

Town of Charlemont
Board of Health
157 Main Street
Charlemont, MA 01339-5500

Charlemont Board of Health Regulations
for the Employment of Outside Consultants
(Adopted by the Board of Health on 6/27/2012)

I. Legal Authority, Purpose, and Related Provisions

(1) The purpose of this regulation is to provide for the protection of public health, safety, welfare and the environment by providing a mechanism that may be utilized at the discretion of the Board of Health when, in their opinion, it is necessary and appropriate for the Board to enlist the assistance of outside expertise when reviewing any proposal that comes before the Board of Health for a decision.

(2) This regulation is promulgated pursuant to the authority of M.G.L. c. 44, § 53G, and c. 111, § 31.

(3) The provisions of these regulations shall apply to M.G.L. c. 111, § 143, as well as other pertinent laws, regulations, and programs under the purview of the Board of Health.

(4) These regulations should be read together with M.G.L. c. 21A, § 13, M.G.L. c. 21 §§ 26 through 53, M.G.L. c. 111, §§ 17, 27, 27A, 27B, 27C, 30, 31, 31A, 31B, 31C, 31D, 31E, 122, 124, 125, 125A, 127, 127A, 127P, 127B and 129; M.G.L. c. 83, § 11; and M.G.L. c. 131, § 40.

II. Review by Outside Consultant:

1. If, after receiving an application, a proposal, a request for assignment, or other request for review or sign-off, the Board of Health determines that in order to deliberate and decide any issue raised by an applicant it requires technical advice unavailable from municipal employees, it may employ outside consultants in accordance with the provisions of M.G.L. c. 44, § 53G. The Board of Health may require that the applicant pay a reasonable consultant fee for the employment of outside consultants chosen by the BOH.

2. All fees assessed pursuant to this section shall be reasonable in light of:

- (a) the complexity of the proposed project as a whole;
- (b) the complexity of particular technical issues;
- (c) the size and character of the site or proposal;
- (d) the projected construction costs, and
- (e) fees charged by similar consultants in the area.

3. If the applicant fails to pay the consultant fee within ten days of receiving written notification of the selection of consultant, the Board of Health may deny the permit, approval or other relief requested.

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4. Prior to paying the consultant fee, the applicant may appeal the selection of the consultant to the Town's Board of Selectmen.

(a) The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications.

(b) The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field.

(c) The required time limits for action upon the application by the Board of Health shall be extended by the duration of the appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board of Health shall stand.

(d) The appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this regulation.

5. Each consultant fee shall be deposited in a special account established by the municipal treasurer pursuant to M.G.L. c. 44, § 53G.

(a) Funds from the special account may be expended only for the purposes described in Section II.

(b) Within 30 days of the completion of the project or of such time as the applicant formally withdraws the proposal, the applicant shall receive a final report of funds in the special account and shall be paid any unspent excess in the account, including accrued interest.

(c) The municipal accountant shall submit annually a report of the special account to the chief elected body and chief administrative official of the municipality for their review. This report shall be published in the town annual report. The municipal accountant shall submit annually a copy of said report to the director of the bureau of accounts.

III. Fees:

1. The Board of Health may assess reasonable fees for permits, licenses, inspections, and oversight services issued or performed by the Board or its representatives in the execution of its responsibilities, pursuant to M.G.L. c. 40 § 22F.

2. A written schedule of fees shall be maintained by the Board of Health and may be amended from time to time, as needed, by simple vote of the Board of Health at any properly convened public meeting.

IV. Severability:

1. If any section, paragraph, sentence, clause or phrase of these regulations shall be deemed invalid by a court of competent jurisdiction, such decision shall not affect the remaining provisions of these regulations, which shall remain in full force and effect and, to this end, the provisions of these regulations are hereby declared severable.

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V. Effective Date:

This regulation was adopted by vote of the Board of Health of the Town of Charlemont at a public meeting held on June 27, 2012, the effective date of these regulations. A public hearing on these regulations was held on April 25, 2012. First publication of notice of public hearing was made April 10, 2012 in the Greenfield Recorder, and second notification was made on April 17, 2012 in the Greenfield Recorder.

Signed and Certified under the
pains and penalties of perjury,



Earl Bowen, ~~Chairperson~~
Board Member



Robert Lingle, Board Co-Chair person

Trice Hyer, Board Member


Lisa Hutchins, Board Member
- Co-Chair

Ronald Smith, Board Member

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MASSACHUSETTS GENERAL LAWS

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE VII. CITIES, TOWNS AND DISTRICTS

CHAPTER 44. MUNICIPAL FINANCE - MISCELLANEOUS PROVISIONS

Chapter 44: Section 53G. Employment of outside consultants

Section 53G. Notwithstanding section 53, any city or town that provides by rules promulgated under section 9 or 12 of chapter 40A, section 21 of chapter 40B, section 81Q of chapter 41 or section 31 of chapter 111, or by rules promulgated by a conservation commission established by a city or town under section 8C of chapter 40 when implementing the authority conferred under said section 8C of said chapter 40, section 40 of chapter 131, or under any local wetlands ordinance or by-law, for the imposition of reasonable fees for the employment of outside consultants may deposit such fees in a special account. Such rules shall provide for an administrative appeal from the selection of the outside consultant to the city council or town board of selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. The required time limits for action upon an application by a municipal permit granting board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the city council or the town board of selectmen within one month following the filing of the appeal, the selection made by the municipal permit granting authority shall stand. Such an administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section. Any such account shall be established by the municipal treasurer in the municipal treasury and shall be kept separate and apart from other monies. The special account, including accrued interest, if any, shall be expended at the direction of the authorized board or authority without further appropriation; provided, however, that such funds are to be expended by it only in connection with carrying out its responsibilities under the law. Any excess amount in the account attributable to a specific project, including any accrued interest, at the completion of said project shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available to the applicant or to the applicant's successor in interest. The municipal accountant shall submit annually a report of said special account to the chief elected body and chief administrative official of the municipality for their review. Said report shall be published in the city or town annual report. The municipal accountant shall submit annually a copy of said report to the director of the bureau of accounts.

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MASSACHUSETTS GENERAL LAWS

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XVI. PUBLIC HEALTH

CHAPTER 111. PUBLIC HEALTH

Chapter 111: Section 31. Health regulations; summary publication; hearings; filing sanitary codes and related rules, etc.

Section 31. Boards of health may make reasonable health regulations. A summary which shall describe the substance of any regulation made by a board of health under this chapter shall be published once in a newspaper of general circulation in the city or town, and such publication shall be notice to all persons. No regulation or amendment thereto which relates to the minimum requirements for subsurface disposal of sanitary sewage as provided by the state environmental code shall be adopted until such time as the board of health shall hold a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, shall be given by publishing in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days prior to the date set for such hearing, or if there is no such newspaper in such city or town, then by posting notice in a conspicuous place in the city or town hall for a period of not less than fourteen days prior to the date set for such hearing. Prior to the adoption of any such regulation or amendment which exceeds the minimum requirements for subsurface disposal of sanitary sewage as provided by the state environmental code, a board of health shall state at said public hearing the local conditions which exist or reasons for exceeding such minimum requirements. Whoever, himself or by his servant or agent, or as the servant or agent of any other person or any firm or corporation, violates any reasonable health regulation, made under authority of this section, for which no penalty by way of fine or imprisonment, or both, is provided by law, shall be punished by a fine of not more than one thousand dollars.

Boards of health shall file with the department of environmental protection, attested copies of sanitary codes, and all rules, regulations and standards which have been adopted, and any amendments and additions thereto, for the maintenance of a central register pursuant to section eight of chapter twenty-one A.

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PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XVI. PUBLIC HEALTH

CHAPTER 111. PUBLIC HEALTH

Chapter 111: Section 143. Trade or employment attended with noisome and injurious odors; assignment of places; prohibition; appeal

Section 143. No trade or employment which may result in a nuisance or be harmful to the inhabitants, injurious to their estates, dangerous to the public health, or may be attended by noisome and injurious odors shall be established in a city or town except in such a location as may be assigned by the board of health thereof after a public hearing has been held thereon, subject to the provisions of chapter forty A and such board of health may prohibit the exercise thereof within the limits of the city or town or in places not so assigned, in any event. Such assignments shall be entered in the records of the city or town, and may be revoked when the board shall think proper.

The department of environmental protection shall advise, upon request, the board of health of a city or town previous to the assignment of places for the exercise of any trade or employment referred to in this section, and any person, including persons in control of any public land, aggrieved by the action of the board of health in assigning certain places for the exercise of any trade or employment referred to in this section may, within sixty days, appeal from the assignment of the board of health to the department and said department may, after a hearing rescind, modify or amend such assignment.

Notwithstanding any provision in section one hundred and twenty-five A of this chapter, this section shall apply to the operations of piggeries.