



COVID-19 FOR COPS SUMMER BEACH ENFORCEMENT

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Foundation for success — appointment & information

All police officers in your department should be appointed as “agents” of your local Board of Health (BOH) so they can act immediately. As I have mentioned in prior bulletins, your local BOH can appoint all police officers as agents pursuant to 111, § 30.¹ Ideally, it should be in writing.² Appointment enables officers to educate, warn, and enforce COVID-19 violations — especially concerning social distance and masks — which are likely to increase in warmer weather.

The primary response is education, education, education! People may, for a variety of emotional reasons, fail to comply with current rules. It’s easy for us to assume that violators are deliberately defiant. Keep the contact positive — “Excuse me, are you aware of the mask and social distance requirements on the beach?” — and then go from there. Issue a warning if the citizen needs a stronger message. Save a stronger response for the extreme or multi-incident offender.

- **Keep a box of masks in each cruiser or emphasize a “do-it-yourself” fix.** Instead of issuing tickets, officers can help citizens immediately comply with the law by giving them masks or, if they have a scarf or towel, recommending they create make-shift masks. [It’s like those great cops who let an unregistered motorist go on the RMV website and register on the side of the road!] These simple, positive methods are working around the nation.³

¹ 111, § 30 states: “Boards of health may appoint agents . . . to act for them in cases of emergency . . . , and any [agent] 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]

² Here is recommended language — 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This appointment will be for the duration of the state of emergency pertaining to COVID-19, or until rescinded by the BOH, whichever happens first.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. Thank you.

³ See International Chiefs of Police Association (IACP). TheLead@iacp.bulletinmedia.com.

- **Set a good example!** If your officers and staff practice “social distancing” and wear face masks, it goes a long way toward educating the community. It also prevents criticism of the department when officers need to issue a money fine — or even arrest someone for a pandemic-based crime.

Local beach enforcement

The simple way to enforce responsible beach behavior this summer is to adopt local regulations and, if necessary, rely on tickets and trespass for the non-compliant. The Governor issued COVID-19 Order No. 34 on May 18 to regulate the use of *state beaches*.⁴ However, local beach regulation is an open subject. My recommendation is to use state regulations as the foundation for beach regulations your BOH can adopt pursuant to 111, §§ 31 and 104.^{5, 6} Recommended provisions include:

- Visitors may sit, sunbathe, picnic, walk, jog, and fish — *provided* they maintain proper social distancing of 6’ from anyone that is not in their household group.^{7, 8}
- Any single household group at the beach may have a maximum of 10 people.
- Visitors may also engage in watersports that *do not* involve close contact or shared equipment (e.g., swimming, surfing, body boards) — *provided* they maintain proper social distancing of 6’ from all others.
- Organized ball games of any type are prohibited.
- Masks or face covering of the nose and mouth must be worn by anyone age 5 and over⁹ if that person is unable to, or does not maintain, a distance of 6’ from every other person, including members of their household group.

⁴ Order No. 34 appears at <https://www.mass.gov/info-details/covid-19-state-of-emergency>.

⁵ 111, § 31 (BOH has ability to promulgate regulations without a public hearing). 111, § 104 (“If a disease dangerous to the public health exists in a town, the selectmen and board of health shall use all possible care to prevent the spread of the infection”).

⁶ Local BOH and municipal officials are free to impose restrictions that go beyond the Governor’s State of Emergency (SOC) Order No. 13 as long as the local rules do not weaken the objectives of the Governor’s Order or interfere with “essential services” in any way.

⁷ The term “household group” is used in COVID-19 Order No. 33, which describes permissible outdoor recreational activities as well as other aspects of the phased re-opening of Massachusetts. Although undefined in the order, clearly a “household group” includes those people who have been living together since the quarantine began and, therefore, do not pose as much of a risk of infection to each other.

⁸ Local officers, who are appointed as agents of the local BOH, already have the authority to warn (1st offense), fine \$300 (2nd offense), and arrest (3rd and willful) for social distance violators in outdoor spaces. The Governor and Commissioner of Public Health established this authority in COVID-19 Order No. 13 (issued March 23) and Guidance (issued March 31). Go to <https://www.mass.gov/info-details/covid-19-state-of-emergency>.

⁹ The Commissioner of Public Health issued guidelines for wearing face masks in public settings on May 1, which appear at <https://www.mass.gov/info-details/covid-19-state-of-emergency>. Technically, children between the ages of 2 and 5 should wear a mask but the decision is left to the child’s parent or guardian. Children under 2 should not wear a mask.

- Exceptions for wearing a mask apply to those who: (1) cannot breathe safely; (2) have a “behavioral health diagnosis” (i.e., their mental condition does not allow them to manage this); (3) must communicate with another who relies on lip reading; (4) require supplemental oxygen; and (5) are exercising outdoors and able to keep a safe social distance from others.¹⁰ A medical condition that causes an inability to wear a mask does not have to be documented.
- The violation of any local beach regulation may result in a warning, \$300 fine (40, § 21D process), and/or ejection from the beach and parking areas. Violators who fail to leave the property after being notified by police are subject to arrest for trespassing in violation of 266, § 120.

Conspicuously post local beach regulations. Now, police officers are in a position to engage in simple and clear enforcement.

Depending on the situation, the following enforcement options apply:

- **Preferred response: Educate and warn.** For example, “Hi Sir, you cannot play any ball games on the beach. I know it’s a pain and not fun, but this is an important public health regulation that we have to enforce. Thank you for your cooperation.”
- **Warn and discuss ejection.** For example, “Hi Laura, we spoke before. You have to wear a mask if you are going to be near people. This is a public health rule. I’m not going to argue with you. The next time you’ll have to leave the beach.”
- **Warn, fine, and/or eject.** For example, “John, I’ve spoken with you a couple of times now. There are too many people here; you’re too close; and a lot of you are not wearing masks. Let me see your ID please. Ok, the party is over and everyone needs to leave right now. As the organizer, I’m giving you a ticket.”
 - *Issue local ordinance or bylaw ticket with \$300 fine (just like you do for civil marijuana violations, leash law, littering, etc.)*
- **Eject and/or arrest.** For example, “Mr. Williams, I have spoken to you several times about complaints from other people. At this point, gather your things and leave the beach immediately.” [Your suspect argues.] “Please, I’m not going to ask you again. You’re subject to arrest for trespassing. Please, just leave. Don’t put yourself in a position where you end up under arrest.”
 - *Failure to leave after verbal ejection is “remaining without right,” which constitutes trespassing in an officer’s presence and justifies warrantless arrest. 266, § 120.*
 - *Trespass applies to public property under the control of a municipal government. See Hurley v. Hinckley, 304 F.Supp. 704 (D. Mass. 1970).*

¹⁰ Id.

- *Optional: Issue a “No Trespass Notice”* to a violator whose misbehavior was so blatant you do not want him to come back to the beach without permission. Make sure that the notice provides a named official (e.g., police chief or BOH director) and phone number, so the violator may call — in order to have an informal hearing to determine whether the notice will remain in effect, be rescinded, or be modified. See, e.g., *Wayfield v. Town of Tisbury*, 925 F.Supp. 880 (D. Mass. 1996) (access to a public forum like a library should not be denied on an ongoing basis without giving the citizen an opportunity to make his case to a town official).

CRIMINAL BEHAVIOR BEYOND TRESPASS	
BEHAVIOR	ENFORCEMENT
<i>Coughing, getting close to others in a way that causes alarm, annoyance or inconvenience</i> (emphasize public reaction to bad behavior).	<i>Disorderly Conduct</i> (272, § 53). The behavior creates a “hazardous condition” for no legitimate purpose. Right of arrest: 272, § 54 authorizes “in presence” warrantless arrest. See <i>LED Criminal Law, Chapter 23</i> .
<i>Intentionally touching, spitting, or coughing on another person</i> (no need for person to be positive for COVID-19).	<i>A&B</i> (265, § 13A). Right of arrest: If in officer’s presence, it is a breach of peace that justifies warrantless arrest. If not in presence, apply for complaint. <i>Comm. v. Cohen</i> , 55 Mass. App. Ct. 358 (2002) (intentionally spitting constitutes A&B). ¹¹
<i>Threatening to infect or spread COVID-19</i> (does not matter whether threat is true or false; offender’s intent is irrelevant — e.g., “only joking” is no defense).	<i>Threat of Dangerous Substance</i> (269, § 14). Any direct or indirect threat about the location of a dangerous substance — like COVID-19 — that causes another person to experience “discomfort.” Right of arrest: Felony. See <i>LED Criminal Law, Chapter 19</i> .

¹¹ *Comm. v. Smith*, 58 Mass. App. Ct. 381 (2003) (defendant knew he had HIV and yelled that he intended to kill a prison guard; he then bit the officer’s arm; this was assault with intent to murder or maim in violation of 265, § 15). For more detail, see *LED Criminal Law, Chapters 4 (A&B), 5 (ABPO), and 6 (assault with intent)*.