



JOINT GUIDANCE ISSUED BY
THE OFFICE OF THE ATTORNEY GENERAL
AND
THE MASSACHUSETTS CHIEFS OF POLICE
ASSOCIATION



COVID-19 LAW ENFORCEMENT GUIDANCE

MASKS & FACE COVERINGS FAQS

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Frequently Asked Questions (FAQs)¹

On May 1, 2020, Massachusetts Governor Charlie Baker signed the Order Requiring Face Coverings in Public Places Where Social Distancing Is Not Possible. This Order may be accessed [here](#). Shortly thereafter, and pursuant to the Governor's Order, Commissioner Bharel of the Commonwealth of Massachusetts Department Public Health (DPH) issued Guidance For Wearing Face Masks In Public Settings. This Guidance may be accessed [here](#).

What is the effective date for the Order requiring face coverings?

¹ This guidance represents a collaboration between the Office of the Attorney General for the Commonwealth of Massachusetts and the Massachusetts Chiefs of Police Association.

This Order will become effective on **Wednesday, May 6, 2020** and will remain in effect until the Governor rescinds it, or the state of emergency ends, whichever comes first.

What are the requirements of the Order?

The Order **requires** that every person over the age of five (5) wear a mask or cloth face covering in the following instances:

1. When in a place open to the public, whether indoor or outdoor **and** when the person is unable to maintain social distancing; or
2. When a person is inside, or waiting in line outside of any grocery store, pharmacy, or other retail store; or
3. When a person is providing or using the services of any taxi, car, livery, ride-sharing, or similar service or any means of mass public transit, or while within an enclosed or semi-enclosed transit stop or waiting area.

This also applies to all workers and customers of businesses or other organizations open to the public that are permitted to operate as COVID-19 Essential Businesses.²

Are there any exceptions to the requirement to wear a mask or face covering under the Order?

Yes, the Order specifically **exempts** the following individuals from the requirement to wear a mask or face covering under the Order:

1. Those with **medical conditions** or disabilities that may inhibit them from wearing a mask or face covering safely. This may include, but is not limited to:
 - Those who cannot breathe safely;
 - Those who, due to a behavioral health diagnosis, are unable to do so;
 - Those communicating with people who rely upon lip-reading;
 - Those who require supplemental oxygen to breathe;
2. Those who are **exercising outdoors** and are able to keep physical distance from others; and
3. Children under the age of **2 years**.

Keep in mind that individuals not wearing a mask or face cover due to a medical condition or disability are not required to produce any documentation verifying the condition.

² Such businesses are enumerated in Appendix A of COVID-19 Order 13, as extended by COVID-19 Orders 21 and 30.

Are children between two (2) and five (5) years of age required to wear a mask or face covering under the Order?

Children between the ages of two (2) and five (5) years of age are **encouraged** to wear a mask or face covering, but it is up to the discretion of the parent or guardian. As a result, the Order **does not require** such children to wear a mask or face covering.

What is a “mask or face covering”?

There is no official definition other than the requirement that the mask or face covering covers the person’s nose and mouth.

The DPH Guidance **advises** that such masks or coverings **should**:

- fit securely and comfortably against the side of the face;
- be secured with ties or ear loops;
- allow for breathing without restriction; and
- be able to be laundered and dried without damage or change of shape.³

Further, the Order **strongly discourages** individuals from using medical-grade masks to comply with the Order. These masks should be reserved for use by healthcare workers or first responders.

May businesses require customers to wear masks or face coverings while on their property?

Yes, businesses have the right to decline the entry of any customer who refuses to wear a mask or face covering for non-medical reasons. **Businesses cannot, however, decline entry of a customer for failing to wear a mask or face covering because of a medical condition.** Businesses may also consider providing other reasonable accommodations to individuals with medical conditions or disabilities such as curbside service. Individuals with medical conditions or disabilities who are denied service because they are unable to wear a face mask can file a complaint with the Massachusetts Attorney General’s Office.

How is the Order enforced?

The Order states that the Department of Public Health, local boards of health, and authorized agents under G.L. c. 111, § 30 **are authorized to enforce the Order** and if necessary, may do so with the assistance of State or municipal police.

³ The Guidance further advises that masks and face coverings should be routinely washed depending on the frequency of use. When possible, masks should be washed in a washing machine. If a washing machine is unavailable, masks should be washed with soap and water and allow drying fully before using again.

The Order provides that violations of this Order will be punished in the following manner:

- (a) a warning for the first offense; and
- (b) a civil citation and fine of up to \$300.00 for the second or subsequent offense.

What about existing local board of health regulations or orders regarding masks and face coverings?

The Governor's Order preempts all conflicting local board of health regulations or municipal orders regarding masks and face coverings, and as of Wednesday, May 6, 2020, those regulations may no longer be enforced. Note, however, that if individuals have already been cited under such a regulation for a violation occurring before March 6, 2020, the municipality still has the authority to collect any such fines for that violation.

What is law enforcement's role in enforcing the Order, and what is the recommended response?

Again, law enforcement **may** be called upon to assist the DPH, local boards of health, or authorized agents in enforcing the Order, **if necessary**.⁴ However, the DPH, local boards of health, and authorized agents remain the **enforcement authorities**. As a result, law enforcement has only a support role, if called upon, to enforce the Order.

Prior to any law enforcement response, chiefs of police and law enforcement executives should have interactive discussions with their local boards of health, municipal counsel and authorized agents of local boards of health to clarify:

- In what instances law enforcement personnel may be called upon to assist;
- The method by which law enforcement personnel may be called upon to assist;
- The information needed in calling upon law enforcement personnel to assist; and
- The anticipated level of law enforcement response in certain situations.

If law enforcement is called upon to assist the DPH, local board of health, or their authorized agents, then the following response is recommended after arriving on scene:⁵

- 1. Identify the party, establish contact, and diffuse the situation.** Officers should be aware that individuals may be experiencing a high-level of stress based upon the ongoing pandemic, and the orders and regulations being placed upon their liberty. As with all citizen contacts, officers should seek to use this first contact with the party to calm the situation as much as possible, to establish a connection, and to diffuse the situation. Note that nothing in this guidance is meant to require, advise or recommend that officers

⁴ This enforcement authority is derived from Chapter 639 of the Acts of 1950 (the Massachusetts Civil Defense Act).

⁵ Keep in mind that the recommended response is highly dependent upon the situation presented to the responding personnel and may quickly evolve depending upon the actions of the parties present.

deviate from accepted officer safety standards and tactics. Officer safety remains paramount.

- 2. Determine whether an exemption applies.** Remember, certain individuals are exempt from the requirements of the Order. In order to determine whether an exemption applies, officers should tactfully ask the party why they are refusing to wear a mask or face covering. If the reason is because the person has a medical condition or disability, then the party will indicate this. **Officers should not follow up with requests for documentation to substantiate this. Likewise, officers should not ask the party to identify the specific medical condition or disability.** And if an exemption applies and the person is seeking to enter a business, ascertain whether a reasonable accommodation has been offered to allow the person to access the business without wearing a mask. One such example may include offering curbside service.

- 3. If an exemption does not apply, attempt to achieve voluntary compliance.** Officers should always attempt to achieve voluntary compliance. One aspect of the role of law enforcement is to provide education and training to the public on not just what the law is, but also, why the law exists. Officers may wish to carry such educational materials with them to share with citizens. These materials may display, in a picture format for instance, the benefits of using such masks and face coverings, and the benefits of social distancing. Similarly, officers may wish to talk through ways the person could comply with the order if a tradition mask is not available. For example, the use of a bandana, long sock or cloth. Additionally, the Department may want to research local providers in the area that offer masks and face coverings and officers consider carrying extra masks whenever possible. The primary goal is that through a congenial conversation, officers can achieve voluntary compliance.

- 4. If voluntary compliance cannot be achieved, then officers may issue a citation to the party under the Order if absolutely necessary.** This is the last resort for simple violations of the Order. If absolutely necessary to gain compliance, officers may issue a civil citation for up to \$300.00 using the same process that they use for marijuana and other violations under G.L. c. 40, § 21D.

- 5. If the party is in violation of other criminal laws and regulations, then officers may respond in accordance to the violation.** If the party is in violation of other criminal laws or regulations (e.g. breach of the peace, disturbing the peace, trespass, disorderly conduct, etc.), then officers may response to those infractions in the usual manner.

What if a business declines entry to a customer because they are refusing to wear a mask?

If law enforcement is called upon to respond to an incident where a business declines entry to a customer because they are refusing to wear a mask or face covering, then officers should consider the following:

- 1. Determine whether the party has a medical or disability related reason for not wearing a mask.** Remember, under the Order, businesses may only decline entry to a customer for refusing to wear a mask or face covering for non-medical reasons. As a result, officers should attempt to determine, with discretion, why the person is refusing to wear a mask or face covering. In order to determine whether an exemption applies, simply ask the party, why they are refusing to wear a mask or face covering. If the reason is due to a medical condition or disability, then the party will indicate this. **Officers should not follow up with requests for documentation to substantiate this. Likewise, officers should not ask the party to identify the specific medical condition or disability.**
- 2. Determine whether a reasonable accommodation was offered.** If the customer has a medical condition or disability which means they cannot safely wear a mask, the business is required to either allow the customer to enter the store without a mask or provide another reasonable accommodation that allows access to the business. If a business does not provide a reasonable accommodation, a complaint can be filed with the Massachusetts Attorney General's Office.
- 3. Determine whether there is a discriminatory motive for declining entry to the party.** Remember that G.L. c. 272, § 92A provides that a place of public accommodation may not discriminate against any person based upon their religious sect, creed, class, race, color, denomination, sex, gender identity, sexual orientation, nationality, deafness, blindness, or physical or mental disability. As a result, officers shall not take any enforcement action if there are sufficient grounds to believe that the reason why the party is being denied entry is discriminatory in nature. Again, such instances of discrimination may be referred to the Massachusetts Attorney General's Office.
- 4. Attempt to achieve voluntary compliance.** Officers should always attempt to achieve voluntary compliance. One aspect of the role of law enforcement is providing education and training to the public on not just what the law is, but also, why the law exists. Officers may wish to carry such educational materials with them to share with citizens and which display, in a picture format, the benefits of using such masks and face coverings, and the benefits of social distancing. Similarly, officers may wish to talk through ways the person could comply with the order if a tradition mask is not available. For example, the use of a bandana, long sock or cloth. Additionally, the Department may want to research local providers in the area that offer masks and face coverings and officers should consider carrying extra masks whenever possible. The primary goal is that through a congenial conversation, officers can achieve voluntary compliance. Officers may advise the person that they have to comply, or the business may have them removed.

5. **If voluntary compliance cannot be achieved in a business setting, officers may utilize the trespass charge as the last resort.** If the party will not voluntarily comply, either by donning a mask or face covering, or by refusing to leave the business, and an exemption does not apply, then the officer may consider utilizing the charge of trespass under G.L. c. 266, § 120. Again, such charges should only be used as a last resort when voluntary compliance cannot be achieved through other means.