



COVID-19 FOR COPS

CRITICAL NEW ORDERS

Issued November 5, 2020 — May be copied and circulated without limitation

On Monday, November 2, Governor Baker issued COVID-19 Orders 53, 54, 55 which take effect at 12:01 a.m. on Friday November 6. Massachusetts, like the rest of the nation, has escalating rates of COVID-19. It is tempting for police to lay low in this time of social and political volatility, but citizens need you to educate *and* enforce if Massachusetts is to have pandemic progress!

MANDATORY CLOSING (Order 53)

Most public and private gathering places must open after 5:00 a.m. and close at 9:30 p.m. Sixteen activities are affected.¹ For any business activity, owners and employees may remain on the premises after closing for business operations. Police will likely focus on restaurants, alcohol/marijuana sales, and private gatherings.

- **Restaurants.** No dining on the premises at 9:30 p.m. However, after-hours food and non-alcoholic beverages may be sold for take-out or delivery.
- **Alcohol and marijuana sales.** After 9:30 p.m., sales of alcohol prohibited by any public or private licensee (bars, restaurants, caterers, casinos, private clubs) and marijuana by any 94G licensed retailer. *Each* prohibited sale is a separate \$500 violation.

¹ Businesses, facilities, and activities subject to daily mandatory closing period are:

1. Restaurants.
2. Arcades and other indoor/outdoor recreation.
3. Indoor and outdoor events.
4. Indoor and outdoor theaters, movie theaters, and performance venues.
5. Drive-in movie theaters.
6. Youth and adult amateur sports activities.
7. Golf facilities.
8. Recreational boating and boating businesses.
9. Outdoor recreational experience and educational activities.
10. Casinos, horse racing tracks, and simulcast facilities.
11. Driving and flight schools.
12. Zoos, botanical gardens, wildlife reserves, and nature centers.
13. Close contact personal services.
14. Fitness centers and health clubs.
15. Indoor and outdoor pools (public and semi-public swimming pools).
16. Museums/cultural and historical facilities/guided tours.

- **Any private/public events.** Indoor and outdoor events, including those at private residences, must begin after 5:00 a.m. and end at 9:30 p.m.

Enforcement options. The Governor’s order — issued in accordance with the Civil Defense Act (Chapter 639 of the Acts of 1950) — provides:

- **Police may issue \$500 civil fine on a municipal ticket.** Formal enforcement is limited to a \$500 civil ticket pursuant to the procedure for municipal bylaws and ordinances (40, § 21D).
 - ✓ First, issue ticket to the owner of the establishment. List the violation as “COVID-19 Order 53” with a brief explanation — e.g., “Illegal After-Hours Alcohol Sale.”
 - Each day a violation continues is grounds for a separate ticket and fine.
 - ✓ Second, file a brief incident report. See the attached example.
 - ✓ Third, forward a copy of the ticket and report to your local Board of Health.
- **Arrest is not authorized for a violation of this order.**
- **However, a continuing violation constitutes disorderly.** As previous LED bulletins have noted, a blatant and continuing violation after police intervention constitutes Disorderly Conduct under 272, § 53. After all, a citizen who continues to purposefully disobey a public health restriction during a state of emergency is creating a “hazardous condition with no legitimate purpose.” *Comm. v. Juvenile*, 368 Mass. 580 (1975). Police may arrest a disorderly citizen in their presence under 272, § 54.
- **Finally, consider administrative consequences.** The Alcoholic Beverages Control Commission (ABCC) or Cannabis Control Commission (CCC) may suspend the retail license of a violator.²

GATHERING LIMITS (Order 54)

Private and public gatherings have been significantly limited.

- **Always “social distancing.”** At all gatherings, 6’ of social distancing between participants is required unless they are already household members.
- **Private gathering limits.**
 - ✓ **10 persons indoors** — including residences. [*Note:* Household members are never considered a “gathering,” but they do count toward the 10-person limit when any non-household members are present.]
 - ✓ **25 persons outdoors** — including residences. [*Note:* Household members are never a gathering but count toward the 25 when any non-household members are present.]

² Also remember, if you have a business owner who is a chronic offender, the Governor’s order allows your city or town counsel to seek an injunction in district court to shut down the business.

- **Public gatherings or venues.**
 - ✓ **25 persons indoors** — event staff is not counted in the 25-limit.
 - ✓ **Outdoor events depend on community status.**
 - In Lower Risk Communities (check with your Board of Health to see if your municipality qualifies), 100 persons — event staff excluded.
 - All other communities, 50 persons — event staff excluded.
- **Exemptions for certain gatherings.**
 - ✓ **Religious activities** exempt, provided they follow the COVID-19 Places of Worship Rules.
 - ✓ **Outdoor (but not indoor) gatherings for political expression** (e.g., protests, demonstrations).
 - ✓ **Government, health, and education activities** — e.g., health facilities; DMH, DPH, or DDS facilities; homeless shelters; public and private elementary schools.

Enforcement options. This order was also issued in accordance with the Civil Defense Act.

- **Police may issue \$500 civil fine on a municipal ticket.**
 - ✓ First, issue ticket to the person, organization, or business responsible for organizing, hosting, or allowing the gathering. List the violation as “COVID-19 Order 54” with a brief explanation — e.g., “Public Indoor Gathering Over 25.”
 - *Important:* Each person over the permissible limit is a separate violation and \$500 fine.
 - ✓ Second, file a brief incident report. See the attached example.
 - ✓ Third, forward a copy of the ticket and report to your local Board of Health.
- **Arrest is not authorized for a violation of this order.**
- **However, blatant failure to disperse constitutes disorderly.** A blatant and continuing violation after police intervention constitutes Disorderly Conduct under 272, § 53. After all, a citizen who continues to purposefully disobey a public health restriction during a state of emergency is creating a “hazardous condition with no legitimate purpose.” *Comm. v. Juvenile*, 368 Mass. 580 (1975). Police may arrest a disorderly citizen in their presence under 272, § 54.³
- **Warning and dispersal approach — detect violations early, promptly gain compliance (e.g., excess occupants leave), and/or patiently disperse violators.**

³ Also remember, if you have a chronic public or private offender, the Governor’s order allows your city or town counsel to seek an injunction in district court to prevent further misbehavior.

MASKS (Order 55)

A mask or “face covering” is required in all public spaces.

- **All persons over age 5.** All persons over age 5 must wear a mask or face covering;
- **In public.** Inside every kind of business, facility, or place open to the public, including while on public ways, using public or hired transportation, or while carpooling.
- **Exemptions.** This mask requirement does not apply:
 - ✓ When a person is alone or with only household members in a private vehicle;
 - ✓ For those with a medical or disabling condition;
 - A person is *not* required to produce documentation verifying the condition;
 - *Only* an employee at a workplace or school may be required to provide documentation if he or she requests an accommodation to avoid a face covering;
 - ✓ When eating or drinking in a restaurant, receiving dental care, or swimming;
 - ✓ When a face covering would impede communication with a person who has a hearing deficit;
 - ✓ When DPH orders or sector-specific regulations from a state agency provide other guidance.

Enforcement options. This order was also issued in accordance with the Civil Defense Act.

- **Achieving voluntary compliance — in this high stress time — is our paramount goal.**
- **Police⁴ are not given primary enforcement authority.** BOH officials are authorized to enforce Order 55 with *assistance* from State or municipal police.⁵ Of course, it is unwieldy for police officers to have to notify and wait for a BOH official every time they want to notify, educate, warn, or ticket a violator. That is why your chief or a commander should:
 - ✓ ***Under 111, § 30, have police officers appointed as BOH agents.*** 111, § 30 states: “Boards of health may appoint agents or directors of public health to act for them in cases of emergency . . . , and any such agent or director shall have all the authority which the board appointing him had; but he shall in each case within two days report his action to the board for its approval, and shall be directly responsible to it and under its direction and control.” [emphasis added]

⁴ The only exception to this rule applies to the MBTA Transit Police. Transit officers do have primary authority to issue tickets on MBTA bus, rail, and transit systems.

⁵ The exact quote from Order 55 is: “The Department of Public Health, local boards of health and authorized agents pursuant to G.L. c. 111, § 30 are authorized to enforce this Order and if necessary may do so with the assistance of State or municipal police.”

- ✓ *Get the appointment in writing.* While 111, § 30 does not specify the process by which agents must be appointed⁶, it makes sense to have it written. My suggested language is:

Dear Chief [Name]:

I am the Director of the [Town/City] Board of Health (BOH) and, given the unprecedented need for community outreach and enforcement during the COVID-19 pandemic, I am communicating the BOH's recent decision on [date] to designate all sworn officers, supervisors, and commanders of the [Town/City] Police Department as "agents" of the [Town/City] Board of Health. The BOH has this authority under G.L. c. 111, § 30.

This appointment will be for the duration of the state of emergency pertaining to COVID-19, or until rescinded by the BOH, whichever happens first.

As agents, you will be able to engage in all public outreach, enforcement, and mitigation activities that our existing staff can perform. To have its officers function effectively in this role, the [Town/City] Police Department agrees to consult with the BOH, to be guided by its regulations during public health activities, and to document and forward reports within two days to the BOH.

I look forward to our collaboration to keep our citizens safe during this current emergency. Thank you.

- ✓ *Once a BOH agent, you may issue a \$300 civil fine on a municipal ticket.*
 - First, issue ticket to the violator as "COVID-19 Order 55" with a brief explanation — e.g., "Mask Rule."
 - Second, file a brief incident report. See the attached example.
 - Third, forward a copy of the ticket and report to your local Board of Health, as is required by 111, § 30 within two days.
- **Arrest is not authorized for a violation of this order.**
- **Blatant mask violations that involve obvious failures to social distance — especially after warning — constitute disorderly.** Disorderly Conduct under 272, § 53 applies to a citizen who continues to purposefully disobey a public health restriction during a state of emergency. This behavior creates a "hazardous condition with no legitimate purpose." *Comm. v. Juvenile*, 368 Mass. 580 (1975). Police may arrest a disorderly citizen in their presence under 272, § 54.⁷

⁶ I do not think that officers need to be sworn. For example, see 138, § 56 discussing agents of the liquor licensing board who, traditionally, have been sworn officers, but have not taken a separate oath for this position.

⁷ Also remember, if you have a chronic public or private offender, the Governor's order allows your city or town counsel to seek an injunction in district court to prevent further misbehavior.

- **Special issue: If a customer refuses to wear a mask or face cover for non-medical reasons, the operator of a facility or business may decline entry.** Police undoubtedly will be called to confrontational situations where an unmasked customer refuses to leave. I recommend that officers:

- ✓ *Establish (subtly) whether the individual has a medical condition.* Don't ask: "Hey, do have a health condition that prevents you from wearing a mask?" Instead ask: "Why are you refusing to wear a mask?" If the person does not spontaneously describe, in reasonable detail, a medical condition, then that justification is off the table.
- ✓ *Consider any allegation of discrimination — not social or political opinions.* Remember the Starbucks case in Philadelphia? Be sensitive to the patron who says something like, "Two other people entered without a mask, but now a black guy like me shows up and, all of sudden, they kick me out and call police." The public accommodation law does not allow private businesses, open to the public, to discriminate.⁸

On the other hand, statements like, "Hey, it's my right" or "COVID is so overrated" or "I got tested last week," are not defenses to the face covering rule or, more importantly, to the law of trespass.

- ✓ *Ask the person to cover their face or leave.* Your persuasive and calm communication can make all the difference at this stage. It's a simple choice — cover or go.
- ✓ *If the person does not put on a face cover or leave the premises, an arrest for trespass becomes an option.* 266, § 120 ("remaining without right" on property — after being told to leave by the owner or other person in charge — triggers an officer's in-presence right of arrest for trespass). See generally *Comm. v. Lapon*, 28 Mass. App. Ct. 681 (1990) (defendant refused to leave supermarket after being told he was not going to get a free bottle of laundry detergent). There is no need to consult with your local BOH or issue a 21D ticket in this situation. Simply use the trespass law.

STAY AT HOME ADVISORY (DPH recommendation)

The Department of Public Health (DPH) advises the public to stay home from 10 p.m. to 5 a.m. This advisory carries no mechanism for police enforcement. It is simply a public health recommendation that people stay at home during these restricted hours — unless they are working; seeking emergency medical care; or visiting a grocery store, pharmacy, or take-out food vendor.

⁸ See 272, §§ 92A and 98. For a full discussion of trespass and its relationship to the public accommodation law, see 2020 LED Criminal Law, Chapter 32 at pgs. 32-5 to 32-6. Also see Chapter 16 at pg. 16-5.

LAW ENFORCEMENT DIMENSIONS presents POLICE COVID-19 ENFORCEMENT at-a-glance!

Authority	Coverage	Enforcement
Order 53 Mandatory Closing	<p>Public and private gathering places must open after 5:00 a.m. and close by 9:30 p.m. Special applications:</p> <ul style="list-style-type: none"> Restaurants. No dining after 9:30 p.m., but may do take-out and delivery. Alcohol. No sales by public or private licensee after 9:30 p.m. Marijuana. No sales by retailers after 9:30 p.m. Any private/public events must begin after 5:00 a.m. and end at 9:30 p.m. 	<p><i>Warning and dispersal — good option.</i></p> <p><i>Police authorized to issue \$500 municipal ticket:</i></p> <ul style="list-style-type: none"> Each alcohol/marijuana sale is separate \$500 viol. Each day of misconduct is separate \$500 viol. <p><i>Admin license suspension through proper agency.</i></p> <p><i>Blatant, continuing violation may be disorderly conduct arrest (272, §§ 53 and 54).</i></p>
Order 54 Gathering Limits	<p>Private gathering limits:</p> <ul style="list-style-type: none"> 10 people indoors, including homes. 25 people outdoors, including homes. Note: Household members are not a gathering but count toward total when any non-household members present. <p>Public gathering limits:</p> <ul style="list-style-type: none"> 25 people indoors (event staff not counted in total). Outdoors in “low risk communities”, 100 people. All other communities, 50 people (event staff not counted in both cases). <p>Exemptions: Religious services; political, outdoor demonstrations; government, health, or elementary school functions.</p>	<p><i>Warning and dispersal — good option.</i></p> <p><i>Police authorized to issue \$500 municipal ticket:</i></p> <ul style="list-style-type: none"> To person, organization, or business that hosts or allows gathering. Each person over the limit is a separate violation and \$500 fine. Each day that misconduct occurs is a separate violation. <p><i>Blatant, continuing violation may be disorderly conduct arrest (272, §§ 53 and 54).</i></p>
Order 55 Masks	<p>Mask or “face covering” in all public spaces:</p> <ul style="list-style-type: none"> If over 5 years old; Inside every business, facility, or place open to public — including all public ways or transportation with non-household members. <p>Basic exemptions: (1) medical or disabling condition (don’t need documentation); (2) eating/drinking in restaurant; (3) need to speak to hearing impaired person.</p> <p>Business or other facility may decline entry if person refuses to wear mask for a <i>non-medical</i> reason.</p>	<p><i>Goal is to educate and encourage voluntary compliance.</i></p> <p><i>Police must be appointed BOH agents (111, § 30) in order to issue \$300 municipal ticket on their own for mask violation.</i></p> <p><i>If violator refuses to wear mask (for non-medical reasons) in business or facility, then arrest for trespass if he/she refuses to leave after warning.</i></p>
DPH Advisory	DPH advises everyone to stay home from 10:00 p.m. to 5:00 a.m.	Absolutely none.



VIOLATION

#209001

CITY OF SPRINGFIELD • NOTICE OF VIOLATION
VIOLATION ORDINANCE, RULE, LAW OR REGULATION

OFFENDER NAME	JOHN WEST		
ADDRESS	32 EAST ST.		
CITY	STATE	ZIP CODE	
SPRINGFIELD, MA		01118	
DOB	LICENSE #	SS #	
6/07/80	S29824817	N/A	
PLATE NO.	MAKE	TYPE	COLOR
207-WLV	HONDA	CIVIC	RED
OFFENSE(S)	COVID-19 ORDER 54 OVER 25 GATHERING (see report for facts)		

TIME OF VIOLATION (AM)	8:15 (PM)	SECTOR	2
DATE OF VIOLATION	NOV 7, 2020		
LOCATION OF VIOLATION	LOMBARDO'S		
SIGNATURE OF ENFORCING PERSON	EMPLOYEE ID	ENFORCING AGENCY	
Sgt. Eleni Barbieri	88	SPR POLICE	

I HEREBY ACKNOWLEDGE THE FOREGOING CITATION

X

[] Unable to obtain signature. Date Mailed _____

The Non-CRIMINAL FINE FOR THIS OFFENSE IS \$ 1,000.00

Either option (1) or (2) will operate as a final disposition, with no criminal record.

(1) You may choose to pay the above fine, either by appearing in person or through a duly authorized agent, between 10:00AM and 4 PM Monday—Friday except Thursday, between 10:00AM-6:00PM or by mailing a check, money order or postal notice WITHIN IN 21 DAYS OF THIS NOTICE TO:

CITY CLERK, City of Springfield 36 Court St., Springfield, MA, 01103

(2) If you decide to contest this matter, you may do so by a making a written request for a noncriminal hearing, and enclosing a copy of this citation. WITHIN IN 21 DAYS OF THIS NOTICE to:

Clerk Magistrate District Court 50 State St., Springfield, MA, 01103

(3) If you fail to pay the above fine or request a hearing within in 21 days, or if you fail to appear for the hearing or to pay any fine determined at the hearing to be due, a criminal complaint may be issued against you.

[] I HEREBY ELECT THE FIRST OPTION above, confess the offense charged, and enclose payment in the amount of \$ _____

[] I HEREBY REQUEST A NONCRIMINAL HEARING on this matter

Signature _____

PLEASE PEEL OFF TAPE AND FOLD FLAP TO SEAL ENVELOPE.

← MUNICIPAL
TICKET← VIOLATION
DESCRIPTION← SEE
REPORT
NEXT
PAGE

← FINE*

* explained
in report

Sample Police Report Narrative

All information on the sample ticket and in this report is fictitious.

At approximately 8:15 p.m., I, Sgt. Eleni Barbieri, was dispatched to a report of a party at Lombardo's Festival, located at 32 East St., Springfield. Lombardo's caters weddings and other events.

Units 42 and 34 were on scene. They had been sent to deal with a fight between two wedding guests, which was resolved when I arrived.

Officers Allen and Maxwell quickly determined that there were 35 guests at the wedding reception (several others had run out the back door). This violates COVID-19 Order 54. The maximum amount of guests allowed at an indoor venue is 25, excluding event staff.

I also noticed approximately 20 guests not wearing masks.

I spoke to the owner and host of the party, Mr. John West. Mr. West told me: "Hey, I got to make a living. Anybody who pays can come here. Screw the masks too."

The wedding party, although disappointed, provided me with a guest list for "contact tracing" and agreed to end the event when I allowed them to remove the food and beverages they had purchased.

I issued ordinance ticket #209001 to Mr. West. Although there were 10 guests over the 25 person limit, which calls for a fine of \$5,000 under Order 54. I assessed Mr. West a \$1,000 fine for two of the guests.

This report and ticket are being forwarded to the Springfield Board of Health.

* * * * *

Important note: If officers on scene identify people present, those names and phone numbers can be listed and attached to the report. If a COVID-19 infection does develop from the gathering, a list of contacts may be useful to your local board of health for contact tracing. Of course, it may be unrealistic for officers to learn people's identities at an improper gathering prior to dispersal. However, officers may condition release without a ticket based on the host or other violator providing their name and cell phone number to facilitate tracing. Officers and supervisors should weigh these approaches depending on the situation.