



# BOH Forms: #28 Enforcement Checklist

Board of Health and Local Health Department Standard Operating Procedures (SOP)

This **Checklist** highlights many of the requirements and tools available Boards of Health to ensure compliance.

The checklist is designed to be used in tandem with **Local Regulations, MA Regulations, General Laws and current Emergency Orders.**

**Remember: BOH almost always has the final say on requirements.**

## Enforcement Overview – generally listed in order from least to most restrictive

BOH have a wide range of enforcement tools. Enforcement should always focus on compliance using the least restrictive methods.

- Social Norms** (seatbelts, non-smoking, drinking and driving, flu shots)
- Surveillance** (data, MAVEN, media)
- Public Education** (tick checks, cover your coughs, COVID-19 handwashing/masks)
- Self-Assessments and Certifications**
- Inspections** (The BOH/Agent must in general see/hear/smell/feel the violation to enforce against it. Photos are helpful in court.)
- Re-inspections and Re-inspection Fees**
- Verbal Advisories**
- Verbal Warnings**
- Verbal Orders** (allow reasonable time for corrections, then follow up)
- Written Warnings**
- Written Orders to Correct** (Must have dates for compliance and be delivered to the individual.)
- Non-criminal Tickets** (Smoking, COVID-19 and Municipal Civil Tickets based on acceptance of Chapter 40, s. 21B.)
- Hearings** (Appeals and Condemnations. BOH Hearings must be posted and due notice given to all parties; minutes taken.)
- Variations** (May not give variations deemed to endanger the public health or safety. Variance must be in writing.)
- Embargo Orders** (Withholding a product until a hearing can make a determination.)
- Condemnation Orders** (Best to first hold a hearing but may condemn from the street for imminent health threats.)
- Closures** (Emergency closures for imminent health threat may be ordered immediately, followed by a hearing.)
- Permit Suspensions** (For substantial violations of permit to operate. Should hold a hearing first if possible.)
- Isolation and Quarantine Orders** (Must ensure support services. Fines and court hearings for non-compliance.)
- Court Orders** (M.G.L. c. 111 §187. Housing Court is a Superior Court that is familiar with civil Public Health Law.)
- Receiverships** (AG and Courts) Chapter 111, 127I

## Enforcement Partners

- Town/City Counsel
- Chief Elected Officials/Managers
- Building Officials
- Fire Officials
- Conservation Commission
- Law Enforcement Officials (May appoint LE as Agents for the BOH to help with enforcement; M.G.L. c. 111, s. 30)
- Assessor's Office
- Other Municipal Departments and Officials
- Department of Labor Services (DLS)
- Department of Public Health (DPH)
- Department of Environmental Protection (DEP)
- Department of Labor Standards
- Alcohol Beverages Control Commission (ABC) <https://www.mass.gov/enforcement-division-abcc>
- Housing Court Officials (Courts generally give deference to the BOH in matters of public health if BOH follows rules).
- Attorney General's Office
- District Attorney's Office
- Berkshire County Boards of Health Association ([info@bcboha.org](mailto:info@bcboha.org)) and neighboring Boards of Health
- Massachusetts Professional Associations: MPHA; CLPH, MHOA, MAHB
- Community Social Service Agencies

## Precedence of Laws

- Federal Constitution (Powers not enumerated to the Federal Government are reserved to the States)
- Acts of Congress & Treaties
- Rules & Regulations of certain Executive Departments
- State Constitution
- Laws enacted by State Legislature (M.G.L.)
- Emergency Orders from the Governor
- Rules and Regulations of state agencies (C.M.R.)
- Municipal charters granted by the state

- Municipal legislation/By-Laws (though these likely can't limit BOH authority granted under MGL & CMRs.)
- Rules and Regulations of local boards of health** (M.G.L. c.111, s.31) as long as they are not prohibited by State law.

### Powers and Duties

**Note:** Boards of Health have broad powers and enforcement authority granted by the State coordinate or concurrent with other State Agencies in multiple areas that directly and indirectly impact the health and safety of their residents. If the BOH does not act after reasonable notice, in a reasonable time, other State Agencies including the Department of Public Health may act.

- Mass General Law (MGL) 111.00** (the basis for most Board of Health authority)
- State Sanitary Code:** M.G.L. c. 111, s. 127A
- State Environmental Code Title 5:** M.G.L. c. 21A, s. 13; MGL c .111, s. 31E; 310 CMR 15.00
- Public Nuisances:** M.G.L. c.111, s.122. <https://malegislature.gov/laws/generallaws/parti/titlexvi/chapter111/section122> (Does not include private disputes. Issue must impact the public health and safety. Many farm practices are exempt M.G.L c. 111, s.125A.)
- Lead Laws:** M.G.L. c. 111 s. 198; 105 CMR 460
- Smoking:** M.G.L. c. 270 s. 22; 940 CMR 21 & 22; 105 CMR 661.
- Farm Labor Camps:** MGL c. 111, s. 127G; 105 CMR 420:00
- Housing:** M.G.L. c. 111, s. 127C; nuisances M.G.L. c.111, s.128; condemn buildings M.G.L. c.111, s.127B; 105 CMR.410.00
- Lodging:** M.G.L.c140, s32B; M.G.L. c140, s 36
- Food:** Condemnation M.G.L. c. 94, s.146; 105 CMR 590.012. Adulterated Food, M.G.L. c.94, s.186-195.Criminal Penalty 590.16
- Beavers:** M.G.L. c. 131, s. 80a.
- Tanning Parlors:** M.G.L.c.111, s208.;105 CMR 123:
- Body Art:** Need local regulations
- Private Wells:** Need local regulations
- Other Regulated Activities:** Waste Haulers; Animals; Pools, Camps; Beaches, Pesticides; Cemeteries; Waste Sites, etc.
- Receivership:** M.G.L. c. 111, s. 127I
- Non-Criminal Tickets:** M.G.L. c. 40, s. 21D
- OSHA:** 105 CMR 300.00
- Condemn Diseases & Order Isolation and Quarantine:** 105 CMR 300.00 & 300.210
- COVID-19:** enforcement (Governor's Orders COVID-19; M.G.L. c.111. s.30)

### State Sanitary Code: M.G.L. c. 111, §127A.

- Chapter I: General Administrative Procedures
- Chapter II: Housing (105 CMR 410)
- Chapter III: Farm Labor Camps (105 CMR 420.)
- Chapter IV: Recreational Camps for Children (105 CMR 430; MGL140, s32B/32C)
- Chapter V: Public/Semi-public Swimming Pools (105 CMR 435; MGL c 140, s 51)
- Chapter VI: Family Type Campgrounds (105 CMR 440.)
- Chapter VII: Bathing Beaches (105 CMR 445.)
- Chapter VIII: Medical or Biological Waste (105 CMR 480.)
- Chapter X: Retail Food Establishments (105 CMR 590.)
- Chapter XI: Indoor Skating Rinks (105 CMR 675.)

### BOH Local Regulations

- BOH Regulations:** M.G.L c. 111, §31 is a broad grant of authority empowering boards of health to adopt “reasonable health regulations.” Local regulations can be immediate at a properly called BOH Meeting and without a hearing, especially for emergencies.
- Stricter than State:** Local regulations may not be inconsistent with state or federal regulations, but they may be more stringent.
- Local Conditions:** Regulations may act to avoid potential dangers, as well as to restrict conditions proven to be harmful.
- Public Hearings** may be required (e.g., for Title 5 regulations) and are recommended for any new regulations.

### Enforcement Steps

- IDENTIFY CODE VIOLATIONS - Inspections/Data/Assessment**
- EDUCATION – Priorities/Improvements**
- VOLUNTARY COMPLIANCE – Most effective & easiest**
- ENFORCEMENT– Goal is Compliance**
  1. **Issue Written, Signed Orders to Correct**
  2. **Take further legal actions (fines, fees, hearings)**
  3. **Closures, Takings**
  4. **Court**

### Corrective Actions

- Correct on the spot if possible
- Provide a written Order to Correct; the inspection form can serve as an order to correct. Orders must be signed by Agent or BOH
- Fines and re-inspection fees – should have a local regulation that sets reinspection fees and fines for violations – especially repeats

- Written Corrective Action Plan or Risk Control Plan – often need for complex or expensive changes
- Hearings – to hear the evidence. Decisions can be made at a later public meeting
- Variances and Special Exceptions – should be used sparingly for cases of manifest injustice
- Closures, Suspensions, and loss of Permit – may want to hold a hearing before these orders are final
- Court Orders – the strongest action as violations of court orders are a criminal offense, enforceable by fines and jail sentences

### Food Code Corrective Actions

**Correction times – immediately or**

**P (Priority) = 72 hours; P<sup>f</sup> (Priority Foundation)= 10 days; C (Core) = 90 days or as agreed in a written plan**

**Correction Options: food embargo/voluntary disposal; more training, permit modifications, written HACCP plans or Corrective Action Plans (CAP), employee restrictions/exclusions, closure/revocation.**

### Written Correction Orders must include:

- BOH Authority - under MGL 111 and other codes
- Date of investigation
- Location of nuisance/violation condition
- Nature of nuisance/violation condition
- Investigation results
- Statement of violations observed and Code sections violated
- Time limit for compliance
- Notice of the right to a hearing or notice of a hearing scheduled by LBOH (including date, time, and location)
- Signature of Agent or BOH

### Written Hearing Notices must include:

- Date of complaint
- Date and Time of Hearing
- Location of Hearing – must be a public place
- Nature of suspected nuisance condition or violation or issue to be discussed
- Notice of right to legal representation, witnesses, evidence
- Hearings are posted public meetings unless protected health information is being discussed.

### BOH Hearings

#### Before the Hearing

- \* Provide notice that Hearings can be requested
- \* Request must be in writing and received within 10 days of receipt of notice/order
- \* Hearing must be held within 10 days of written request (3 days for summary suspension written request for a hearing)
- \* Hearing notice must be in writing
- \* BOH can also schedule Hearings with proper notice without waiting for a request (postponements possible)

#### At the Hearing:

- \* Provide an opportunity for petitioner to be heard and to show why order should be withdrawn or modified
- \* For the Food Code, oral testimony must be recorded verbatim (tape recorder). Minutes must be kept.
- \* BOH makes a final decision. Need not be at this meeting

#### After the Hearing:

- \* Inform petitioner in writing—this is Public Record
- \* If Order is sustained or modified, note timeframe (per original order or per modification)
- \* Aggrieved can seek relief in court

### Enforcement Tools

- Fines under local Regulations
- Fines under State Orders (Under COVID-19 Orders of up to \$300 per person per violation)
- Fines of up to \$1,000 for causing a public health nuisance which may be injurious to the public health. MGL, c 111 s 122
- Non-Criminal Tickets (managed like parking tickets in communities who have accepted MGL c.40 s 21D)
- Re-inspection Fees – may cover all costs associated with the re-inspection including scheduling, paperwork, follow up, etc.
- Report violations to the Alcohol Beverages Control Commission or Department of Labor Standards
- Suspending, revoking or altering permits to operate

### Non-Criminal Tickets (Similar to parking tickets)

- BOH (and their agents) may issue non-criminal and civil tickets for smoking and likely COVID-19 violations without their community authorizing non-criminal tickets under MGL c. 40, s. 21D.
- Communities that have accepted MGL c. 40, s. 21D can issue non-criminal tickets in the same manner as parking tickets.
- Fines go into the general fund.
- Fines are usually paid to Town/City Clerk.
- Ticket form needed: name of offender; address, description of offense, date/time; amount of ticket; BOH witness name/signature.
- Consider a ticket with a copy which should be given to the violator immediately or asap.
- Note on the ticket: person may contest the ticket in any local court of law.

**Enforcement Partners Local**

- \* Town/City Counsel
- \* Chief Elected Officials/Managers
- \* Building/Fire Officials
- \* Conservation Commission
- \* Law Enforcement Officials (May appoint LE as Agents for the BOH to help with enforcement; M.G.L. c. 111, s. 30)
- \* Assessor's Office & other Municipal Departments and Officials
- \* Housing Court Officials (Courts generally give deference to the BOH in matters of public health if BOH follows rules).
- \* District Attorney's Office
- \* Berkshire County Boards of Health Association ([info@bcboha.org](mailto:info@bcboha.org)) and neighboring Boards of Health
- \* Community Social Service Agencies

**Enforcement Partners State**

- \* Department of Public Health (DPH)
- \* Department of Environmental Protection (DEP)
- \* Department of Labor Standards (DLS)
- \* Alcohol Beverages Control Commission (ABC)
- \* Housing Court Officials (Courts generally give deference to the BOH in matters of public health if BOH follows rules).
- \* Attorney General's Office
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**Business COVID-19 Control Standards as of August 30, 2020**

- A written COVID-19 Control Plan to ensure workplace safety standards.
- Must implement the plan in accordance with current orders, regulations and laws.
- Must self-certify and post a compliance notice. (Governor's COVID-19 Order #33)
- Ensure required masks (Order #31), social distancing, sanitation, staff training, and hygiene are practiced. (Order #33)
- Limits of gathering sizes (Order #46 and sector specific orders)
- Comply with all other relevant permit, license, and code requirements.
- Subject to enforcement by the BOH and their Agents (which may include local police) under the State Sanitary Code along with the Department of Labor Services (DLS), Dept. Early Education and Childcare, Dept. of Elementary and Secondary Education

**COVID-19 Enforcement Overview**

1. BOH share responsibility for enforcement of COVID-19 Orders with the Department of Labor Services (DLS). Any BOH actions taken should be communicated to DLS and DLS will communicate any actions they take to the BOH.
2. BOH cannot refuse to issue a permit based solely on disapproval of a COVID-19 Control Plan. The BOH can require changes consistent with State Guides and Orders.
3. Law Enforcement Officials may be appointed Agents of the BOH under Chapter 111, Section 30 to enforce COVID-19 Orders and should be called anytime there is a concern for public safety.
4. BCBOHA in general recommends that BOH refer complaints concerning businesses or individuals that are not regulated by the BOH to the Department of Labor Services (DLS hotline: (508) 616-0461x9488; email [safepublicworkplacemailbox@mass.gov](mailto:safepublicworkplacemailbox@mass.gov)).
5. Closures: it is unlikely that the BOH can close a business just for violating the COVID-19 Orders unless they can determine that the business presents an actual public health threat. Better to go to court to close a business for COVID.
6. Limits on gatherings (gatherings are currently 25 persons) do not apply to business allowed to operate under separate Orders.
7. Face Masks and Social Distancing are required in most instances when outside the home.
8. While BOH are prohibited from making stricter COVID-19 regulations than contained in the State Orders/Guides, they may clarify State Orders that lack details as to the specifics of their implementation.

**COVID-19 Enforcement Steps**

- COVID-19 enforcement is complaint driven, but the BOH can enforce based on observing a violation with or without a complaint.
- Verbal Warning – up to 1 time
- Written Warning – up to 1 time
- Written Fines of up to \$300 – up to 3 times (Consider an escalating fine.)
- Cease and Desist – up to 1 time
- Closing for COVID-19 violations only, must go to court. May close for permit violations or as a public nuisance after a hearing.

**Model BOH Orders**

TOWN OF \_\_\_\_\_-

**ENFORCEMENT ORDER**

Cert. Mail                      w/return  
Reg. Mail

OWNER  
ADDRESS

DATE:

RE: LOCATION

Dear **Property/Business Owner(s)**,

By vote of **the Local Board of Health**, under Chapter 111 section 122, 127A and 127B of the Massachusetts General Laws: 105 CMR 400.000: State Sanitary Code. Chapter 1: General Administrative Procedures; and 105 CMR 410.000; State Sanitary Code, Chapter 2: Minimum Standard of Fitness for Human Habitation and State Sanitary Code 310 CMR 15.000 STATE ENVIRONMENTAL (Title 5) **and Others**

An inspection on **DATE** revealed the following violations: **VIOLATIONS**

ITEM # 1

**CODE Citation**

**BY VOTE OF THE BOARD OF HEALTH: ORDER, YOU SHALL CORRECTIVE ACTIONS REQUIRED - WHAT EVER YOU FEEL IS APPROPRIATE FURTHER, YOU SHALL COMPLETE ALL WORK/CHANGES/ WITHIN THE TIME YOU FEEL APPROPRIATE.**

FAILURE to respond to this order may result in the assessment of a fine of not less than \$10.00 or more than \$500.00 for each day that such refusal continues. Further, action will be taken to **clean or repair the property at the owners expense and/or Condemn said property.**

Should you be aggrieved by this order, you have the right to request a hearing before the Board of Health. A request must be received in writing in the office of the Board of Health within seven (7) days of receipt of this order. At said hearing, you will be given an opportunity to be heard and to present witnesses and documentary evidence as to why this order should be modified or withdrawn. You may be represented by an attorney. Please also be informed that you have the right to inspect and obtain copies of all relevant inspection or investigation reports, orders, notices and other documentary information in the possession of the Board of Health and that any adverse party has a right to be present at the hearing. If these premise are occupied as rental housing, the occupants are entitled to the statutory remedies provided, a copy of this notice has been provided to them. .

Please submit any request for hearings **to the** \_\_\_\_\_

Signed and Certified under the  
pains and penalties of perjury.

BY \_\_\_\_\_

Cc: