

CLA MEMORANDUM

DATE: September 23, 2021

TO: Michael N. Feuer
Los Angeles City Attorney

Attn: David Michaelson, Chief Assistant City Attorney

FROM: Sharon M. Tso *smtso*
Chief Legislative Analyst

Council File: 21-0878
Assignment No. 21-08-0614

Vaccine Mandate Framework

On August 11, 2021, the City Council requested the City Attorney to prepare and present an ordinance that would require eligible individuals to have received at least one dose of a COVID-19 vaccination to enter certain indoor spaces. The Council further directed the Chief Legislative Analyst to provide an implementation plan and solicit input from 1) business organizations on the types of public spaces that should be included in the draft ordinance and 2) childcare organizations to incorporate how the ordinance can best protect children aged 12 years old and younger. Based on conversations with stakeholders, research concerning other cities with vaccine mandates, and discussions with the Los Angeles County Department of Public Health, this memorandum provides a framework for the City Attorney regarding provisions to include in the draft COVID-19 Vaccine Mandate Ordinance (Attachment A). An implementation plan that will further detail business outreach and enforcement of the ordinance will be provided under separate cover.

On September 17, 2021, the Los Angeles County Department of Public Health issued a revised health order implementing a limited vaccine requirement, which would affect all incorporated and unincorporated areas in the County, including the City. The order is summarized as follows:

- Beginning October 7, 2021, all attendees, ages 12 and over, at Outdoor Mega Events involving 10,000 or more persons must, prior to entry, show proof of full vaccination against COVID-19 or a pre-entry negative COVID-19 test result.
- Beginning October 7, 2021, certain bars, breweries, wineries, distilleries, nightclubs and lounges with indoor service and operations are required to verify the COVID-19 vaccination status of their patrons and employees. Employees who seek an exemption

from the vaccination requirement will need to demonstrate a negative COVID-19 test result on a weekly basis.

- The revised health order strongly recommends that beginning October 7, 2021, operators of all restaurants and food facilities reserve and prioritize indoor seating and service for vaccinated patrons. Operators are strongly recommended to verify proof of vaccination status for all patrons 12 years of age or older.
- The revised health order does not supersede any stricter limitation imposed by a local public entity within the jurisdiction of the County of Los Angeles Public Health.

Based on the revised health order and the Council's Motion, the City is and has remained at a level of high community transmission of COVID-19. Additional precautions in certain indoor and outdoor settings where COVID-19 transmission is more likely to occur must be implemented to avoid further negative impacts to the public and economic health of the residents, visitors, and businesses of the City. It is further necessary to protect the health and wellbeing of the City's employees from transmission of COVID-19 while at the workplace. City employees are required to be fully vaccinated by October 20, 2021.

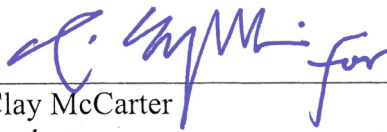
The vaccine mandate will apply to indoor public settings where persons are not required to wear masks at all times. It will also apply to indoor settings where increased levels of physical exertion by patrons or large numbers of people gather at an establishment for long periods of time. The mandate will also apply to locations where employees and patrons are in close proximity for an extended period of time. Finally, the mandate includes an expansion on the County's outdoor mega event vaccination provision to include events with 5,000 to 9,999 attendees.

All patrons of covered locations will need to demonstrate that they are fully vaccinated. This is a necessary change from the Council's original instruction of a one-dose requirement, which will ensure consistency with the County's revised health order. Due to the health implications of this ordinance, an Urgency Clause should be included. Additionally, we provide a list of outreach meetings we conducted with business and childcare organizations, including a summary of comments that we received (Attachment B).

In reviewing options to protect those under 12 years old that are not eligible to be vaccinated against COVID-19, it was suggested that requiring vaccinations of employees of daycare facilities should be considered. Upon discussing this matter with your office, our Office was advised that matters of workplace safety in this area are preempted by State law, specifically by the Division of Occupational Safety and Health (Cal-OSHA). During the pandemic, Cal-OSHA did provide limited authority for Public Health Officers to take measures that may be necessary

to prevent the spread of communicable diseases. This limited authority may be exercised through a County Public Health Order. Therefore, requiring daycare employees to be vaccinated would need to be issued through a State or County order.

If we may be of further assistance, please let us know.



Clay McCarter
Analyst

Attachment: A. Vaccine Mandate Implementation Framework
 B. Vaccine Mandate Outreach List

City of Los Angeles
COVID-19 Vaccination Mandate Framework

Basis:

1. According to the Los Angeles County Department of Public Health (DPH):

- “Despite widespread availability of COVID-19 vaccines, proactive outreach efforts, and multiple incentive programs aimed at motivating people to get vaccinated, uptake has stagnated in recent months in the United States, at around 51% fully vaccinated, well short of what might be required to achieve sufficient levels of community protection. In Los Angeles County, COVID-19 vaccination rates are above the national average, but more than 3 million eligible residents ages 12 and older are not yet vaccinated. Los Angeles County is not yet near a vaccination level that would provide sufficient community protection to remove all safeguards given the significant threat the virus poses to the lives and livelihoods of residents and workers across the County.”¹
- “COVID-19 vaccination is important because it is the best way to prevent COVID-19. The vaccines are extremely good at preventing people from getting sick from COVID-19 and ending up in the hospital or dying. They also reduce the risk of becoming chronically ill from COVID-19 and from missing work and school. When we get vaccinated, we aren’t just protecting ourselves, but also our family, friends, and neighbors. This includes children under 12 who can’t be vaccinated yet and people with very weak immune systems for whom the vaccine is less effective. The more people get vaccinated the less likely it is that COVID-19 will spread or that new variants of the virus will take hold. Even people who have had COVID-19 should get vaccinated because their natural immunity may not last long enough or be strong enough, and they could get infected again.”²
- “Existing community transmission of COVID-19 in Los Angeles County remains High and continues to present a high risk of infection and harm to the health of those who are not or cannot be vaccinated against COVID-19. COVID-19 vaccinations are widely available to those 12 years and older, but as of August 8, 2021, nearly 2.5 million eligible people age 12 years and older in our community have not received a COVID-19 vaccination and remain susceptible to infection, in addition to the approximately 1.4

¹ Department of Public Health Report dated August 24, 2021:
http://file.lacounty.gov/SDSInter/bos/bc/1111509_EvaluationofCOVID-19VaccineRequirementsforIndoorPublicSpaces_Item73-B_AgendaofAugust10.2021_.pdf

² <http://publichealth.lacounty.gov/media/coronavirus/docs/about/FAQ-Vaccine.pdf>

million children under the age of 12 years who are not currently eligible to receive a COVID-19 vaccination. New variants of the virus that may spread more easily or cause more severe illness are increasingly present in our county and remain a high risk for those who are not vaccinated against COVID-19 in the absence of other community mitigation measures, like physical distancing requirements and capacity limits in indoor and outdoor settings.”³

- In an August 24, 2021 report, the DPH stated that the following location types represent a higher risk for COVID-19 transmission:
 - Indoor public settings where people are permitted to remove their mask for an extended period of time when around others, enabling more droplets and airborne particles to enter the indoor area and be breathed in by others who are also not wearing their masks.
 - Indoor businesses where people are likely to be engaged in heavy physical exertion, have elevated breathing, and expel increased amounts of respiratory droplets and airborne particles.
 - Indoor entertainment venues where large groups of people gather for extended periods of time, often without significant distancing, and can remove their mask to eat or drink.
 - Large numbers of people at an establishment.
 - The close proximity of employees and/or customers for long periods of time.
- On September 17, 2021, the DPH issued a revised health order⁴ implementing a limited vaccine requirement, including Outdoor Mega Events involving 10,000 or more persons.

2. According to the Centers for Disease Control and Prevention (CDC)⁵:

- Getting vaccinated protects against severe illness from COVID-19, including the Delta variant.
- Fully vaccinated people are about five times less likely to become infected with the Delta variant, 10 times less likely to be hospitalized with COVID-19 from the variant, and 11 times less likely to die from the variant.

3. A COVID-19 vaccination will protect the health and wellbeing of the City’s employees from unwanted transmission while at the workplace. Indoor City facilities represent locations where

³ http://publichealth.lacounty.gov/media/coronavirus/docs/HOO/HOO_SaferReturnWorkCommunity.pdf.

⁴ http://publichealth.lacounty.gov/media/coronavirus/docs/HOO/HOO_SaferReturnWorkCommunity.pdf

⁵ https://www.cdc.gov/mmwr/volumes/70/wr/mm7037e1.htm?s_cid=mm7037e1_w.

large numbers of people gather and/or where employees and constituents are in close proximity for long periods of time. City employees are required to be fully vaccinated by October 20, 2021.

4. According to the California Department of Public Health⁶:

- “Large events involve several factors that increase the risk of transmission including (a) persons attending often travel from outside the immediate area, from areas with higher levels of transmission, and some types of travel may increase the risk of exposure; (b) events have prolonged duration; (c) crowding is common in large events; (d) even in counties or venues with universal masking requirements, masks are removed for eating and drinking; and (e) the larger the number of people gathered in crowded settings, the greater the likelihood that contagious persons are present and the more individuals who are exposed with the potential of becoming infected and spreading infections within their families, communities, schools, and workplaces.”
- “A key method to reduce transmission in large gatherings is to expand the number of events that require attendees to be verified fully-vaccinated against COVID-19 or verified tested negative, both indoors and outdoors.”

Covered Locations:

Apart from the locations included in the DPH revised health order, additional precautions in certain indoor and outdoor settings where COVID-19 transmission is more likely to occur must be implemented to avoid further negative impacts to the public and economic health of the residents, visitors, and businesses of the City. It is also necessary to protect the health and wellbeing of the City’s employees from transmission of COVID-19 while at the workplace.

1) Indoor public settings where people are permitted to remove their mask for an extended period of time when around others, including indoor portions of businesses that serve food and drinks, such as, but not limited to, restaurants, food courts, cafeterias, bars, wineries, breweries, distilleries, nightclubs, lounges, cardrooms, arcades, family entertainment centers, bowling alleys, banquet halls, ballrooms, and adult entertainment centers.

2) Indoor businesses where people are likely to be engaged in heavy physical exertion, have elevated breathing, and expel

⁶ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Beyond-Blueprint-Framework.aspx>

increased amounts of respiratory droplets and airborne particles, including, but not limited to, gyms, fitness centers, dance studios, and yoga studios.

3) Indoor entertainment venues where large groups of people gather for extended periods of time, often without significant distancing, including, but not limited to, movie theaters, concert venues, sports arenas, live performance venues, museums, malls/shopping centers, convention centers, and exhibition spaces.

4) Personal care establishments where customers and employees are in close proximity for long periods of time, including, but not limited to, spas, nail salons, hair salons, barbershops, and tanning salons.

5) Indoor City facilities where members of the public gather with City staff for prolonged periods of time, often in close proximity. These locations include, but are not limited to, City Hall, libraries, recreation centers, and senior centers.

6) Outdoor Large Events involving 5,000 to 9,999 persons. Attendees under this category are permitted to demonstrate a pre-entry negative COVID-19 test result as an alternative to providing proof of vaccination.

Definition of “Indoor”:

“Any part of a covered premises with a roof or overhang that is enclosed by at least three walls, except that the following will not be considered an indoor portion: (1) a structure on the sidewalk or roadway if it is entirely open on the side facing the sidewalk; and (2) an outdoor dining structure for individual parties, such as a plastic dome, if it has adequate ventilation to allow for air circulation.”

Date Covered Locations
Must Begin Verifying
Vaccine Status:

November 4, 2021

Enforcement Start Date:

November 29, 2021

Sunset Date:

The end of the local emergency period as declared by the Mayor.

Application:	All patrons of covered locations who are eligible to receive a COVID-19 vaccine.
Vaccination Level:	Fully vaccinated. At least 14 days should have elapsed since a person received their final dose of a COVID-19 vaccine authorized (including emergency authorization) by the U.S. Food and Drug Administration or World Health Organization. ⁷
Negative test:	Pre-entry negative testing is testing that must be conducted within 72 hours before entry (both PCR and Antigen tests are acceptable). Results of the test must be available prior to entry. The following are acceptable as proof of a negative COVID-19 viral test result: 1) A photo identification of the patron and 2) a printed document from the test provider or laboratory or an email or text message displayed on a phone from the test provider or laboratory. The information should include the person's name, type of test performed, and negative test result (date of test must be within prior 72 hours).
Entity Protocol:	Covered locations may require proof of vaccination to be shown at the time of the patrons first in-person interaction with staff (e.g., at the time of ordering) or at the entrance to the establishment. Entity staff will be required to verify the identification of any patrons appearing to be 18 years of age or older for both vaccine verification and negative COVID-19 test results.
Photo ID:	Original or copy of an identification card, such as <ol style="list-style-type: none"> 1. Driver's License 2. Government Identification 3. School or Work Identification 4. Passport
Proof of Vaccination:	1. A United States Centers for Disease Control and Prevention COVID-19 vaccination card, which includes the name of the person vaccinated, type of vaccine provided, and date last dose

⁷ WHO authorized vaccines: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/covid-19-vaccines>

administered, or similar documentation issued by another foreign governmental jurisdiction (approved by the World Health Organization);

2. A photo of a vaccination card as a separate document as a physical photograph or stored on a phone or electronic device;

3. Documentation of vaccination from a healthcare provider; or

4. A personal digital COVID-19 vaccine record issued by the State of California or similar documentation issued by another state, local, or foreign governmental jurisdiction, or by a private company.

Building Signage:

Covered facilities are required to post signage that is easily visible by patrons before they enter the indoor area. Signage must be posted by November 1, 2021.

1. The City will provide informational guidelines that entities can print for their own use.

2. Establishments may make their own signage, which must be at least 8.5x11 inches, use at least 24 point font, and include this text: “Effective November 18, 2021, the City of Los Angeles requires all patrons who are eligible to receive a COVID-19 vaccine to be fully vaccinated in order to enter this establishment. To find out where to get a free COVID-19 vaccine, visit: www.VaccinateLACounty.com (English) and www.VacunateLosAngeles.com (Spanish) to find a vaccination site near you, make an appointment at vaccination sites, and much more. If you don’t have internet access, can’t use a computer, or you’re over 65, you can call 1-833-540-0473 for help finding an appointment, connecting to free transportation to and from a vaccination site, or scheduling a home-visit if you are homebound. Accommodations are available for those claiming a medical or religious exemption.”

Outreach Department:

Economic and Workforce Development Department

Enforcement:

Department of Building and Safety

Penalties:

Charged against the business, per incident:

1st Offense: Warning - Notice to Correct

2nd Offense \$1,000 fine

3rd Offense: \$2,000 fine

Subsequent Offense: \$5,000 fine

Fines will be administered under the Administrative Citation Enforcement (ACE) Program.

Exemptions:

The following types of exemptions from the vaccine requirement will be permitted:

1. Religious - self affirmation of a sincerely-held religious belief.

2. Medical - self affirmation due to a qualifying medical condition or restriction.

A. Patrons utilizing the religious or medical exemption to enter a covered location will be required to provide proof of a negative COVID-19 PCR or Anitgen test taken within 72 hours prior to arrival.

B. Unvaccinated persons seeking access to City facilities will be required to provide proof of a negative COVID-19 PCR or Anitgen test taken within 72 hours prior to arrival if the government service is not available by other means.

3. The brief use of indoor restrooms, brief pick-up/drop off of food or other services, or performing necessary repairs.

4. Nonresident performing artist, professional athlete/sports team, and those nonresidents who are accompanying an artist, athlete/sports team.

5. All locations operated by Los Angeles World Airports.

Vaccination Mandate Outreach

Summary of Comments

- Requirements to demonstrate proof of a COVID-19 vaccine should be consistent with orders issued by Los Angeles County and the State.
- Vaccine required locations should focus on high transmission locations (i.e. where masks are likely to be removed to eat or drink) and should not include indoor locations where masks are already required and will not likely be removed (i.e. retail establishments).
- Business representatives expressed concern for employees who will be interacting with patrons who object to demonstrating proof of vaccination.
- Business representatives expressed concern regarding workforce hiring, particularly in the restaurant and retail industries, and that a vaccine mandate may hamper hiring efforts due to potential enforcement responsibilities.
- The City should include a medical exemption for individuals who are unable to receive a COVID-19 vaccination due to their health condition.
- Phase in the implementation process. Provide ample time for business to develop protocols to ensure compliance with a vaccine mandate.

Organizations Who Provided Comments

California Retailers Association	Letter	August 10
Food and Beverage Small Business Owner	Email	August 13
LA County Public Health	Teleconference	Multiple Dates
Westfield	Phone & Email	August 20
AEG	Meeting	August 20
NBC Universal	Meeting	August 20
Hotel Association / Tourism	Meeting	August 23
Childcare Alliance	Meeting	August 27

California Restaurants Assoc.	Meeting	August 27
LAWA	Meeting	August 27
Building & Safety	Meeting	August 27
EWDD	Meeting	August 30
Clear (digital vaccine card)	Meeting	August 30
Salesforce	Meeting	August 31
LA Chamber of Commerce	Meeting Letter	August 31 September 1
Grubhub	Meeting	September 3
McDonald's Corporation	Phone Call	September 8