


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY COUNCIL MEMBER DAN KALB

EMERGENCY ORDINANCE ADDING OAKLAND MUNICIPAL CODE CHAPTER 8.68 TO REQUIRE PROOF OF A COVID-19 VACCINATION FOR PATRONS AT THE FOLLOWING INDOOR PUBLIC LOCATIONS: (1) ESTABLISHMENTS OR EVENTS WHERE FOOD OR DRINK IS SERVED INCLUDING RESTAURANTS, BARS, COFFEE HOUSES, CLUBS, AND BANQUET HALLS; (2) ENTERTAINMENT VENUES, THEATERS, CONCERT VENUES, MUSEUMS, AND RECREATION FACILITIES; (3) GYMS, FITNESS CENTERS AND YOGA STUDIOS; (4) SENIOR ADULT CARE FACILITIES AND CITY SENIOR CENTER PROGRAMS; (5) DENTAL OFFICES; (6) PUBLIC LIBRARIES; (7) CITY HALL; AND (8) LARGE INDOOR EVENTS AT CITY AND PRIVATELY-OWNED FACILITIES

WHEREAS, COVID-19 has killed over 5.2 million people around the world, over 808,000 in the United States and over 74,000 in California; and

WHEREAS, here in Oakland, we have experienced over 38,000 cases of COVID-19 involving over 400 deaths; and

WHEREAS, on July 27, 2021 the Center for Disease Control and Prevention (CDC) updated guidance for fully 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, in addition to its recommendation that unvaccinated and not fully vaccinated persons wear a mask in public indoor settings; and

WHEREAS, on July 28, 2021 the California Department of Public Health issued Guidance for the Use of Face Coverings in alignment with the CDC's recommendation for universal masking in public indoor settings statewide; and

WHEREAS, on August 5, 2021 the State Public Health Officer issued an Order requiring vaccination of workers in 'high risk' healthcare settings; and

WHEREAS, on August 11, 2021, the State Public Health Officer issued an Order requiring vaccine verification of workers in public and private school settings serving students from transitional kindergarten through grade 12; and

WHEREAS, on September 28, 2021, the California State Public Health Officer issued an order requiring the vaccine at all adult care facilities and direct care workers as adult and senior care facilities and settings where direct care and services are provided, are high-risk settings where COVID-19 transmission and outbreaks can have severe consequences; and

WHEREAS, unvaccinated persons are more likely to get infected and spread the virus. Most current hospitalizations and deaths are among unvaccinated persons; and

WHEREAS, on October 28, 2021 the California Department of Public Health updated it's COVID-19 Public Health Recommendations for Fully Vaccinated People including aligning with the CDC update on testing for exposed fully vaccinated, asymptomatic people; and

WHEREAS, the federal Centers for Disease Control CDC, the California Department of Public Health and the Alameda County Health Officer agree that COVID-19 poses a serious risk, particularly to individuals who are not fully vaccinated; and

WHEREAS, medical professionals, scientists, and epidemiologists agree that vaccines are proven the most effective in preventing infection and the subsequent spread of COVID-19, and to reduce hospitalizations and death; and

WHEREAS, the City Administrator has implemented a Mandatory Vaccination Policy that requires all City of Oakland (City) employees to be fully vaccinated and verify that status to the City no later than November 29, 2021; and

WHEREAS, Alameda County has created a COVID-19 Vaccine Incentives Program that enables participants who register to receive cash incentives at several sites throughout Oakland including Allen Temple, The Center (Oakland Unified School District Central Kitchen), Castlemont High School and San Antonio Park; and

WHEREAS, the first confirmed case of the COVID-19 Omicron variant in the United States was detected in San Francisco on December 1, 2021; and

WHEREAS, COVID-19 remains a significant challenge in the City, particularly given the highly contagious delta variant and the spreading omicron variant; and

WHEREAS, the California Department of Public Health issued recommendations for Californians to protect themselves from COVID-19 and the Omicron variant including getting vaccinated; and

WHEREAS, cities throughout California including Los Angeles, Berkeley, San Francisco and San Jose and around the country including New York City and New Orleans have implemented proof of vaccination mandates; and

WHEREAS, experts are predicting a steep rise in cases this winter. This proof of vaccination effort is designed to increase the vaccination rate in Oakland, decrease the likelihood of someone who has contracted COVID-19 from entering these establishments and importantly, reduce the spread of COVID-19 at these same establishments.; and

WHEREAS, The Oakland City Council (City Council) finds and declares that this ordinance is required for the immediate protection of the public peace, health, and safety for the following reasons: Establishing a vaccination requirement for patrons in certain higher-risk locations in is a subject of imminent concern in light of the current and ongoing hazards of the COVID-19 pandemic, including the continuous high rate of community transmission, and the current data on the safety and efficacy of the COVID-19 vaccines; and

WHEREAS, for the reasons stated above and in the report accompanying this legislation, the City Council seeks to adopt an emergency ordinance adding Oakland Municipal Code Chapter 8.68 to require proof of a COVID-19 vaccination for patrons at the following indoor public locations: (1) establishments or events where food or drink is served including restaurants, bars, coffee houses, clubs, and banquet halls; (2) entertainment venues, theaters, concert venues, museums, and recreation facilities; (3) gyms, fitness centers and yoga studios; (4) senior adult care facilities and City senior programs; (5) dental offices; (6) public libraries; (7) City Hall; and (8) large indoor events at city and privately-owned facilities; and

WHEREAS, to ensure that Patrons who may not be able to meet the vaccination proof requirement for entrance to City Hall or a Public Library are able to fully benefit from the services provided in those locations, the City is providing additional exemptions and accommodations that do not apply to the rules for other Covered Locations and Large Indoor Events.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them part of this Ordinance.

SECTION 2. Emergency Need.

In accordance with Section 213 of the Oakland City Charter, the City Council finds and declares that adoption of this Emergency Ordinance is necessary due to the current and immediate threat to the public health, safety and welfare posed by the spread of COVID-19 as set forth by the facts stated above and in the report accompanying this legislation.

SECTION 3. Addition of Chapter 8.68 of the Oakland Municipal Code to Require Proof of a COVID-19 Vaccination for Patrons at Certain Indoor Public Locations and at Large Indoor Events.

Chapter 8.68 Requirement of Proof of a COVID-19 Vaccination for Patrons at Certain Indoor Public Locations and at Large Indoor Events

8.68.010 – Title.

This Chapter shall be known as the “Requirement of Proof of a COVID-19 Vaccination for Patrons at Certain Indoor Public Locations and at Large Indoor Events Ordinance.”

8.68.020 – Definitions.

- A. **City** means the City of Oakland
- B. **Citation** means either a Civil Penalty or an Administrative Citation issued pursuant to Chapters 1.08 and 1.12 respectively, of the Oakland Municipal Code and does not include a criminal penalty.
- C. **Covered Location** means any of the following public indoor locations in the City:
 - 1. Establishments or events where food or beverages are served, including, but not limited to, restaurants, bars, fast food establishments, coffee shops, tasting rooms, cafeterias, food courts whether freestanding or contained within larger businesses such as a grocery store or market hall, breweries, wineries, distilleries, banquet halls, and hotel ballrooms;
 - 2. Gyms and fitness venues, including, but not limited to: gyms, recreation facilities, fitness centers, yoga, Pilates, cycling, barre, and dance studios, hotel gyms, boxing and kickboxing gyms, indoor fitness boot camps, and other facilities used for conducting indoor group fitness classes;
 - 3. Entertainment and recreation venues, including, but not limited to, movie theaters, music and concert venues, live performance venues, commercial event and party or wedding venues, sports arenas, convention centers, exhibition halls, performing arts theaters, bowling alleys, arcades, card rooms, family entertainment centers, museums, play areas, pool and billiard halls, and other indoor recreational game centers;
 - 4. Senior Adult Care Facilities and City Senior Centers;
 - 5. Dental Offices.

A Covered Location does not include any location that does not have an Indoor Portion. A Covered Location does not include any location that is required by a Federal, State, Alameda County, or other local public agency requirement to check proof of COVID-19 vaccination status prior to providing indoor service.

Nothing in this Chapter shall be interpreted to preclude indoor locations in the City that are not included in the above list from issuing similar requirements or more stringent requirements than required by this Chapter

- D. **COVID-19** means coronavirus disease 2019, the infectious disease caused by the SARS CoV-2 virus that resulted in a global pandemic, including variants thereof.
- E. **COVID-19 Vaccine** means a vaccine authorized to prevent COVID-19 by the United States Food and Drug Administration (FDA), including by way of an emergency use authorization, or by the World Health Organization (WHO).
- F. **Full Vaccination/Fully Vaccinated** means 14 or more days after completing the entire recommended series of vaccination with a COVID-19 Vaccine. Currently, an individual is considered Fully Vaccinated at least two weeks after receiving a second dose of the Pfizer or Moderna COVID-19 Vaccine or two weeks after receiving the single dose of the Johnson & Johnson Janssen COVID-19 Vaccine.
- G. **Individual Eligible for a COVID-19 Vaccine** means a person for whom a COVID-19 Vaccine is authorized for use by the FDA, including by way of an emergency use authorization or, in the case of a foreign visitor or traveler, a person for whom a COVID-19 Vaccine is authorized by the WHO.
- H. **Indoor Portion** means any part of a Covered Location, City Hall, or a Public Library 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 or adjacent to 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 (such as the equivalent of twenty-five percent or more of the sides of the structure are open) to allow for air circulation.
- I. **Large Indoor Event** means an indoor event with more than five hundred (500) attendees. A Large Indoor Event includes conventions, conferences, expos, concerts, shows, nightclubs, sporting events, live events and entertainment, fairs, festivals, and large private events or gatherings such as weddings. Large Indoor Events may have either assigned or unassigned seating, and may be either general admission or gated, ticketed, and permitted events. Large Indoor Events do not include government-sponsored public meetings.
- J. **Patron** means an Individual Eligible to Receive a COVID-19 Vaccine who enters, attends an event, visits someone, or purchases goods or services at a Covered Location, City Hall, or a Large Indoor Event. A Patron does not include a resident of a Senior Adult Care Facility.

K. **Photo Identification** means an original or copy of an identification card, including:

1. Driver's license;
2. Government issued identification card;
3. School or work identification card;
4. Passport.

L. **Proof of Recent Negative COVID-19 Test** means a printed document, email or text message displayed on a phone, from a test provider or laboratory that shows results of a polymerase chain reaction (PCR) or antigen COVID-19 test that either has Emergency Use Authorization (EUA) by the U.S. Food and Drug Administration or is operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services, that was conducted within 72 hours before entry into a Covered Location, Public Library, City Hall, or Large Indoor Event. The printed document, email, or text message must include the person's name, type of test performed, date of the test, and negative test result.

M. **Proof of Vaccination** means one of the following demonstrating proof of Full Vaccination that is cross-checked with a Patron's Photo Identification:

1. A vaccination card issued by the United States Centers for Disease Control and Prevention (CDC) COVID-19 vaccination card, which includes the name of the person vaccinated, type of vaccine provided, and date last dose administered, or similar documentation issued by a foreign governmental agency;
2. A photo of a vaccination card (both sides), compliant with Subsection 8.68.020.M.1, above, as a separate physical photograph or stored on a phone or electronic device;
3. Documentation of vaccination from a licensed 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. California residents can visit the State of California's Digital COVID-19 Vaccine Record website at myvaccinerecord.cdph.ca.gov and download a QR Code on a phone.

N. **Public Library** means a library open to the public operated by the City.

- O. **Self-Attestation Document** means a letter signed by the patron, under penalty of perjury stating that the patron has a sincerely held religious belief that qualifies the Patron for an exemption.
- P. **Senior Adult Care Facility** means a housing arrangement for persons sixty (60) years of age and over, where twenty-four (24) hour non-medical care and supervision is provided, more commonly referred to as “assisted living facilities.”
- Q. **Verification of a Medical Exemption** means documentation signed by a licensed medical provider indicating the Patron is excused from receiving any COVID-19 vaccine due to a medical condition or disability recognized by the Food and Drug Administration or Centers for Disease Control as a contra-indication to COVID-19 vaccination.

8.68.030 - Proof of Vaccination Required for a Patron to enter Indoor Portion of a Covered Location.

- A. Beginning on January 15, 2022, a Covered Location shall display prominently in at least two locations on its premises, visible to Patrons prior to entrance, an advisory notice informing Patrons that, beginning on February 1, 2022, Proof of Vaccination is required to enter any Indoor Portion of a Covered Location.
- B. Beginning on February 1, 2022, a Covered Location shall require each Patron twelve (12) years or older to provide Proof of Vaccination. For each Patron eighteen (18) years or older a Covered Location must also cross check a Patron’s Proof of Vaccination with a Photo Identification. A Covered Location may require such proof either before a Patron enters an Indoor Portion of a Covered Location or upon the Patron’s first interaction with staff.
 - 1. A Patron may be exempt from the requirements of this section if they are entitled under any applicable law to a reasonable accommodation for a medical condition. To qualify, a Patron must demonstrate eligibility by providing the Covered Location with:
 - a. Verification of Medical Exemption; and
 - b. Proof of a recent Negative COVID-19 Test and Photo Identification.
 - 2. A Patron of a Dental Office who does not qualify for an exemption provided above may still be allowed to enter such location in the event they are having a dental emergency requiring immediate care as determined by any licensed dentist in that Dental Office. A Dental Office also may allow proof of recent negative COVID-19 test in lieu of proof of vaccination for their Patrons regardless of qualifying medical exemption.
 - 3. A Patron who does not provide Proof of Vaccination and who does not qualify for an exemption may use the portion of a Covered Location that is not an Indoor Portion. A Patron who does not provide Proof of Vaccination may be allowed to enter an Indoor Portion of a Covered Location for brief and limited periods of time to use the restroom, order, pick-up, or pay for food or drink “to-go,” or perform necessary repairs, provided

that the Patron wears a well-fitting mask at all times while in the Indoor Portion of the Covered Location. To the extent feasible, a Covered Location may offer service outside for a Patron who does not provide Proof of Vaccination, including curbside pickup, drive thru delivery, and outdoor seating and dining.

- C. A Covered Location must develop and keep a written record describing the protocol for implementing and enforcing the requirements of this Chapter. Such records must be kept for one year and made available, upon request, to the local public health jurisdiction or the City.

8.68.040 - Proof of vaccination or Proof of Negative COVID-19 required to enter City Hall or a Public library.

- A. Beginning on January 15, 2022, City Hall and all Public Libraries shall display prominently on their premises, visible to any persons upon entrance, an advisory notice that, beginning on February 1, 2022, Proof of Vaccination or Proof of recent Negative COVID-19 is required to enter any Indoor Portion of City Hall or a Public Library.
- B. Beginning on February 1, 2022, as specified below, Patrons shall provide Proof of Vaccination upon entering an Indoor Portion City Hall or a Public Library. A City employee or contractor (City Personnel) as designated by the City Administrator at City Hall or a Public Library is required to check Proof of Vaccination for Patron aged twelve (12) years of age or older. For Patrons aged eighteen (18) years and older, City Personnel must also cross check the Patron’s Proof of Vaccination with a Photo Identification.
 - 1. A Patron may be exempt from the requirements of this section if they are entitled under any applicable law to a reasonable accommodation for a medical condition or restriction or a sincerely held religious belief. To qualify, a Patron must demonstrate eligibility as follows:
 - a. To be eligible medical exemption, the Patron must provide Verification of Medical Exemption; or
 - b. To be eligible for a religious, the Patron must provide a Self-Attestation Document demonstrating a sincerely held religious belief.
 - 2. A Patron who does not provide either Proof of Vaccination or the exemptions provided above will be provided alternative arrangements for access to government services, to be determined on a case-by-case basis, including, but not limited to, online or remote service, service outdoors, or providing Proof of recent Negative COVID-19 Test prior to entering any Indoor Portion of a City Hall or a Public Library and wearing a mask.
 - 3. This requirement for City Hall access does not apply to members of the public attending a City Council meeting or other meeting subject to the Brown Act and Sunshine Ordinance. In lieu of a vaccination proof requirement for such meetings, the City may impose appropriate measures that are in compliance with the Brown Act and Sunshine Ordinance which may include limitations on capacity, temperature checks,

social distancing, mask requirements, and the provision of equivalent viewing and public comment options.

- C. This section does not apply to any individual City employee, intern, or volunteer subject to the City's COVID-19 Vaccination Requirement for Employees, Interns, and Volunteers (City of Oakland Administrative Instruction 593).

8.68.50 - Proof of Vaccination Required to Attend a Large Indoor Event.

Beginning on February 1, 2022, an operator or host of an Indoor Large Event must verify Proof of Vaccination or, if qualified for a medical exemption, Proof of recent Negative COVID-19 Test for each Patron who is twelve years (12) of age or older. For each Patron eighteen (18) years or older, an operator or host must also cross check the Patron's Proof of Vaccination with a Photo Identification.

A Patron may be exempt from the requirements of this section if they are entitled under any applicable law to a reasonable accommodation for a medical condition. To qualify, a Patron must demonstrate eligibility by providing the Covered Location with:

- a. Verification of Medical Exemption; and
- b. Proof of a Recent Negative COVID-19 Test and Photo Identification.

- D. Operators or hosts of Large Indoor Events must develop and keep a written record describing the protocol for implementing and enforcing the requirements of this Chapter. Such records must be kept for one year and made available, upon request to the local public health jurisdiction or the City.

8.68.060 - Enforcement.

- A. An operator Covered Location or operator or host of a Large Indoor Event may be issued a Citation for violation of any provision of this Chapter and shall be subject to the enforcement provisions provided pursuant to Chapters 1.08 and 1.12 of the Oakland Municipal Code.
- B. This Chapter shall be enforced beginning February 1, 2022.

8.68.070 - Rules and Regulations.

The City Administrator is authorized to promulgate Rules and Regulations consistent with this Chapter for further clarification, implementation, and enforcement of the provisions of this Chapter.

SECTION 4. Public Notice.

The City Administrator shall distribute notice, including media press releases, of this ordinance as widely as reasonably possible to effected covered locations and operators of large

indoor events. Further, the City Administrator shall provide a notice for posting in a downloadable form on the City’s website, and summary of this Ordinance and a Frequently Asked Questions document in a downloadable format on the City’s website so that Covered Locations and operators of Large Indoor Events can post such information. The City shall make such information available in Spanish and Chinese.

SECTION 5. Severability.

- A. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.
- B. No Conflict with State or Federal Law. Nothing in this ordinance shall be Interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

SECTION 6. Effective Date and Expiration.

This ordinance shall take effect immediately if adopted in accordance with Section 216 of the Oakland City Charter. It shall expire upon the lifting of the City’s Administrator’s Declaration of Local Emergency in response to the spread of COVID-19 that was issued March 9, 2020 and ratified by the City Council on March 12, 2020 pursuant to Resolution No. 88075 C.M.S.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS

NOES –
ABSENT –
ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

EMERGENCY ORDINANCE ADDING OAKLAND MUNICIPAL CODE CHAPTER 8.68 TO REQUIRE PROOF OF A COVID-19 VACCINATION FOR PATRONS AT THE FOLLOWING INDOOR PUBLIC LOCATIONS: (1) ESTABLISHMENTS OR EVENTS WHERE FOOD OR DRINK IS SERVED INCLUDING RESTAURANTS, BARS, COFFEE HOUSES, CLUBS, AND BANQUET HALLS; (2) ENTERTAINMENT VENUES, THEATERS, CONCERT VENUES, MUSEUMS, AND RECREATION FACILITIES; (3) GYMS, FITNESS CENTERS AND YOGA STUDIOS; (4) SENIOR ADULT CARE FACILITIES AND CITY SENIOR CENTER PROGRAMS; (5) DENTAL OFFICES; (6) PUBLIC LIBRARIES; (7) CITY HALL; AND (8) LARGE INDOOR EVENTS AT CITY AND PRIVATELY-OWNED FACILITIES

This Emergency Ordinance (Ordinance) adds Oakland Municipal Code Chapter 9.68 to require certain indoor businesses and locations, designated as “Covered Locations, to require patrons to show proof of a COVID-19 vaccination. Additionally, this same requirement applies to Patrons at Public Libraries and the Oakland City Hall. These locations include establishments or events where food or drink is served including Restaurants, Bars, Coffee Houses, Clubs, and Banquet halls; (2) Entertainment Venues, Theaters, Concert Venues, Museums, and Recreation facilities; (3) Gyms, Fitness Centers and Yoga Studios; (4) Senior Adult Care facilities and City senior center programs; and (5) Dental Offices. Likewise, the proof of vaccine requirement applies to Patrons visiting City Hall and Public Libraries, and Large Indoor Events. Large Indoor Events are defined as an indoor event with more than five hundred attendees.

The Ordinance provides that enforcement will be conducted pursuant to Civil Penalties and Administrative Penalties. It also provides the City Administrator with authority to promulgate Rules and Regulation for clarification and enforcement of the Ordinance and requires the City Administrator to provide the public with notice of the new rules, including summaries of the ordinance and related informational documents. The Ordinance will expire when the City of Oakland’s Declaration of Emergency in response to COVID-19 is lifted.