



Assisting Massachusetts Boards of Health through training, technical assistance and legal education

## MASSACHUSETTS ASSOCIATION OF HEALTH BOARDS FAQs Facial Coverings, Graduations, Town Meetings

### **FACIAL COVERINGS:**

**Question:** Can an establishment require an employee to wear a face covering if the employee claims he or she has a medical condition?

**Answer:** No, the Order Requiring Face Coverings in Public Places Where Social Distancing is not Possible (COVID-19 Order No. 31) provides an exception to the face-covering requirement when an individual has a medical condition that prevents any individual from wearing a face covering. Additionally, COVID-19 Order No. 31 states that any individual who cannot not wear a face covering because of a medical condition “shall not be required to product documentation verifying the condition.”<sup>1</sup>

In a scenario where an employer deems it necessary to find an alternative to allowing the employee to work without a face covering, the employer may seek to provide a reasonable accommodation to the employee.<sup>2</sup> Some examples of reasonable accommodations may include:

- Permitting the employee to take an unpaid leave of absence until COVID-19 Order No. 31 is rescinded or the state of emergency is terminated;
- Allowing the employee to work from home; or

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<sup>1</sup> OFFICE OF THE GOVERNOR, Order Requiring Face Coverings in Public Places Where Social Distancing is not Possible, COVID-19 Order No. 31 (May 1, 2020), at 2, available at <https://www.mass.gov/doc/may-1-2020-masks-and-face-coverings/download>.

<sup>2</sup> “Reasonable Accommodation” is a term of art in the Americans with Disabilities Act whose definition includes “job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition of or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.” 42 U.S.C. § 1211(9)(B).

- If possible, providing an alternative face covering to accommodate the employee's medical condition.

By providing the reasonable accommodation, the employer is both accommodating the employee's medical condition and reducing the risk of its operation further spreading COVID-19.

**Question: Can an establishment turn away a customer who is not wearing a facial covering because of a medical condition?**

**Answer:** No, per the Commonwealth's Face Covering Q&A, businesses may refuse entry to persons who refuse to cover their face, unless it is for a medical reason.<sup>3</sup>

In a circumstance where a potential patron refuses to utilize a face covering, but does not claim a medical condition, a business may opt to offer an alternative to the patron, such as curbside or delivery service.

**Question: Can a voter be turned away from a polling place because the voter is not wearing a mask?**

**Answer:** No, per the Commonwealth's Face Covering Q&A. Voters are encouraged to wear face coverings and polling places should be set up to maintain social distancing during the voting process. Qualified voters will be allowed to vote without consequence, regardless of whether the voter is wearing a face covering.<sup>4</sup>

**Question: Is there any guidance for Graduations?**

**Answer:** Yes, the Massachusetts Department of Elementary and Secondary Education (DESE) provided guidance on May 21, 2020. Per the guidance, ceremonies held between before July 18 "should be held virtually or in extremely limited other circumstances following safety protocols (e.g. car parades)." Graduations beginning July 19 may take place outside, provided the ceremony is conducted using DESE standards and as long as public health data supports the continued reopening of the state.<sup>5</sup>

Graduations beginning July 19, 2020 must follow these guidelines:

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<sup>3</sup> COMMONWEALTH OF MASSACHUSETTS, Face Covering Q&A, available at <https://www.mass.gov/doc/frequently-asked-questions-face-covering/download> (last visited June 15, 2020).

<sup>4</sup> Id.

<sup>5</sup> MASSACHUSETTS DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION, High School Graduation Guidelines from DPH/HHS to Help Prevent the Spread of COVID-19 (May 21, 2020), available at <https://www.mass.gov/doc/may-21-2020-high-school-graduation-guidance/download>.

- Attendance—limited to graduates and immediate family;
- Social Distancing—six-foot distancing;
- Face Coverings—required for all attendees over the age of five; and
- Ceremony: Pre, During and Post—no communal gatherings outside of the ceremony, no food or drink, the venue must have sufficient access to hand sanitizer at entrances and exits, and no touching.<sup>6</sup>

**Question: Is there guidance for town meetings and town elections?**

**Answer:** Yes. The legislature passed Chapter 92 of the Acts of 2020 on June 5, 2020.<sup>7</sup> The Commonwealth provided Guidance for Town Meetings on June 11, 2020.<sup>8</sup>

*Discussion of Chapter 92 of the Acts of 2020*

With respect to municipal elections, the legislation allows for a municipality that had previously scheduled its caucus or election for a date between March 23, 2020 and July 31, 2020 to postpone up until August 1, 2020. It also allows a town, by the vote of its select board, town council, or board of registrars, to eliminate a municipal caucus that is scheduled to occur between March 23, 2020 and July 31, 2020. Lastly, the legislation allows nomination papers signed by at least 10 registered voters of the town and requires that nomination papers be returned between 32 and 36 days prior to the town election.<sup>9</sup>

With respect to town meeting, the legislation allows for a reduced quorum requirement of not less than 10% of the existing quorum and that notice of this change be made seven days prior to the vote of the select board.<sup>10</sup>

The legislation also allows for town meeting to be held through remote participation (i.e. video and telephone conferencing) in instances where it is not possible to safely assemble while complying with

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<sup>6</sup> Id.

<sup>7</sup> An Act Relative to Municipal Governance During the COVID-19 Emergency, 2020 Mass. Acts, Ch. 92 (June 5, 2020), available at <https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter92>.

A section by section summary of the legislation can be found on the Commonwealth’s website. COMMONWEALTH OF MASSACHUSETTS, Chapter 92 of the Acts of 2020: An Act Relative to Municipal Governance During the COVID-19 Emergency, available at <https://www.mass.gov/doc/chapter-92-of-the-acts-of-2020-section-by-section-summary/download> (last visited June 15, 2020) (Chapter 92 Summary).

<sup>8</sup> COMMONWEALTH OF MASSACHUSETTS, Guidance for Town Meetings to Address COVID-19 (June 11, 2020), available at <https://www.mass.gov/doc/guidance-for-town-meetings-to-address-covid-19/download> (Town Meeting Guidance).

<sup>9</sup> 2020 Mass. Acts, Ch. 92, §§ 1-5; Chapter 92 Summary, supra note 7.

<sup>10</sup> 2020 Mass. Acts, Ch. 92, § 7.

applicable state and local orders. To utilize a remote meeting platform, the town meeting moderator must submit in writing a request for remote participation to the town select board or board of selectman, with said request including a written determination that a safe in-person assembly is not possible, identification of the remote participation platform, a certification that there has been a consultation with a local disability commission or coordinator, and certification of a successful test of the remote platform that it performed satisfactorily. Within 10 days of receipt of the written request, the select board or board of selectmen must vote on whether to conduct a remote town meeting.<sup>11</sup>

Per the legislation, the remote conference platform must provide the ability:

- For all participants to identify themselves and hear those officials and residents who are participating in the town meeting;
- To determine whether a quorum is present;
- For a participant to request recognition without prior authorization;
- For the moderator to determine when a town meeting member wishes to speak, make a motion, raise a point of order, or object to a request for unanimous consent;
- For the moderator to recognize a participant to speak;
- To conduct a roll call vote;
- For interested member of the public to witness the town meeting;
- To record the town meeting.<sup>12</sup>

Any registered voter may request participation instruction for the remote town meeting not less than 48 hours in advance of the town meeting.<sup>13</sup>

Prior to “taking up any business” at the remote town meeting, town meeting members shall vote one whether to commence business by remote means, or to postpone the remainder of town meeting to either an already warranted town meeting date or a date to be determined.<sup>14</sup>

Further, for both already-postponed municipal election and already-held town meetings, if performed in a manner substantially consistent with Chapter 92 of the Acts of 2020, then the actions of the town officials shall be ratified, validated and confirmed.<sup>15</sup>

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<sup>11</sup> Id. § 8(a)-(b).

<sup>12</sup> Id. § 8(a). The recorded town meeting must be made available to the public within 90 days of the remote town meeting. Id. § 8(h)

<sup>13</sup> 2020 Mass. Acts, Ch. 92, Id. § 8(a)

<sup>14</sup> Id., § 8 (f).

<sup>15</sup> Id. § 17.

### Discussion of Town Meeting Guidance

The following is a non-exhaustive summary of the guidance provided by the Commonwealth for in-person town meetings:

- Town officials should communicate that any residents feeling sick or exhibiting COVID-19 symptoms and any vulnerable residents should not attend town meeting;
- Town officials are encouraged to hold meetings either virtually or outdoors;
- Attendance—remote participation and reduction of quorum is encouraged, pursuant to Chapter 92 of the Acts of 2020, and attendees should sign in;
- Social Distancing—seats should be arranged and microphone lines should be marked for six-foot distance between attendees and there should be increased ventilation, one-way aisle for entering and exiting, and row-by-row exiting;
- Face coverings—All attendees over the age of five must wear face coverings, but for those with a medical exception, who shall not be required to provide documentation verifying the condition; those addressing town meeting may remove their face covering; there should be installation of plexiglass or the like at podiums and points of address; and the guidance discourages pre- or post-meeting communal gatherings;
- Cleaning, Disinfection, Hygiene—the venue must undergo pre-and post-meeting cleaning, there should be markings placed outside of the bathrooms to promote six-foot distancing, officials must ensure access to hand-washing stations and alcohol-based sanitizer, the distribution of paper (including Town Warrants) must be done in a manner to ensure social distancing and for paper not to be shared between attendees, electronic voting machines must be cleaned after each use; and
- Notification of a positive case must be reported to the local board of health if any attendee is exposed to COVID-19.<sup>16</sup>

Additional guidance documents may be found on [www.mahb.org](http://www.mahb.org).

***THIS INFORMATION IS PROVIDED FOR LEGAL EDUCATIONAL PURPOSES ONLY AND IS NOT TO BE CONSTRUED AS LEGAL ADVICE. LEGAL ADVICE CAN ONLY COME FROM MUNICIPAL ATTORNEYS.***

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<sup>16</sup> Town Meeting Guidance, supra note 8.