



**ANDREW M. CUOMO**  
Governor

**RUTHANNE VISNAUSKAS**  
Commissioner/CEO

**OFFICE OF INTEGRATED HOUSING MANAGEMENT MEMORANDUM # 2021 – B – 2**

**To:** All Limited Profit & Limited Dividend Mutual Housing Companies  
Owners, Managing Agents and Site Managers

**From:** Alfred Walcott, Director

**Date:** January 28, 2021

**REVISED**

**Subject:** Imposing Monetary Administrative Fees for not Wearing Face Masks or Face Coverings in Public Areas at Mitchell-Lama Limited-Equity and Limited-Dividend Cooperatives

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Several Mutual Housing Companies/cooperatives in our Limited Profit and Limited Dividend portfolio have amended their house rules or have adopted board resolutions imposing administrative fees on shareholders and occupants found not wearing face masks or face coverings in building common areas. DHCR is issuing this Management Bureau Memorandum to answer the question of whether these cooperatives have the authority to impose administrative fees on shareholders and occupants for not wearing a face mask or face covering.

The efficacy of face coverings to prevent the spread of COVID-19 has been demonstrably established. As of January 24, 2021, more than 24.8 million people in the United States had confirmed coronavirus infections and more than 416,000 have died of Covid-19.<sup>1</sup>

On November 27, 2020, the New York State Department of Health pursuant to Sections 201, 206 and 225 of the Public Health Law and Executive Order 202.14 promulgated Section 66-3.2 of Title 10 of the New York Code of Rules and Regulations (NYCRR) (the “Public Health Regulation”). It provides in pertinent part that individuals who can medically tolerate face coverings shall be required to cover noses and mouths when in public places if they are unable to maintain social distancing. The Public Health Regulation further provides that building owners, and those authorized on their behalf, shall deny admittance to any person who fails to comply.

If authorized by its internal governing documents and in accord with the “business judgment rule,” cooperatives often have the authority to create by-laws, rules and regulations governing the conduct of residents and guests of the cooperators. This is also for DHCR supervised limited dividend and limited profit mutual housing companies, subject to DHCR review and approval. See PHFL §17(2). DHCR regulations specifically provide that rules of tenancy should be established by a housing company to provide reasonable control of tenant or cooperator’s actions which might “infringe on rights of other tenants or cooperators to peaceful possession of their apartment or tend to impair residential character of a housing development.” (9 NYCRR 1727-3.6).

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<sup>1</sup> [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesper100klast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days)

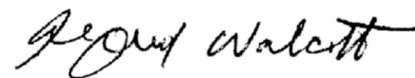
Such rules are subject to DHCR review and approval (or are otherwise effective within 90 days of submission to DHCR). These rules must generally be placed in the lease or rental agreement, unless this requirement is waived by DHCR. Similarly, the housing company may amend its by-laws subject in the same manner to DHCR review and approval.

While not necessarily collectible as additional rent, charges may be imposed for unusual administrative costs “caused by repeated negligence or willful actions of tenants or cooperators.” (9 NYCRR 1727-4.2). These additional administrative fees (often referred to as “fines”) may be imposed on cooperators pursuant to the cooperative’s governing documents, subject to DHCR approval to assure that such rules and by-laws have a rational basis and are appropriate.

To determine if a cooperative can impose such fees, DHCR recommends that the cooperative review its governing legal documents (i.e. by-laws, proprietary lease) to determine whether the cooperative has the power to levy administrative fees. A house rule or board resolution that is inconsistent with the building’s governing documents may not be enforceable without an amendment to the governing documents. DHCR recognizes that the governing documents were drafted well before the COVID-19 pandemic and face mask mandates, but the governing documents can still provide the basis for a board to take such steps.

Next, a majority of the board of directors must vote in favor of instituting these fees. The purpose of these fees should not be to create a revenue stream for the corporation but rather to encourage compliance with mask mandates and compensate the corporation for the unusual administrative costs of enforcement associated with negligent and willful infringement on the rights of peaceful enjoyment by other cooperators. These fees should not be exorbitant or unreasonably excessive. Cooperative boards should consult with the counsel regarding whether amendments to internal rules and by-laws are necessary to support enforcement.

Finally, consistent with the Public Health Regulation, boards must recognize that certain people cannot medically tolerate a face mask or face covering. Therefore, like any house rule, these rules must be subject to adjustment as a reasonable accommodation to a disability on a case by case basis and must be applied in a manner consistent with the federal Americans with Disabilities Act, the NYS and/or NYC Human rights Law and any other applicable provision of law. Any by-law or rule in the absence of an express waiver by DHCR would still be subject to the statutory and regulatory requirements regarding modifications to rules, policies, practices, and procedures.



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Alfred Walcott

cc: L. Manley, D. Murphy, M. Stratos, A. Abrams, J. Francois