

**HOUSE . . . . . No. 571**

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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 passage of the accompanying:

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

PETITION OF:

NAME:

*James R. Miceli*

DISTRICT/ADDRESS:

*19th Middlesex*

**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**

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.

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

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

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

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

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

45 A “manure management plan”

46 A “nutrient management plan”

47 A “pest control plan

48 An “environmental assessment”

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

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

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

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

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

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

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

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

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

72 Verify that all abutters have been notified

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

74 Review the "permit application for keeping swine" and required documents.

75 Certify all application information and documents are complete and accurate.

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

79 2) The approving authority shall provide an opportunity for the abutters to express their  
80 concerns, ask questions, and express their support or opposition to the application. The board of

81 health may require the applicant to furnish additional information to make a determination  
82 whether to grant the permit.

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

86 4) The approving authority shall act on the application for a swine permit and shall  
87 provide the applicant with a written decision of the outcome and any conditions imposed by the  
88 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  
110 setback if an engineer or qualified professional as determined by the approving authority, hired  
111 by the applicant, prepares an approved odor dispersion plan resulting in improved or equivalent  
112 odor minimization and dispersion on the neighborhoods surrounding the operation. The odor  
113 dispersion plan shall include, but is not limited to, the following; odor control measures,  
114 meteorological data, prevailing wind direction and topography. The odor dispersion plan shall

115 include biofilters and tall air stacks or similar implementations to provide optimum odor  
116 minimization and disbursement.

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

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

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

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

129           The MMP shall require management and disposal of manure in a way, which minimize  
130 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.

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

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

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

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

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

169 Upon every visit to the swine operation, regardless of reason for visit local health  
170 department officials shall require updates of pest problems experienced on the property and  
171 control measures taken, including type of pest problem, action taken and results. All information  
172 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.