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
REVISED: January 25, 2022

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 500+ persons indoors, to check proof of full vaccination – meaning 14 days have elapsed since a person received all recommended doses of the primary series of a COVID-19 vaccine authorized by the FDA or World Health Organization – for all patrons 5 years and older before allowing a patron to enter an indoor portion of the business’ facility, subject to limited exceptions. The order strongly urges Covered Business to require that all patrons are Up to Date on vaccination.

This order further requires that the businesses listed above along with other businesses, including child care facilities, adult day programs, home health care services, pharmacies, and dental offices, obtain proof of full vaccination and booster from all workers at the business’ facility.

Background:
California, the San Francisco Bay Area region and the City of Berkeley are currently experiencing an unprecedented rise in COVID-19 cases. California is currently experiencing the fastest increase in COVID-19 cases during the entire pandemic. Since Thanksgiving 2021, the seven-day average of new cases per 100,000 people per day has increased from 9.9 to 215.3, reflecting a twenty-fold increase within two months. The 14-day average of hospitalizations also increased since Thanksgiving 2021 from 3,303.0 to 15,248, reflecting a fivefold increase within two months. In addition, on December 2, 2021, the SARS-CoV-2 B.1.1.529 (“Omicron”) variant was detected in the City of Berkeley and continues to circulate throughout the community. The spread of the Omicron variant (which comprises approximately 99.5% of cases sequenced nationally, with rapid increases occurring globally) further emphasizes the importance of vaccination and boosters. This variant is highly transmissible, especially in indoor settings, and
requires multi-component prevention strategies to reduce spread. The City of Berkeley is experiencing high levels of community transmission and an increase in hospitalizations due to the Omicron variant, with the highest risk for COVID-19 infection among unvaccinated residents and those who have not received a booster.

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 and boosted immediately. Information on obtaining a COVID-19 vaccine in the City of Berkeley is available here: https://www.cityofberkeley.info/covax/

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 Coverings1 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.

On December 22, 2021, the State Public Health Officer issued three Orders requiring vaccination of workers in ‘high risk’ healthcare settings, adult care facilities, direct care workers and health care workers in state and local correctional facilities and detention centers.

1 Online: https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx
According to CDPH Guidance for Local Health Jurisdictions on Isolation and Quarantine of the General Public, determination of whether an asymptomatic close contact must quarantine is dependent on their vaccination status. Employers will need to have current and complete records of their employees’ COVID-19 vaccine records, including any boosters, in order to appropriately conduct worksite contact tracing as required by CalOSHA ETS.

This Order requires that certain “Covered Businesses” (named in Paragraph 2 below), starting February 7, 2022, check proof of Full Vaccination for patrons 5 years and older prior to allowing a patron’s entry into an indoor portion of the business’ facility, with limited exceptions. “Full Vaccination” for the sake of this requirement means that 14 days have elapsed since a patron received all recommended doses of the primary series of a COVID-19 vaccine authorized by the FDA or World Health Organization. The Order strongly urges that Covered Businesses also require boosters for all eligible patrons.

The Order also requires that Covered Business obtain proof of full vaccination and booster (“Up to Date Vaccination”) from all workers by no later than February 7, 2022, subject to limited exceptions. The order strongly urges that Up to Date Vaccination be required of patrons 5 years and older.

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:

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 §§ 120220, 120295; City of Berkeley Municipal Code §2.50.040.)

1. This Order will take effect at 12:01 a.m. on January 27, 2022, and will continue to be in effect until it is extended, rescinded, superseded, or amended in writing by the Health Officer. Facilities and businesses must be in full compliance with the Order by 8:00 a.m. on February 7, 2022.

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 500 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. Vaccination status shall be defined for purposes of this Order as follows:

a. **Full Vaccination**: When 14 days have elapsed after a person received all recommended doses of the primary series of a COVID-19 vaccine authorized by the FDA or World Health Organization (including emergency authorization), pursuant to Table A contained in the California Department of Public Health State Health Officer Order of December 22, 2021.

b. **Up to Date Vaccination (Full Vaccination and booster)**: When a person has received all recommended doses of the primary series of a COVID-19 vaccine and any applicable booster doses authorized by the FDA or World Health Organization (including emergency authorization), pursuant to Table A contained in the California Department of Public Health State Health Officer Order of December 22, 2021. A person who has received Full Vaccination and is not yet eligible for a booster dose is considered to have an Up to Date Vaccination for purposes of this order.

4. Effective immediately, Covered Businesses named in Paragraphs 2.a., 2.b., and 2.c., above, shall require all patrons age 5 and older to show Proof of Full Vaccination before entering any indoor portion of a facility, subject to the exemptions in Paragraph 5 and any applicable requirement of federal, state or local law requiring accommodation.
a. Effective February 7, 2022, this vaccine verification requirement shall be extended to all patrons age 5 and older.

b. Covered Businesses named in Paragraphs 2.a., 2.b., and 2.c. shall cross-check Proof of Vaccination for each patron 18 years or older against photo identification, unless photo identification is integrated into the Proof of Vaccination. For minors, Covered Businesses should use best efforts to cross-check minors’ Proof of Vaccination against some form of identification. For example, if the minor does not have a photo ID, a non-photo ID (e.g., school ID) or verification from a parent/guardian is sufficient.

c. For patrons who have recently become eligible for vaccination due to their age, Covered Businesses may waive this requirement until March 14, 2022 or until 60 days after the patron became eligible which ever date is later.

d. Covered Businesses named in Paragraphs 2.a., 2.b., and 2.c. are strongly urged to require Proof of Up to Date Vaccination for all eligible patrons.

5. Covered Businesses are not obligated to require Proof of 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 boosted and are required to wear a face covering when inside a Covered Business. Where possible, Covered Businesses are encouraged to make arrangements for such brief transactions to occur outdoors.

b. Large indoor events of 500 people or more that sold tickets before January 27, 2022 are not required to obtain Proof of Full Vaccination from patrons age 5-11 years of age until March 14, 2022. However, beginning on January 27, 2022 and until March 14, 2022, operators or hosts of large indoor events who do not require proof of vaccination must require all patrons age 5 and 11 to show proof that they are negative for COVID-19, before entering the facility or venue, test results must be within one day for antigen tests, and within two days for PCR. Acceptable proof of test results is detailed in paragraph 6.c.ii.1. below.
6. As soon as possible but no later than February 7, 2022, Covered Businesses shall require all workers to show Proof of Up to Date 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’ 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 boosted 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.

   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 per the guidance noted in the City of Berkeley Public Health Emergency Isolation Order 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/

7. Proof of Vaccination for the purposes of this Order shall include only the following documentation indicating that a person is vaccinated for COVID-19:

   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

   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.

8. 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.

9. Nothing in this Order limits the obligation of a Covered Business to comply with the requirements in the Cal/OSHA COVID-19 Prevention Emergency Temporary Standards.
Nothing in this Order shall be construed to limit the ability of a Covered Business to impose policies which are stricter than those imposed by this Order.

10. 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.

11. 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.

12. 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.

13. This Order is in addition to the Order for the Wearing of Face Coverings in Indoor Settings (“Face Covering Order”) issued August 2, 2021 and revised October 27, 2021 and December 29, 2021. This Order does not limit or modify the applicability of the Face Covering Order in any way. All individuals subject to the Face Covering Order must continue to wear face coverings indoors until further notice.

14. In the event of an outbreak, or if a Covered Business which is subject to this Order violates or fails to comply with this Order, the Health Officer may take additional action(s), including but not limited to imposing additional vaccine verification and reporting requirements, to protect the public’s health. Violation of this Order constitutes an imminent threat and immediate menace to public health, constitutes a public nuisance, and is a misdemeanor punishable by imprisonment, fine or both.
15. 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.

16. 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:

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

January 25, 2022