



Assisting Massachusetts Boards of Health through  
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## MASSACHUSETTS ASSOCIATION OF HEALTH BOARDS COVID–19 Local Public Health Emergency Powers 3.23.2020

Public health professionals, especially local health departments and boards of health, are facing many questions from local public officials, residents, parents, health care providers, and others about COVID–19. MAHB’s series of documents are meant to provide answers and guidance to health departments and boards of health. **This document is provided *for educational purposes only* and is not to be construed as legal advice. For legal advice, please contact your city or town attorney.**

**QUESTION: What other local emergency powers exist for cities and town in the case of a public health emergency?**

**ANSWER:** The authority of a board of health to respond to public health emergencies is embedded in many different state laws and regulations. The Massachusetts Supreme Judicial Court has made it clear that “[t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means.” Druzik vs. Bd. of Health of Haverhill, 324 Mass. 129, 139 (1949) (citing Lawrence v. Bd of Registration on Med., 239 Mass. 424, 428 (1921)).

### Nuisance Law

Massachusetts General Laws Chapter 111, Section 122 requires boards of health to “examine into all nuisances, sources of filth and causes of sickness . . . which may [endanger] public health, [and] destroy, remove or prevent [them].” The statute also gives boards of health the authority to make regulations for public health and safety.

Typically, the board of health serves a “Cease and Desist Order” upon the individual or establishment responsible for the nuisance, orders the abatement of the nuisance, and requests the responsible party to come before the board for a hearing. The order must be in writing and served upon the owner or authorized agent of the establishment.<sup>1</sup> These types of hearings are required by law to provide an individual with his or her due process rights. They are considered “quasi-judicial” because the board, after hearing the facts, can decide whether to shut down an establishment to prevent a public health threat.<sup>2</sup>

### **Emergency Situations and Due Process**

The Massachusetts Sanitary Code permits boards of health to issue orders to address public health emergencies and require actions that are deemed necessary to meet the emergency, including shutting down establishments without holding a hearing. However, an individual who receives such an order may request a hearing by filing a petition and shall be granted a hearing no later than 10 days after the filing of the petition.<sup>3</sup>

The Department of Environmental Protection’s Environmental Code also permits boards of health to issue emergency orders. Similar to the Sanitary Code, an individual may request a hearing. However, under the Environmental Code, the hearing shall be granted “as soon as possible.”<sup>4</sup>

### **Board of Health Authority to Enact Reasonable Health Regulations**

Massachusetts General Laws Chapter 111, Section 31 enables boards of health to make reasonable health regulations, including preventive regulations, to protect public health and safety. Once the board enacts a regulation, notice must be published in a local newspaper, and this publication shall be considered notice to all individuals. The only regulations that require a hearing prior to enactment are those that relate to the subsurface disposal of sanitary sewage.<sup>5</sup> While MAHB’s position has always been that a public hearing should be held prior to enacting any regulation, a hearing is often not legally required.

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<sup>1</sup> SEE MASS. GEN. LAWS ch. 111, §§ 122-25.

<sup>2</sup> See Nelson v. State Bd. of Health, 186 Mass. 330, 334-35 (discussing quasi-judicial nature of board of health’s powers).

<sup>3</sup> 105 CMR 400.200(B).

<sup>4</sup> 310 CMR 11.05.

<sup>5</sup> MASS. GEN. LAWS ch. 111, § 31.

City and town attorneys are solely responsible for providing legal advice to their clients and MAHB urges boards of health and other municipal officials to consult with them prior to issuing any emergency orders.

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