



# Commonwealth of Massachusetts

## DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

Charles D. Baker, Governor ♦ Karyn E. Polito, Lieutenant Governor ♦ Jennifer D. Maddox, Undersecretary

### PHN 2021-11

To: Local Housing Authority (LHA) Executive Directors and Board Members  
From: Ben Stone, Director, Division of Public Housing  
Subject: End of COVID-19 State of Emergency and LHA Operations  
Date: June 16, 2021

On [May 17<sup>th</sup>](#) Governor Baker announced the [end of the COVID-19 state of emergency](#), first enacted on March 10, 2020, effective June 15<sup>th</sup>. He also announced the termination of most public health restrictions related to COVID effective May 29<sup>th</sup>. Governor Baker also terminated the preceding mask executive order and replaced it with an “[Advisory Regarding Face Coverings and Cloth Masks](#)”. This advisory [echoes CDC guidance](#) by only asking **unvaccinated** people to wear masks in most settings. Effective May 29, [general masking requirements only remain](#) in certain public settings including public transportation, health care, public schools, emergency shelter programs, home health care workers, and congregate care facilities including DDS and DMH group home programs.

We understand that the announcement of the end of the pandemic emergency and public health restrictions raises many questions for LHAs, who have been following regulations and guidance under the emergency order and implementing public health measures in their operations for over a year.

While most public health restrictions have been lifted, individual businesses, non-profits, and government entities such as Housing Authorities can set their own rules for employees and visitors as long as they are consistent with existing contracts and laws. In addition to describing guidance and regulations remaining in effect, this guidance informs LHAs of their parameters for setting COVID-19 related policies in the aftermath of the COVID-19 pandemic. **All such decisions, however, remain local decisions of each housing authority.**

### Need to Know:

1. **State Regulations and CDC Guidance:** Almost all state public health guidance related to LHAs is lifted. See new CDC guidance for vaccinated individuals.
2. **DHCD Guidance:** DHCD COVID-19 guidance rescinded effective June 15. See attachment for catalog of guidance with exceptions.
3. **Remote Meetings:** Legislation enacted June 16<sup>th</sup> extending ability for government boards to hold remote public meetings through April 1, 2022
4. **LHA Operations:** COVID-19 Operational Adjustments at Local Discretion
  - a. Community Rooms and Programs
  - b. Office Operations
  - c. Mask Wearing
  - d. Vaccine Policies
5. **Eviction Diversion Initiative:** Most Eviction Prevention Guidance no longer in effect, but LHAs strongly encouraged to take advantage of rental assistance programs, particularly the [Subsidized](#)

[Housing Emergency Rental Assistance \(SHERA\)](#) program. Certain measures extended by legislation passed June 16.

- 6. Rent Determination:** LHAs to follow [760 CMR 6.00, Occupancy Standards and Tenant Participation in State-Aided Public Housing](#), with the exception that the [emergency regulation](#) to apply the senior wage exclusion to temporary wage replacement income such as unemployment benefits or short term disability payments remains in effect. LHAs may continue practices adopted during the pandemic to conduct rent determinations. The waiver of late fees and interest is no longer in effect after the end of the state of emergency.

## 1. State Regulations and CDC Guidance

As of May 29, no Massachusetts public health regulations apply to Local Housing Authorities with the exception of the masking-requirement by staff and vendors in c.689/c.167 group homes for clients of DMH and DDS. Office safety standards and capacity requirements are lifted, as are any restrictions on private or public gatherings.

[CDC guidance](#) states that fully vaccinated people can resume activities without wearing masks or physically distancing in most situations, as both indoor and outdoor activities pose minimal risk to fully vaccinated people.

The [CDC continues to advise](#) mask wearing and physical distancing for those who have not yet been fully vaccinated.

CDC guidance [continues to emphasize improvements to indoor air quality and ventilation](#) to reduce spread among unvaccinated individuals in indoor settings.

## 2. DHCD COVID-19 Guidance

Effective June 15, 2021, all DHCD COVID-19 related guidance is rescinded, except where noted in the attached spreadsheet of COVID-19 related Public Housing Notices (PHNs) or in this memo. LHAs may certainly continue implementing best practices and recommendations from previous DHCD guidance, but these are no longer considered official policy of DHCD.

## 3. Remote Meetings

The [Executive Order Suspending Certain Provisions of the Open Meeting Law](#), issued on March 12, 2021, expired with the end of the State of Emergency on June 15. LHAs and other governmental bodies have been operating under this order, which suspended quorum requirements and allowed for remote public meetings, throughout the pandemic. The legislature has [passed legislation](#), signed into law by Governor Baker on June 16, which extends the ability of public bodies, including LHA boards, to hold remote public meetings through April 1, 2022. LHAs may return to in-person meetings if they choose or continue to hold remote meetings; if holding remote meetings they must ensure public access through remote means.

## 4. LHA Operations

In general, aside from the mask requirement for employees and visitors in DMH/DDS c.167/c.689 group homes, there are no [state-wide](#) public health requirements that apply to Housing Authorities since the COVID-19 Order 67 regarding face coverings was revised on May 29<sup>th</sup>. DHCD's general expectation, echoing [PHN 2021-07](#), is that LHAs open community rooms, allow in-person visits to LHA offices, and resume all maintenance activities if they haven't already done so. Beyond that, however, the nature of how to reopen and

what to require of staff and visitors to LHA offices is a local decision. LHAs as employers may set their own COVID-19 precautions, within bounds of employment and civil service law.

LHAs should resume any capital projects that were previously on hold for COVID-related reasons. LHAs should be aware of considerable construction cost escalations in the last 6 months. Please reach out to your DHCD Project Manager to discuss as needed.

### **a. Community Rooms and Programs**

LHAs should reopen community rooms to residents as soon as possible if they have not yet done so, and may restart programming in those rooms.

LHAs may consider posting signage asking non-vaccinated residents and visitors to wear masks in community rooms and other common areas. These requests are not enforceable and LHAs should not query tenants or community room visitors about their vaccination status as it may violate various privacy and civil rights laws to do so. LHAs should be aware that there may be disputes among residents about mask wearing and vaccination statuses; unfortunately these may be difficult for LHAs to resolve given privacy restrictions and absence of state mandates.

LHAs may request visiting services staff (i.e Council on Aging, Meals on Wheels) to wear masks or to require visiting services staff to wear masks if not vaccinated, if the LHA chooses to do so, with appropriate reasonable accommodations.

LHAs may request or require visiting vendors (ie construction or maintenance contractors) to wear masks in certain situations on LHA property, such as when in proximity to tenants and staff, with appropriate reasonable accommodations.

DHCD reiterates that such decisions are at LHA discretion and **DHCD does not take a position on mask policies** in Housing Authority common areas; however any policy should be adopted by the LHA Board.

### **b. Office Operations**

LHAs should, as soon as possible, open administrative offices to the public for in-person services during all LHA business hours, with an appropriate administrative employee available in-person to meet with tenants and applicants. LHAs should also remain available to the public by phone and email during business hours, and remove “out of office due to COVID” messages on Authority phone lines and emails if they remain. All office capacity restrictions have been lifted.

LHAs may continue to have certain staff work remotely; that is a local business decision. Any decision about Executive Director remote work should be approved by board and consistent with the requirement to provide in-person services above. DHCD only requires that residents and applicants will be able to meet with a LHA representative in person if they so choose.

LHAs may ask or require visitors to office to wear a mask; any rules for entry should be posted clearly. This is a local policy, and if adopted the LHA should offer a reasonable accommodation for those unable to wear a mask. Examples of a reasonable accommodation would be for visitor to communicate they are not wearing a mask because of a disability and for office staff to don masks, open windows, turn on a fan, etc. The LHA cannot offer a lower standard of service to people not wearing a mask. LHA staff must be allowed to wear a mask if they are more comfortable wearing one, and also can be required to wear a mask under other conditions defined by the employer.

### c. Maintenance

LHAs should, if they have not yet, resume in-unit inspections and in-unit non-emergency work orders.

Per recent [CDC guidance](#), and as stated in [PHN 2020-07](#), surfaces present low risk of transmission for COVID-19 and cleaning with soap and water, rather than disinfecting, is generally sufficient for common touch points in most settings.

LHAs MAY implement COVID protocols for maintenance staff, such as requiring masks for staff while in a resident's unit or asking residents when requesting a work order if they have been vaccinated or are more comfortable with maintenance staff wearing a mask. Once again, such protocols are **local policy at discretion of the LHA**.

### d. Staff Policies: Mask Wearing & Vaccine Mandates

LHAs may adopt their own policies, if any, on mask wearing and vaccine mandates and incentives. As an example, Commonwealth policy is that vaccinated employees do not need to wear masks or distance unless special circumstances apply. The Commonwealth asks non-vaccinated employees to wear masks when inside and not able to distance, but this is essentially on the "honor" system with managers not expected to know an individual employee's vaccination status.

LHAs may adopt policies requiring masks for employees in certain circumstances, such as when in resident units. If doing so, they should consult with an employment lawyer and take note of any relevant terms in collective bargaining agreements, the requirements of anti-discrimination, employment and privacy law, and should allow for reasonable accommodations.

At this point, given the uncertain legal climate on this issue, DHCD cannot recommend that LHAs adopt mandatory vaccination policies. LHAs that may be considering vaccination policy for employees should be **certain to consult with legal counsel** to assess the legality and enforceability of such a policy. LHAs may consider implementing reasonable vaccination incentive programs, as these will be far less likely to lead to legal questions. DHCD will not provide budget exemptions for this purpose.

As stated above, the guidance on vaccines and mask requirements is only so LHAs understand their decision-making parameters for this topic; with exception of caution around vaccine policies **DHCD makes no recommendation of what LHAs SHOULD do**. Any such policies should be approved by the LHA Board.

## 5. Eviction Diversion Initiative and Eviction Policies

DHCD [PHN 2020-32](#): Eviction Prevention Guidance is no longer in effect. LHAs, however, should be aware that tenants are still reckoning with the economic impact of the COVID-19 pandemic and may continue the "best practices" listed in that guidance as well as in the [CHAPA Eviction Diversion Pledge](#).

The emergency regulation announced in PHN 2020-32, requiring LHAs to make decreases in rent retroactively effective to the first day of month following decrease in tenants income, are no longer in effect after June 15.

LHAs may continue to work with tenants to access state and federally-funded [Rental Assistance programs](#) to pay down arrearages accrued during the pandemic period. These include:

- Rental Assistance for Families in Transition (RAFT) - State-funded rental assistance program, with no eligible period or requirement to show COVID impact. Tenants apply as individuals.
- Emergency Rental Assistance Program (ERAP): Federally-funded program for rent and utility arrears accrued after 3/13/20. Tenants apply as individuals with attestation of COVID-19 impact.

- [Subsidized Housing Emergency Rental Assistance \(SHERA\) program](#): Federally-funded program for rent and utility arrears accrued after 3/31/2020. Subsidized owners apply on behalf of their tenants who have signed an attestation of COVID-19 impact.

DHCD recognizes that the use of these rental assistance programs and their program requirements to defer eviction proceedings may affect Tenants Accounts Receivable (TAR) in FY22. DHCD will issue guidance later on how it will adjust the TAR metric in Performance Management Reviews.

Several eviction prevention measures passed in [chapter 257 of the acts of 2020](#) lapsed on June 15<sup>th</sup> but are being extended by [An Act relative to extending certain COVID-19 measures adopted during the state of emergency](#), signed into law June 16. This legislation continues protection for tenants facing eviction proceedings of non-payment of rent from eviction if they have a pending application for rental assistance through April 1, 2022 and continues the [required notice to tenants and HED](#) accompanying a notice to quit through January 1, 2023.

## 6. Rent Determination

While DHCD guidance related to interim rent determinations in [PHN 2020-09](#) and [PHN 2020-12](#) is no longer in effect, LHAs are free to continue with practices that worked for them during the pandemic such as remote determinations.

DHCD emergency regulations related to rent determination are no longer in effect, with the exception of the extension of the [senior wage exclusion](#) to temporary wage replacement such as unemployment income or short term disability.

On April 30, 2020, DHCD waived the requirement to charge late fees and interest during the pandemic. As of June 15<sup>th</sup>, LHAs may again assess these charges to tenants who are late in their rent payments in accordance with 760 CMR 6.04(3)(b).

DHCD guidance regarding payments to individuals in the [Consolidated Appropriations Act \(CAA\)](#) and [American Rescue Plan Act \(ARPA\)](#) remains in effect.

1. Direct Payments to Individuals (“Stimulus Checks”)– **Exclude** from Income for Rent Determination and Eligibility
2. Enhanced UI Benefits – **Include** in Income for Rent Determination (Exclude for Eligibility)
3. Expanded Child Tax Credit – **Exclude** from Income for Rent Determination and Eligibility

Please contact your Housing Management Specialist with questions about this notice, and Risk Management Specialist Sarah O’Leary with specific questions about employment law and policies.

Attachment A: *DHCD COVID-19 Guidance List*