dumped manure on the property, no runoff
13 exists into wetland and that the operation will not contaminate the environment.

14 “Manure management plan” (MMP) a plan written by a qualified industry professional,
15 recommending the handling of swine manure. It shall address clearing, composting, storage
16 (including location in relation to wells and waterways), utilization and removal of swine manure.
17 Such a plan shall represent the most up-to-date best management industry practices and the most
18 stringent industry guidelines.

19 “Nutrient management plan” a plan written by a qualified industry professional, who tests
20 the soil makes recommendations based on soil test results and type of crops to be planted to
21 ensure a balanced soil composition, based on the most up-to-date best management practices and
22 the most stringent recommendation and guidelines.

23 “Pest control plan” a plan written by a qualified professional to provide recommendations
24 to address control of pests and rodents using an integrated approach, including products to be
25 used, based on the most up-to-date best management industry practices and the most stringent
26 recommendations and guidelines.

27 “Swine” any pigs not including pot-bellied pigs kept as household pets. For the purpose
28 of licensing swine, juvenile swine not yet weaned, residing on the property with their maternal
29 parent shall not count as additional swine and will not require an additional or amended permit,
30 until they are weaned.

“Swine permit” the permit granted by the approving authority to keep swine within the town of Tewksbury, valid for 12 months from date of issue.

SECTION 2. In accordance with section 31 of chapter 111 of the General Laws, the board of health shall promulgate and adopt reasonable rules, regulations, guidelines and polices to carry out the provisions of this act.

An agricultural operation shall apply annually to the approving authority for a permit to keep swine. The approving authority and the board of health shall be responsible for agricultural operations to obtain permits at least every 12 months. All existing, new and expansion of existing operations for keeping swine with 50 or more swine or increase of 50 or more swine, shall be required to submit a permit application for keeping swine. Every year thereafter, said permit shall not require a public hearing and all plans shall be updated and approved subject to the rules, fees and consultant approved by the approving authority.

The following information shall be required and shall accompany the permit application:

Application form, completed and showing number of swine to be kept.

A “manure management plan”

A “nutrient management plan”

A “pest control plan

An “environmental assessment”

Verification that all abutters have been notified by certified mail of the applicants intent, not more than 30 days but no less than 14 days in advance of the hearing before the approving authority.

A certified plot plan of the entire farming operation, in its entirety, including areas, which may be located in an abutting town(s). The plan and the following information will be drawn to scale and will become part of a legal document:

The plot plan shall reflect the location of all buildings and structures of the entire farm and their purpose.

The plot plan shall reflect the location and size of the area(s) the manure is located for composting, location of spreading area (cropland) or storage area, including areas, which may be located in an abutting town(s).

The plot plan shall reflect the location of all streams, ponds and/or wetlands or waterways, including flood zones, located on the entire property, including areas, which may be located in an abutting town(s). The location of deceased swine, composted or buried, shall be reflected on the plot plan.

A clear designation and description of the nearest boundaries or areas covered by Tewksbury's ground water protection bylaw.

Permits for keeping swine, if issued, shall be issued to the owner of the property for a specific number of swine and cannot be transferred or assigned without the approval of approving authority.

Permits are valid for 12 months, from the date of issue, after which time it expires.

SECTION 3. 1) Upon receipt of the completed application, the approving authority shall hold a public hearing within 45 days, during which time, the approving authority shall:

Verify that all abutters have been notified

Inspect the property, and ensure that it is in accordance with the regulations.

Review the “permit application for keeping swine” and required documents.

Certify all application information and documents are complete and accurate.

Review the file on the agricultural operation from previous years to insure it is in good standing. Review complaints from residents, environmental report from conservation administrator, and other pertinent findings.

2) The approving authority shall provide an opportunity for the abutters to express their concerns, ask questions, and express their support or opposition to the application. The board of health may require the applicant to furnish additional information to make a determination whether to grant the permit.

3) The burden shall be on the applicant to establish that the granting of a permit shall not endanger the health and wellbeing of the public, including the drinking water supplies of the community.

4) The approving authority shall act on the application for a swine permit and shall provide the applicant with a written decision of the outcome and any conditions imposed by the approving authority if the permit is granted.

89 5) The approving authority shall issue or deny said “permit for keeping swine”. If upon
90 examination of the required documents; there would be a negative impact to the public’s health
91 and welfare, including odor nuisance concerns, said application shall be denied, with findings
92 forthcoming from the approving authority. Failure to provide complete and accurate documents
93 required under Section 2 shall be grounds for denial.

94 SECTION 4. In the absence of standard regulations for swine buildings, for all size
95 operations, from the agricultural industry and state laws requiring the same, the town of
96 Tewksbury shall require agricultural operations to comply with state building code and a
97 component for public input;

98 Building or renovation of swine buildings shall require a permit application.

99 The applicant shall notify abutters and a public hearing shall be conducted.

100 The applicant shall submit plan to approving authority.

101 The citizens shall be given every opportunity to express their concerns during the public
102 hearing and said concerns shall be remedied by the approving authority.

103 For new construction or renovation, the decision to issue a permit, by the approving
104 authority, shall place the weight of the decision on the appropriateness of the building or
105 improvements for the neighborhood and the welfare of the neighborhood.

106 All new construction or renovation of primary stables, pens or housing used to contain
107 swine shall be a minimum 1760 feet from any lot line and shall be designed with the industry’s
108 most recent and most stringent requirements and recommendations for minimizing odors and
109 environmental pollution. The applicant for a swine permit may be allowed a variance for a lesser

setback if an engineer or qualified professional as determined by the approving authority, hired by the applicant, prepares an approved odor dispersion plan resulting in improved or equivalent odor minimization and dispersion on the neighborhoods surrounding the operation. The odor dispersion plan shall include, but is not limited to, the following; odor control measures, meteorological data, prevailing wind direction and topography. The odor dispersion plan shall include biofilters and tall air stacks or similar implementations to provide optimum odor minimization and disbursement.

SECTION 5. In the absence of standard regulations requiring a manure management plan for all size swine operations, from the Agricultural Industry and State Laws requiring the same, the town of Tewksbury shall require a Manure Management Plan each year, as required in the “permit application for keeping swine”.

The submitted Manure Management Plan (MMP) shall be written by a qualified industry professional and reviewed by the approving authority prior to issuance of a permit.

The MMP shall represent best management industry practices and shall use the most stringent developments in industry regulations and guidelines and technology, regardless of the size of the operation.

The MMP shall address clearing, composting, storage (including location in relation to streams ponds, wetlands, flood zones, and ground water protection areas), utilization and removal of manure.

The MMP shall require management and disposal of manure in a way, which minimize odors, breeding flies and the attraction of vermin.

131 The MMP shall require manure to be collected and stockpiled at a location(s), carefully
132 chosen to maximize the distance from abutting properties and watercourse and with due
133 consideration of the prevailing winds.

134 The storage of manure, wastes and soiled bedding and the maintenance of pens or corrals
135 for swine shall not interfere with any abutter's rights to clean air or to the use and enjoyment of
136 their property.

137 The board of health or its agent and the local health department shall investigate any
138 complaints of offensive odor, pollution or pests (such as rats, mice, insects, flies or mosquitoes)
139 associated with the keeping of swine within the town of Tewksbury and find a remedy in
140 accordance with Section 10.

141 The board of health and the local health department shall track manure production and
142 disposal, documenting and accounting for all swine waste. These documents shall be available
143 to the public.

144 Upon every visit to the property, the health official shall inspect and measure storage
145 areas, measuring the contents of the swine waste storage tank or the height and width of manure
146 piles and their location on the property and document the findings. This information shall be
147 available to the public.

148 SECTION 6. The town of Tewksbury shall require a nutrient management plan annually
149 as required in the permit application for keeping swine.

150 The submitted nutrient management plan shall be written by a qualified industry
151 professional and reviewed by the approving authority prior to issuance of a permit.

The nutrient management plan shall represent best management industry practices and shall use the most stringent developments in industry regulations, guidelines and technology, regardless of the size of the operation. The plan shall address pollution prevention, optimizing soil nutrient uptake and minimizing soil nutrient overload and runoff. Soil testing shall be completed prior to filing an application and reflect the most current soil conditions. The plan shall reflect the practices consistent with agroecology.

Upon every visit to the swine operation, regardless of reason for visit, local health department officials shall require follow up on the nutrient management plan, inspecting the property for violations in the plan and documenting said violations. All information shall be documented and action taken, in accordance with section 10.

SECTION 7. The town of Tewksbury shall require a pest control plan annually as required in the permit application for keeping swine.

The pest control plan shall be written by a qualified industry professional and reviewed by the approving authority prior to the issuance of a permit.

The pest control plan shall represent best management industry practices and shall use the most stringent developments in industry regulations, guidelines and technology, regardless of the size of the operation.

Upon every visit to the swine operation, regardless of reason for visit local health department officials shall require updates of pest problems experienced on the property and control measures taken, including type of pest problem, action taken and results. All information shall be documented and action taken, in accordance with section 10.

173 SECTION 8. The town of Tewksbury shall require an environmental assessment
174 annually as required in the permit application for keeping swine.

175 The submitted environmental assessment shall be written by a qualified industry
176 professional and reviewed by the approving authority prior to issuance of a permit.

177 The environmental assessment shall represent best management industry practices and
178 shall use the most stringent developments in industry regulations, guidelines and technology,
179 regardless of the size of the operation.

180 No swine facility shall willfully or through negligence, cause, suffer, allow or permit of
181 any liquid effluent containing urine and/or fecal matter from the property to flow over the
182 surface of the ground where it can flow to abutting property, public way, watercourse, body of
183 water, or wetland area.

184 All insecticides used to control pests or insects shall be approved by the department of
185 public health and the department of environmental protection and shall be applied in accordance
186 with the instruction for the use of that insecticide.

187 Upon every visit to the swine operation, regardless of reason for visit, local health
188 department officials shall require updates of pest problems experienced on the property and
189 control measures taken, including type of pest problem, action taken and results. All information
190 shall be documented and action taken, in accordance with section 10.

191 SECTION 9. The town of Tewksbury shall determine standards for swine odor relief and
192 prevention.

193 All agricultural operations keeping swine shall use best management industry practices
194 and shall use the most stringent developments in industry regulations, guidelines and technology,
195 regardless of the size of the operation. Swine operations shall use the recommendations, and the
196 latest research and technology, of the environmental protection agency, department of
197 agriculture, national resources conservation service and other industry agencies and
198 organizations, to minimize odors.

199 Decomposition of piggery wastes generates by-products or compounds which produce
200 strong odors. Odor generation from swine waste shall be minimized by the barn design, effluent
201 collection and storage location, carcass disposal, and manure spreading. Swine waste shall be
202 managed in a way as to minimize odor generation and shall use best management industry
203 practices to minimize odors.

204 Odors are influenced by climate and topography, separation distance plays an important
205 role in the dispersion of odors from swine operations, therefore, swine operations shall be
206 established or moved to a sufficient distance from residences, to ensure that dispersion
207 effectively limits odors and frequencies under the expected range of atmospheric conditions. If a
208 sufficient distance to disperse odor cannot be established, more additional and/or more prudent
209 measures shall be taken on behalf of the swine operation, to monitor air quality standards and
210 ensure abutters rights to clean air and use and enjoyment of their property.

211 The director of health or its agent and the board of health shall examine all the factors
212 influencing swine operation odors and take action to relieve neighboring residents. Each
213 complaint shall be documented and shall include: frequency, intensity, duration and
214 offensiveness.

215 Sludge from swine waste is comprised of either completely or partially digested organic
216 matter which when disturbed can be highly odorous. When disturbed or irrigated, effluent
217 generates odors through the release of offensive gases and by spray drift of fine aerosols through
218 the atmosphere. The application of swine effluent shall be managed so that effluent infiltrates, or
219 is incorporated into the soil within 24 hours following application.

220 There shall not be application of swine waste during prolonged wet periods or when
221 runoff would occur. Timing of effluent application shall be considered, during the weekdays
222 when most residents are at work. It shall not occur on weekends or holidays, or when prevailing
223 weather conditions would cause odors. During times when swine waste cannot be applied to
224 soil, alternative methods of manure management shall be used, using best management practices.

225 Carcass disposal shall be well designed and managed to prevent odor and spread of
226 diseases. Burial sites shall be designed to prevent entry of upslope runoff water. The whole
227 carcass shall be covered with a layer of soil immediately after placement in the pit. If composting
228 is used, the carcass should be covered with at 300 mm of sawdust or other composting substrate.
229 Records shall be kept of deaths and location of burial.

230 SECTION 10. The town of Tewksbury shall define enforcement standards for the health
231 department and board of health for swine regulation.

232 Regular inspections shall be performed, as needed, without prior notification in
233 accordance with sections 4 through 10.

234 Non-compliance of any regulations for keeping swine shall be documented and permits
235 may be revoked or suspended if it is determined that any of the following has occurred:

236 Continued keeping of swine constitutes a public safety of health risk.

237 The animals are not receiving proper care.

238 The facts contained in the application or as represented by the application to the
239 approving authority are inaccurate.

240 The permit holder is keeping swine in greater numbers than indicated on the current
241 permit.

242 Abutter's rights to use and enjoy their property have been violated.

243 The health and wellbeing of the citizens are negatively impacted.

244 The best management practices and most stringent industry standards and
245 recommendations have not been used and/or implemented by the operation.

246 Violations occur to "Tewksbury's agricultural regulations for keeping swine".

247 There will be a hearing and issue of conditions on a revocation of a permit. The holder of
248 any permit revoked or suspended, shall be notified of such action by certified mail. The person
249 aggrieved may petition the approving authority for a public hearing within 10 days of
250 notification. The applicant may be permitted to keep said swine on the premise until the
251 approving authority hearing, so long as it does not pose an immediate threat to the public health
252 and safety, in which case the swine must be removed within 24 hours of the receipt of the notice.

253 Complaints shall be logged and investigated immediately.

254 Citizens shall be given every opportunity to express their concerns during a public
255 hearing and said concerns shall be remedied by both the department of health or its agent and the
256 board of health.

257 Unresolved problems shall be remedied by revoking the permit for swine.

258 Violations of the act or regulations promulgated hereunder may be punishable by civil
259 action or criminal prosecution.