



## City of Berkeley Health Order Requiring Proof of Vaccination for Employees and Certain Businesses

### Key Documents:

- [Health Order](#)<sup>1</sup> (9/1/2021)
- [Community Message](#) (9/1/2021)
- [Relevant signage](#)

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[Questions & Answers](#) – last updated October 7, 2021

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### 1. Why did the City Health Officer Order, issued on September 1, 2021, require proof of vaccination to go inside certain businesses?

The Health Officer Order requires proof of vaccination to enter certain businesses to protect against the continued spread of the highly contagious Delta variant of COVID-19, to safeguard against likely future variants and to help ensure the continued safe reopening of schools and businesses. Vaccines are safe, effective and widely available. They are the best means of protection against COVID-19 and its known variants. They are an especially important tool to protect those not eligible to be vaccinated, like children under 12, as well as more vulnerable populations, such as people with compromised immune systems.

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<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Health\\_Human\\_Services/Public\\_Health/covid19/COB-health-order-n24-vaccine-mandate.pdf](https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Public_Health/covid19/COB-health-order-n24-vaccine-mandate.pdf)

## Checking vaccine cards and photo ID

### Vaccine card

**2. The Health Order requires “full” vaccination of employees or indoor patrons of certain businesses. How do you describe full or complete vaccination?**

A person who is “fully” vaccinated if at least 14 days have passed since they received:

- Second dose of Pfizer or Moderna vaccine series
- Single-dose of Johnson & Johnson vaccine
- Final dose of a WHO-approved vaccine

**3. What physical or digital documents can be used to show vaccination status? Use the following as long as they show the name of the person vaccinated, the type of vaccine used and the date(s) the dose or doses were administered:**

- A Vaccination Card issued by the CDC or a foreign governmental jurisdiction which includes:
  - A photo or copy of a Vaccination Card either as a hardcopy or stored on a phone or electronic device; or
  - Documentation of vaccination from a healthcare provider; or
  - 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
- 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.

**4. Since UC Berkeley students are required to be vaccinated, can they just show their University ID to prove they are vaccinated?**

No. UC Berkeley students must produce the valid forms of proof outlined in the Order. UC Berkeley’s policies have no impact on the process and materials required for a Covered Business to comply with the Health Officer Order.

**5. Are businesses required to verify CA digital vaccine records using the SMART Health Card Application (App) even though the required information is displayed on the record?**

Covered Businesses are not required to use the SMART Health Card App; they could solely look at an individual’s vaccination card or a photo or copy of their vaccination card. However, this App is helpful to authenticate digital vaccine records that includes a QR code,

such as what an individual receives when they access their digital State of California record at [myvaccinerecord.cdph.ca.gov](https://myvaccinerecord.cdph.ca.gov).

## Photo Identification

### **6. Check vaccine card against a photo identification.**

A photo ID is needed to confirm that the vaccination record, which does not have the individual's photo, matches the identity of the person providing it.

### **7. What type of photo ID is acceptable?**

The Health Officer Order does not specify the type of photo ID that needs to be checked for employees or indoor patrons. Acceptable photo IDs include options available to undocumented immigrants:

- include school ID
- driver's license
- state-issued ID
- employer ID
- passport
- global entry card
- matricula consular

Any type of ID that helps to confirm an individual's identity will suffice. 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 is sufficient.

Regarding undocumented patrons, for those businesses that are already required to check photo ID (i.e., bars, nightclubs, or businesses serving alcohol), whatever mechanism is used to enter the establishment should suffice. For other Covered Businesses, the Health Officer Order does not specify the type of photo ID that needs to be provided.

## Location, staffing and record keeping requirements for checking vaccination status

### **8. Can "covered businesses" check indoor patron vaccination status at an indoor counter?**

While verification of proof of vaccination would ideally occur before a person enters a covered business or at the first point of service upon entry, these businesses may check for proof of vaccination at an indoor counter.

**9. Do Covered Businesses need to staff a full-time person at businesses door to check proof of vaccination and photo ID for indoor patrons?**

Each business will determine their operational process for verifying full vaccination and photo ID. For these establishments, it would be ideal to have a staff member check vaccination status and an individual's photo ID before letting someone enter the indoor areas of the facility, or minimally immediately after entry. This would be the optimal way to protect the health of those that are inside a Covered Business. For events, vaccination should be checked prior to letting someone in.

**10. Do covered businesses need to keep indoor patron records of their vaccination card and photo ID, or can they be checked each time they patronize a Covered Business?**

Covered Business are not required to keep a record of an indoor patron's vaccination status. If a Covered Business would like to maintain a record of a patron's status, they should seek legal advice to ensure that any such record is appropriately stored and protected.

Requirements for outdoor, "pick-up," "take-out," or "to go" patrons

**11. Do restaurants need to check for vaccination status for take-out/to-go customers?**

No. Masked customers that are doing "pick-up"/take-out/to-go orders" do not need to show proof of vaccination. Only those individuals that are dine-in customers need to be vaccinated and demonstrate proof of vaccination. Individuals that are doing take-out do not need to be vaccinated.

**12. Can outdoor patrons enter a Covered Business to use the restroom or to get access to an outdoor back patio without vaccine verification?**

Yes, these individuals may enter so long as the those who have not shown proof of vaccination do not occupy the indoor areas of the facility any longer than the brief periods permitted by Paragraph 4.a. of the Order.

Exemptions for Patrons

**13. Are there medical and religious exemptions for patrons?**

The Health Officer Order does not create a process for patrons to assert religious or medical exemptions nor require businesses to accept such exemptions. However, if a patron qualifies for a valid religious, medical or other legitimate exemption mandated by federal or state law, the Health Officer Order does not prevent a patron from asserting that exemption

nor prevent the business from honoring such an exemption if required to do so by federal or state law, however businesses cannot grant exemptions that are not mandated by applicable federal or state law. Businesses that may want to allow religious or medical exemptions are encouraged to seek legal advice before doing so.

**14. Are children under the age of 12 exempt from the Order and able to enter a covered business without issue?**

Yes, however, the City's [Face Covering Order](#) does still apply that requires all individuals 2 and older to wear face coverings when indoors in workplaces and public settings, with limited exemptions.

**15. For those that are 11 years old and will be turning 12, is there a 'grace period' where the child is able to continue participating in a Covered Business activity while they are receiving their vaccinations?**

While the Health Officer Order does not provide for any type of grace period, anyone turning 12 must be vaccinated to participate in indoor activities of a Covered Business. To this end, the expectation is that an individual turning 12 will be vaccinated in a timely manner and Covered Businesses should set realistic expectations to provide these individuals with the time that is needed to be fully vaccinated. Given the wide availability of the Pfizer vaccine (the only of the 3 FDA approved vaccines for those 12+), vaccination within five weeks of the child's birthday should be feasible.

**16. Can indoor patrons produce a negative COVID-19 test result or antibody test with positive results?**

No. This order requires proof of full vaccination. A negative COVID-19 test or a positive COVID-19 antibody (covid-recovered) test result are not substitutes for vaccination.

[Large events, private events or venues](#)

**17. Does a venue that hosts private events where food and drink is consumed indoors need to see verify proof of vaccination or is that the duty of the event host to do so and then relay to the venue?**

Covered Businesses are held as the party responsible for any legal consequences for violating this Order. The host of the event would not be at fault for the Covered Business's failure to comply. So, while each business will determine their operational process for verifying full vaccination and photo ID, the legal liability does not rest with the host but with the Covered Business.

**18. Why was the 1,000-person threshold chosen for large indoor events?**

The 1,000-person threshold is aligned with the California Department of Public Health’s classification of these events as “mega-events,” which pose a significant risk with regards to the community spread of COVID-19. You can find a more detailed description of mega-events [State’s COVID-19 page](#) on mega-events.

**19. For indoor events smaller than 1,000 people that are serving food and drink, do attendees need to be checked for proof of vaccination?**

Yes, attendees should be vaccinated and should be checked for their vaccination status. Section 2.a of the Health Officer Order indicates that an establishment or event where food or drink is served indoors, including, but not limited to, restaurants and other dining establishments, bars, clubs, theaters, and entertainment venues must ensure that patrons, customers, or attendees be vaccinated.

**20. For indoor events under 1,000 people where no food/beverage being served or consumed indoors, do attendees need to be checked for proof of vaccination?**

If there is an indoor event under 1,000 persons where there is no food / drink being served or consumed indoors, all are required to wear a mask but do not need to be vaccinated. This is per the [Health Officer Order issued on August 2, 2021](#) that requires all individuals, regardless of vaccination status, to wear face coverings when indoors in workplaces and public settings, with limited exemptions.

**21. For a music venue, do performer vaccination records need to be retained?**

Workers include a covered business’s staff, and volunteers, but would not include performers if they aren’t considered employees. If the performer is anticipated to return to a venue, it may be helpful to maintain a record of their vaccination status so that it does not have to be reproduced. If a Covered Business would like to maintain performer records they should seek legal advice to ensure that any such record is appropriately stored and protected.

[Employer requirements](#)

**22. May an employer require employees to submit proof of their being “fully vaccinated”?**

Yes. The Department of Fair Employment and Housing<sup>2</sup> states that because the reasons that any given employee or applicant is not vaccinated may or may not be related to disability or

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<sup>2</sup> [https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/03/DFEH-Employment-Information-on-COVID-19-FAQ\\_ENG.pdf](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/03/DFEH-Employment-Information-on-COVID-19-FAQ_ENG.pdf) .

religious creed, simply asking employees or applicants for proof of vaccination is not a disability-related inquiry, religious creed-related inquiry, or a medical examination. Employers may wish to instruct their employees or applicants to omit any medical information from such documentation. Any record of employee or applicant vaccination must be maintained as a confidential medical record.

**23. What are the acceptable medical conditions or religious reasons to that exempt can exempt employees from the employer vaccine requirement.**

Different guidelines may apply to employers in relation to proof of vaccination requirements for staff. Employers should refer to guidance issued by the Equal Employment Opportunity Commission (EEOC), as well as guidance from the California Department of Fair Employment and Housing (DFEH). The Centers for Disease Control also has a description of the contraindications and precautions for COVID-19 vaccine on their [website](#).

Per the Order, medical exemptions must be signed by a licensed medical provider.

These are general guidelines only. Businesses are encouraged to seek legal advice as appropriate in developing policies and procedures around the proof of vaccination requirement.

**24. For those few employees who would have religious and/or medical exemptions, what are types of COVID-19 tests are acceptable?**

If an employee is claiming a religious and/or medical exemption and is required to be tested once per week, according to the Health Officer Order, acceptable tests include only a nucleic acid test, including polymerase chain reaction (PCR) test, or antigen test. The test results should indicate what type of test was performed. Acceptable proof of a negative COVID-19 test result includes: 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.

**25. Would a record that indicates an employee's proof of vaccination has been verified as opposed to maintaining the actual form of proof of vaccination provided be considered an acceptable record format?**

Covered Business must maintain records of full vaccination of their workforce and provide those records (upon request) no later than the next business day. The Health Order does not provide guidance about what form those records must take. The Health Order does, however, require that businesses must verify using only the acceptable forms of Proof of

Full Vaccination that are listed in paragraph 6 of the [order](#).

**26. If one of my employees refuses to get vaccinated and does not have a valid medical/religious exemption, am I required to terminate their employment?**

No. The order only requires that Covered Businesses exclude unvaccinated workers from the business' Berkeley facility. Employers may wish to consult or coordinate with their Human Resources Department or seek legal advice.

**27. In a setting where employees are already under another form of vaccine regulation that is less strict, do those employees then fall under this stricter order?**

Covered Businesses must obtain proof of full vaccination by their employees no later than October 15, regardless of whether other legal requirements have already been imposed on those employees. If the proof of full vaccination collected from employees for a prior purpose meets the requirements of this Order, then the Covered Business is already in compliance.

**28. Are new hires required to be fully vaccinated before beginning work or is there a grace period for new staff?**

Generally speaking, Covered Businesses must not permit any unvaccinated employee to enter their facilities after October 15. This means new employees hired after October 15 must already be fully vaccinated. See paragraph 5.a. of the Order

New hires with valid medical/religious basis for declining to get vaccinated may enter the facilities if they produce the required declination letter and commence the testing in accordance with the Health Officer Order. See paragraph 5.c.

[Covered businesses](#)

**29. Does the Health Officer Order apply to all types of theaters?**

If the theater sells food or drink and allows the consumption of food or drink indoors it is covered by the Order. Theaters include, but are not limited to, facilities in which live performances occur or movies are shown for public entertainment.

**30. Are hospitals considered “covered businesses”? Is there an exemption for nurses, doctors, other hospital workers?**

Hospitals and a variety of other medical settings are covered by the August 5, 2021 Order of the [State Public Health Officer](#) requiring vaccination of those employees. They are not addressed by this order.

**31. Are cannabis dispensaries considered pharmacies under the order?**

No, cannabis dispensaries are not considered to be "pharmacies" for purposes of the Health Officer Order.

[Enforcement](#)

**32. What will the City do to enforce this order?**

The City will use the same complaint-based approach that has been used throughout the pandemic.