

ORDER OF THE COMMISSIONER OF HEALTH OF THE CITY OF CHICAGO

No. 2021-2

(Proof of Vaccination in Public Places – Fourth Amended and Re-issued)

Effective: January 26, 2022

WHEREAS, In Executive Order No. 2022-04 (COVID-19 Executive Order No. 99), filed on January 13, 2022, the Governor of Illinois affirmed that a local government body may enact provisions that are stricter than those in the Executive Order; and

WHEREAS, As the Governor of Illinois has affirmed, each region of the State faces different challenges from the COVID-19 pandemic and accordingly faces different timelines for reopening; and

WHEREAS, On November 30, 2021, the SARS-CoV-2 Interagency Group classified the Omicron variant as a variant of concern in the United States; and

WHEREAS, On December 7, 2021, the first infection of the Omicron variant in the City of Chicago was confirmed; and

WHEREAS, In light of the rapid and unpredictable spread of the Omicron variant, it is foreseeable that the vaccination requirements in this Order will be expanded in the near future; and

WHEREAS, The Commissioner of Health (“Commissioner”) will continue to closely monitor public health data and make well-informed determinations regarding appropriate restrictions; and

WHEREAS, The Municipal Code of Chicago (“Code”) authorizes the Commissioner to implement emergency measures to stop the spread of communicable diseases, and to protect the health, safety, and welfare of the City’s residents, including but not limited to authority granted in Sections 2-112-050, 2-112-110(a)(4), and 2-112-130 of the Code, in addition to 77 Ill. Adm. Code Sections 690.1305(a) and 690.1310(c); now, therefore,

The Commissioner of Health of the City of Chicago hereby orders as follows:

SECTION 1. For purposes of this Order, the following definitions apply:

“Covered entity” means any entity that operates one or more covered locations within the City of Chicago.

“Covered Location” means the following:

1. Establishments where food or beverages are consumed, including but not limited to restaurants, bars, fast food establishments, coffee shops, tasting rooms, cafeterias open

to the public, food courts, dining areas of grocery stores, breweries, wineries, distilleries, banquet halls, and hotel ballrooms; and

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, fitness boot camps, and other facilities used for conducting indoor group fitness classes; and
3. Entertainment and recreation venues in areas where food or beverages are served, including but not limited to movie theaters, music and concert venues, live performance venues, adult entertainment venues, commercial event and party venues, sports arenas, performing arts theaters, bowling alleys, arcades, card rooms, family entertainment centers, play areas, pool and billiard halls, and other recreational game centers.
4. "Covered locations" do not include houses of worship, pre-K-12 schools, child care programs, locations in O'Hare International Airport or Midway International Airport, locations in residential or office buildings the use of which is limited to residents, owners, or tenants of that building, or to food service establishments providing only charitable food services, such as soup kitchens.

"COVID-19" means coronavirus disease 2019 caused by severe acute respiratory coronavirus 2 (SARS-CoV-2).

"Identification" means an official document bearing the name of the individual and a photograph. Examples of acceptable identification include but are not limited to: driver's license, non-driver government ID card, passport, and school ID card.

"Indoor portion" means any part of a covered location with a roof or overhang that is enclosed on at least three sides, except that a temporary outdoor structure that holds multiple parties that has at least 50% of the sides open to allow airflow will not be considered an indoor portion, nor a dining structure for individual parties, such as a plastic dome, if it has adequate ventilation to allow for air circulation.

"Nonresident" means any individual who is not a resident of the City of Chicago.

"Patron" means any individual 5 years of age or older who patronizes, enters, attends an event, or purchases goods or services within a covered location.

"Proof of full vaccination" means proof that an individual has been fully vaccinated, with "fully vaccinated" status determined by Centers for Disease Control and Prevention guidance or Chicago Department of Public Health posted guidelines, whichever is the most restrictive.

Such proof may be established by:

1. A CDC COVID-19 Vaccination Record Card or an official immunization record from the jurisdiction, state, or country where the vaccine was administered or a digital or physical photo of such a card or record, reflecting the person's name, vaccine brand, and dates administered; or
2. Any other method specified by the Commissioner as sufficient to demonstrate proof of full vaccination.

SECTION 2. Notwithstanding any other provision of law, a covered entity shall not permit any patron to enter the indoor portion of a covered location without displaying proof of full vaccination. Additionally, any individual over the age of 16 shall provide identification bearing

the same identifying information as the proof of full vaccination. A covered entity may in the interests of efficiency allow patrons to provide the requisite proof prior to entry, either directly to the covered entity or through an intermediary such as an event planner.

SECTION 3. Each covered entity shall develop and keep a written record describing the protocol for implementing and enforcing the requirements of this Order. Such written record shall be available for inspection upon request of any City official authorized to enforce this Order.

SECTION 4. All covered entities shall prominently post signage, in a form prescribed by the Commissioner of Business Affairs and Consumer Protection, at each publicly accessible entrance to the covered location and at least one location inside the covered location that is conspicuously visible, informing patrons of the full vaccination requirement.

SECTION 5. The following individuals are exempted from this Order:

1. Individuals entering a covered location for less than 10 minutes for the purpose of ordering and carrying out food, making a delivery, or using the bathroom;
2. A performing artist, or an individual accompanying such a performing artist, while the performing artist or individual is in a covered location for the purposes of such artist's performance;
3. A professional or college athlete, or an individual accompanying such professional or college athlete, who enters a covered location as part of their regular employment or conduct for purposes of the professional or college athlete/sports team competition;
4. Individuals who have previously received a medical or religious exemption, provided such patrons provide the covered entity proof of the medical or religious exemption and a COVID-19 test administered by a medical professional within the last 72 hours prior to entering a covered location.
5. An individual 18 years of age or younger who enters a covered location to participate in an after-school program, a child care program, or an activity organized or sponsored by a school, the Chicago Park District, or other organization as may be authorized in Chicago Department of Public Health guidance; and
6. An individual who enters for the purposes of voting in a municipal, state, or federal election; or, pursuant to law, assisting or accompanying a voter or observing such election.

SECTION 6. All covered entities shall comply with the standards outlined in Exhibit A to this Order relating to employee vaccination status and testing at covered locations, regardless of the number of their employees. Exhibit A is incorporated by reference to this Order and shall be deemed to have the same force and effect as if set forth here.

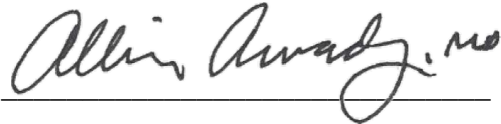
SECTION 7. Pursuant to Sections 2-112-040 and 2-112-050 of the Code, in conjunction with enforcement authority granted in the Code, this Order may be enforced by the Commissioner of Business Affairs and Consumer Protection, the Commissioner of the Buildings, or the Chicago Police Department, in addition to the Commissioner of Health.

SECTION 8. In addition to any other penalty provided by law, any covered entity who violates this Order shall be subject to arrest, and to the fines set forth in Section 2-112-340 of the Code. Further, any covered entity that fails to enforce this Order shall be subject to sanctions, including, but not limited to, closure pursuant to Sections 2-112-050 and 2-112-170 of the Code.

SECTION 9. This Order shall remain in effect until the Commissioner makes a written determination that the threat to public health posed by COVID-19 has diminished to the point that this Order can be safely repealed.

SECTION 10. In the event of a conflict or inconsistency between this Order and any other Public Health Order, Executive Order, or the Phase 5 Guidance, the more restrictive alternative applies.

SECTION 11. If any provision of this Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Order are declared to be severable. This Order is meant to be read consistently with any court order regarding this Order.



Issued: January 26, 2022

Allison Arwady, M.D.,

Commissioner of Health of the City of Chicago

Exhibit A to Order of The Commissioner of Health of The City Of Chicago No. 2021-2

Preamble

The requirements listed in Exhibit A are those promulgated by OSHA as regulations on November 5, 2021, and are independently made part of this order regardless of whether OSHA rescinds or withdraws those regulations.

References to section numbers not included in Exhibit A refer to existing OSHA regulations with those section numbers and are available online.

1910.501(c)

Definitions. The following definitions apply to this section.

Workplace means a physical location (e.g., fixed, mobile) where the employer's work or operations are performed. It does not include an employee's residence.

1910.501(e)

Determination of employee vaccination status.

1910.501(e)(1)

The employer must determine the vaccination status of each employee. This determination must include whether the employee is fully vaccinated.

1910.501(e)(2)

The employer must require each vaccinated employee to provide acceptable proof of vaccination status, including whether they are fully or partially vaccinated. Acceptable proof of vaccination status is:

1910.501(e)(2)(i)

The record of immunization from a health care provider or pharmacy;

1910.501(e)(2)(ii)

A copy of the COVID-19 Vaccination Record Card;

1910.501(e)(2)(iii)

A copy of medical records documenting the vaccination;

1910.501(e)(2)(iv)

A copy of immunization records from a public health, state, or tribal immunization information system; or

1910.501(e)(2)(v)

A copy of any other official documentation that contains the type of vaccine administered, date(s) of administration, and the name of the health care professional(s) or clinic site(s) administering the vaccine(s);

1910.501(e)(2)(vi)

In instances where an employee is unable to produce acceptable proof of vaccination under paragraphs (e)(2)(i) through (v) of this section, a signed and dated statement by the employee:

1910.501(e)(2)(vi)(A)

Attesting to their vaccination status (fully vaccinated or partially vaccinated);

1910.501(e)(2)(vi)(B)

Attesting that they have lost and are otherwise unable to produce proof required by this section; and

1910.501(e)(2)(vi)(C)

Including the following language: “I declare (or certify, verify, or state) that this statement about my vaccination status is true and accurate. I understand that knowingly providing false information regarding my vaccination status on this form may subject me to criminal penalties.”

Note 1 to paragraph (e)(2)(vi): An employee who attests to their vaccination status should, to the best of their recollection, include the following information in their attestation: The type of vaccine administered; date(s) of administration; and the name of the health care professional(s) or clinic site(s) administering the vaccine(s).

1910.501(e)(3)

Any employee who does not provide one of the acceptable forms of proof of vaccination status in paragraph (e)(2) of this section to the employer must be treated as not fully vaccinated for the purpose of this section.

1910.501(e)(4)

The employer must maintain a record of each employee’s vaccination status and must preserve acceptable proof of vaccination for each employee who is fully or partially vaccinated. The employer must maintain a roster of each employee’s vaccination status. These records and roster are considered to be employee medical records and must be maintained as such records in accordance with §1910.1020 and must not be disclosed except as required or authorized by this section or other federal law. These records and roster are not subject to the retention requirements of §1910.1020(d)(1)(i) but must be maintained and preserved while this section remains in effect.

1910.501(e)(5)

When an employer has ascertained employee vaccination status prior to the effective date of this section through another form of attestation or proof, and retained records of that ascertainment, the employer is exempt from the requirements in paragraphs (e)(1) through (3) of this section only for each employee whose fully vaccinated status has been documented prior to the effective date of this section. For purposes of paragraph (e)(4) of this section, the employer’s records of ascertainment of vaccination status for each such person constitute acceptable proof of vaccination.

1910.501(g)

COVID-19 testing for employees who are not fully vaccinated.

1910.501(g)(1)

The employer must ensure that each employee who is not fully vaccinated complies with paragraph (g)(1)(i) or (ii) of this section:

1910.501(g)(1)(i)

An employee who reports at least once every 7 days to a workplace where other individuals such as coworkers or customers are present:

1910.501(g)(1)(i)(A)

Must be tested for COVID-19 at least once every 7 days; and

1910.501(g)(1)(i)(B)

Must provide documentation of the most recent COVID-19 test result to the employer no later than the 7th day following the date on which the employee last provided a test result.

1910.501(g)(1)(ii)

An employee who does not report during a period of 7 or more days to a workplace where other individuals such as coworkers or customers are present (e.g., teleworking for two weeks prior to reporting to a workplace with others):

1910.501(g)(1)(ii)(A)

Must be tested for COVID-19 within 7 days prior to returning to the workplace; and

1910.501(g)(1)(ii)(B)

Must provide documentation of that test result to the employer upon return to the workplace.

Note 1 to paragraph (g)(1): This section does not require the employer to pay for any costs associated with testing; however employer payment for testing may be required by other laws, regulations, or collective bargaining agreements or other collectively negotiated agreements. This section also does not prohibit the employer from paying for costs associated with testing required by paragraph (g)(1) of this section.

1910.501(g)(2)

If an employee does not provide documentation of a COVID-19 test result as required by paragraph (g)(1) of this section, the employer must keep that employee removed from the workplace until the employee provides a test result.

1910.501(g)(3)

When an employee has received a positive COVID-19 test, or has been diagnosed with COVID-19 by a licensed healthcare provider, the employer must not require that employee to undergo COVID-19 testing as required under paragraph (g) of this section for 90 days following the date of their positive test or diagnosis.

1910.501(g)(4)

The employer must maintain a record of each test result provided by each employee under paragraph (g)(1) of this section or obtained during tests conducted by the employer. These records are considered to be employee medical records and must be maintained as such records in accordance with § 1910.1020 and must not be disclosed except as required or authorized by this section or other federal law. These records are not subject to the retention requirements of § 1910.1020(d)(1)(i) but must be maintained and preserved while this section remains in effect.