

Health, Housing & Community Services Department  
Public Health Officer

**ORDER OF THE HEALTH OFFICER  
OF THE CITY OF BERKELEY  
REQUIRING PROOF OF VACCINATION FOR PATRONS  
AND EMPLOYEES OF CERTAIN BUSINESSES**

DATE OF ORDER: September 1, 2021

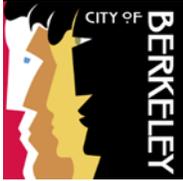
**Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120275 *et seq.*)**

**Summary of Order:** This Order imposes a requirement for certain businesses including gyms and places that serve food and drink indoors or hold events with 1,000+ persons indoors, to check proof of vaccination **of patrons** 12 years and older before allowing a patron's entry to an indoor portion of the business's facility, subject to limited exceptions. This order further requires the businesses listed above along with other businesses including child care facilities, adult day programs, home health care services, pharmacies, and dentist offices to obtain proof of full vaccination from **all workers** at the business' facility.

**Background:**

Since April 2021, the SARS-CoV-2 B.1.617.2 ("Delta") variant has been detected circulating in the City of Berkeley. This variant is highly transmissible, especially in indoor settings, and requires multi-component prevention strategies to reduce spread. The City of Berkeley is experiencing substantial levels of community transmission and an increase in hospitalizations due to the Delta variant, with the highest risk for COVID-19 infection among unvaccinated residents. The City of Berkeley is also seeing an increase in cases among staff and residents in childcare, healthcare facilities and congregate settings.

The COVID-19 vaccines currently authorized in the US are highly safe and effective at providing protection to individuals and communities, particularly against severe COVID-19 disease and death, and are recommended by the Centers for Disease Control and Prevention ("CDC") for all populations for whom the vaccine is authorized by the U.S. Food and Drug Administration ("FDA"). The Health Officer strongly recommends that all eligible persons in the City be vaccinated. Information on obtaining a COVID-19 vaccine in the City of Berkeley is available here: <https://www.cityofberkeley.info/covax/>



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On July 16, 2021, in light of the increased transmissibility of the Delta variant, the City of Berkeley recommended that everyone, including fully vaccinated persons, wear masks in public indoor settings. On July 27, 2021, the CDC updated guidance for fully vaccinated people given new evidence regarding the Delta variant, including evidence that vaccinated people infected with the Delta variant may be more likely to infect others than vaccinated people infected with other known variants. The CDC recommends that fully vaccinated persons wear a mask in public indoor settings, in addition to its recommendation that unvaccinated and not fully vaccinated persons wear a mask in public indoor settings. On July 28, 2021, the California Department of Public Health (“CDPH”) issued its *Guidance for the Use of Face Coverings*<sup>1</sup> in alignment with the CDC’s recommendation for universal masking in public indoor settings statewide. On August 2, 2021, the City Health Officer issued an order requiring face coverings in public indoor settings for everyone over two years of age regardless of vaccination status.

On August 5, 2021 the State Public Health Officer issued an Order requiring vaccination of workers in ‘high risk’ healthcare settings. On August 11, 2021, the State Public Health Officer issued an Order requiring vaccine verification of workers in public and private schools serving students from transitional kindergarten through grade 12.

This Order requires that certain businesses (listed as ‘Covered Businesses’ named in section 2 below) require and obtain proof of full vaccination from all workers by October 15, 2021, and further requires that certain businesses (named in paragraphs 2.a., 2.b., and 2.c., below) check proof of full vaccination of patrons 12 years and older prior to allowing a patron’s entry to an indoor portion of the business’s facility, subject to limited exceptions.

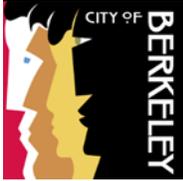
The Health Officer will continue to assess the public health situation as it evolves and may modify this Order, or issue additional Orders, related to COVID-19, as changing circumstances dictate.

### **ORDER**

**UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE  
SECTIONS 101475 AND 120175, THE HEALTH OFFICER OF THE CITY OF  
BERKELEY (“HEALTH OFFICER”) ORDERS:**

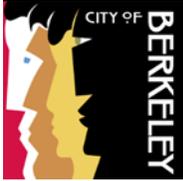
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<sup>1</sup> Online: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>



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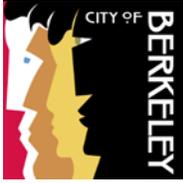
1. This Order will take effect at 12:01 a.m. on September 3, 2021, and will continue to be in effect until it is extended, rescinded, superseded, or amended in writing by the Health Officer. But this Order will not be enforced until 8:00 a.m. on September 10, 2021.
2. Covered Businesses under this Order include any business, government, nonprofit or other person or entity engaged in the following:
  - a. Establishments or events where food or drink is served indoors, including, but not limited to, restaurants and other dining establishments, bars, clubs, theaters, and entertainment venues. This does not include religious facilities which solely and briefly provide food or drink as part of a religious ceremony (e.g., communion or kiddush).
  - b. Gyms, recreation facilities, yoga studios, dance studios, and other fitness establishments, where patrons engage in cardiovascular, aerobic, strength training, or other exercise involving elevated breathing.
  - c. Indoor events of 1,000 people or more including school facilities not already covered by Paragraph 2.a.
  - d. Adult care facilities
  - e. Adult day programs
  - f. Dental offices
  - g. Pharmacies
  - h. Home health care workers and entities employing home healthcare workers
  - i. All public and private childcare facilities
3. As soon as possible but no later than September 10 2021, Covered Businesses named in paragraphs 2.a., 2.b., and 2.c., above, shall require all patrons age 12 and older to show Proof of Full Vaccination before entering any indoor portion of a facility, subject to the exemptions in Paragraph 4 and any applicable requirement of federal, state or local law requiring accommodation. Covered Businesses shall cross-check Proof of Full Vaccination for each patron against photo identification, unless photo identification is integrated into the Proof of Full Vaccination.
4. Covered Businesses are not obligated to require Proof of Full Vaccination from the following patrons:
  - a. A masked patron entering an establishment for a brief period of time solely to pick up or deliver food or goods or to perform other transactions which do not require the patron to remain in the Covered Business for an extended period of time. Such patrons are encouraged to get vaccinated and are required to wear a face covering when inside a Covered Business. Where possible, Covered



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Businesses are encouraged to make arrangements for such brief transactions to occur outdoors.

- b. Large indoor events of 1,000 people or more that sold tickets before September 3, 2021, are not required to obtain proof of vaccination from patrons until October 15, 2021. However, beginning on September 10, 2021, and until October 15, 2021, operators or hosts of large indoor events who do not require proof of vaccination must require all patrons age 12 and up to show proof, before entering the facility, of test results within the past 72 hours showing that they are negative for COVID-19 or proof of Full Vaccination. Acceptable proof of test results is detailed in paragraph 5.c.ii.1. below.
5. As soon as possible but no later than October 15, 2021, Covered Businesses shall require all workers to show Proof of Full Vaccination, subject to limited exceptions below.
- a. Covered workers include, but are not limited to, all employees, contractors and volunteers who enter a Covered Business's facilities or a facility in which a Covered Business operates. Covered workers include workers who enter Covered Business's facilities after normal operating hours (e.g., custodial, laundry and maintenance workers).
  - b. This provision shall not apply to delivery workers who are not employees of a Covered Business. Such workers are encouraged to get vaccinated and are required to wear a face covering when inside a Covered Business.
  - c. Workers who claim exemption from this requirement under federal law due to a qualifying medical reason or sincerely held religious belief must provide:
    - i. A declination letter, signed by the worker under penalty of perjury stating that either: (1) the individual is declining vaccination based on a sincerely held religious belief, practice, or observance, or (2) the individual is excused from receiving any COVID-19 vaccine due to a medical condition or disability recognized by the FDA or CDC as a contra-indication to COVID-19 vaccination, in which case the declination letter must be signed by a licensed medical provider; **and**
    - ii. Proof of a negative COVID-19 test at least once per week in order to be permitted to enter the facilities of the Covered Business to work.



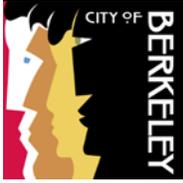
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1. Acceptable tests for this requirement include only a nucleic acid (including polymerase chain reaction (PCR)) or antigen test. The following are acceptable as proof of a negative COVID-19 test result: a printed document (from the test provider or laboratory) or an email, text message, webpage, or application (app) screen displayed on a phone or mobile device from the test provider or laboratory. The information should include the worker's name, type of test performed, negative test result, and date the test was administered. If any state or federal agency uses a more restrictive definition of what it means to be tested for specified purposes (such as Cal/OSHA rules for employers in workplaces), then that more restrictive definition controls for those purposes.
  2. If a worker receives a positive COVID-19 test result, the worker shall self-isolate for at least 10 days and shall not return to the Covered Business's facilities and the Covered Business shall follow the City's guidance for worksite COVID-19 exposures: <https://www.cityofberkeley.info/covid19-worksite-exposure/>
6. Proof of Full Vaccination for the purposes of this Order shall include only the following documentation indicating that at least two weeks have elapsed since a person received their final dose of a COVID-19 vaccine authorized (including emergency authorization) by the FDA or World Health Organization:
- a. A Vaccination Card issued by the CDC or a foreign governmental jurisdiction which includes the name of the person vaccinated, the type of vaccine provided, and the date(s) the dose or doses were administered;
  - b. A photo or copy of a Vaccination Card either as a hardcopy or stored on a phone or electronic device; or
  - c. Documentation of vaccination from a healthcare provider; or
  - d. A personal digital COVID-19 vaccine record issued by the State of California and available by going to <https://myvaccinerecord.cdph.ca.gov/> or similar documentation issued by another state, local, or foreign governmental jurisdiction; or



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- e. An authentic digital record that includes a QR code that when scanned by a SMART Health Card reader accurately displays to the reader client name, date of birth, vaccine dates and vaccine type.
7. Covered Businesses must provide vaccination records of their workers to the Health Officer or other public health authorities or their designees promptly upon request, and in any event no later than the next business day after receiving the request.
8. The Health Officer will continue to monitor several key indicators to inform the decision whether to modify the restrictions in this Order. The Health Officer will continually review whether modifications to the Order are warranted based on (1) progress in countering the spread of COVID-19 in the City; (2) developments in methods and strategies for preventing and treating COVID-19; and (3) scientific understanding of the transmission dynamics and clinical impact of COVID-19.
9. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the March 3, 2020 Proclamation by the Director of Emergency Services Declaring the Existence of a Local Emergency in the City, the March 10, 2020 Resolution of the City Council Ratifying the Proclamation of Local Emergency, and guidance issued by the CDPH and CDC, as each of them have been and may be supplemented.
10. This Order is also issued in light of the March 19, 2020 Order of the State Public Health Officer and subsequent orders and guidance issued by the Governor, the State Health Officer, and the California Department of Public Health and Department of Industrial Relations. The Health Officer may adopt more stringent restrictions and requirements addressing the particular facts and circumstances in the City, necessary to control the public health emergency as it is evolving within the City and the region. Where a City Health Officer Order and any state public health order related to the COVID-19 pandemic conflict, the most restrictive provision controls.
11. This Order is in addition to the August 2, 2021 Order for the Wearing of Face Coverings in Indoor Settings; this Order does not limit or modify the applicability of the August 2, 2021 Order in any way; all individuals subject to the August 2, 2021 Order must continue to wear face coverings indoors until further notice.



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12. Failure to comply with any of the provisions of this Order constitutes an imminent threat and immediate menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.
13. The City must promptly provide copies of this Order as follows: (1) by posting on the City's website (cityofberkeley.info); (2) by posting at Old City Hall, located at 2134 Martin Luther King Jr. Way, Berkeley, CA 94704; and (3) by providing to any member of the public requesting a copy.
14. If any provision of this Order or its application to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

**IT IS SO ORDERED:**

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Lisa B. Hernandez, MD, MPH  
Public Health Officer of the  
City of Berkeley

September 1, 2021

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