



CITY OF PHILADELPHIA
DEPARTMENT OF PUBLIC HEALTH

BOARD OF HEALTH: Originally Adopted
12/14/2021
LAW DEPARTMENT: 12/15/2021
RECORDS DEPARTMENT: 12/15/2021
PUBLIC HEARING: 12/23/2021
REPORT ON PUBLIC HEARING
APPROVED: 1/4/2022
REPORT FILED WITH RECORDS
DEPARTMENT:

**EMERGENCY REGULATION
GOVERNING THE CONTROL AND PREVENTION OF COVID-19**

**MANDATING VACCINES FOR INDIVIDUALS WORKING AND DINING AT
INDOOR DINING LOCATIONS (AS AMENDED 1/4/2022)**

WHEREAS, on March 6, 2020, in response to the 2019 novel coronavirus disease, COVID-19, the Governor of Pennsylvania issued a Proclamation of Disaster Emergency, and on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic, or global epidemic; and

WHEREAS, on March 11, 2020, the Mayor issued a “Declaration of Extraordinary Circumstance: Suspending the Formal Regulatory Process for Regulations Concerning a Novel Coronavirus” to allow the City to promulgate emergency regulations on a shortened time frame in order to address the public health emergency posed by COVID-19, while the formal procedures for promulgating regulations pursuant to Section 8-407 are followed; and

WHEREAS, on March 12, 2020, the Board added COVID-19 to the City’s list of reportable and quarantinable diseases; and

WHEREAS, since March 12, 2020, the Board has promulgated and rescinded numerous disease control and prevention regulations as needed to address the ebbs and flows of the COVID-19 pandemic; and

WHEREAS, since the beginning of the pandemic there have been more than 18,800 COVID-19 hospitalizations and 4,000 COVID-19 deaths in Philadelphia; and

WHEREAS, case rates from November to current are rapidly rising, and Philadelphia has moved from a substantial transmission level of less than 99 COVID-19 cases per 100,000 people to an average of approximately 293 new COVID-19 cases per 100,000 people identified per day in Philadelphia, which places Philadelphia in the Centers for Disease Control and Prevention’s high transmission category (which includes any location over 100 or more cases per 100,000); and

WHEREAS, COVID-19 hospitalizations in Philadelphia hospitals have risen by more than 50% in the 2 weeks between November 26 to December 10, 2021, from 208 hospitalizations on November 26th, to 337 hospitalizations on December 10th, and 79% of COVID-19 hospitalizations

were unvaccinated individuals; and

WHEREAS, the City’s post-Thanksgiving COVID-19 percent positivity rate peaked at more than three times its October rate heading into the Fall and Winter of 2020 and transmission is expected to similarly increase as we head into the Winter of 2021; and

WHEREAS, there is substantial evidence that widespread mask use can prevent the spread of COVID-19, and observational data has suggested that people who wear masks and become infected may be less likely to develop severe disease; and

WHEREAS, inside activities, and in particular inside activities where individuals gather without masks and where individuals gather for extended periods, or both, increase the likelihood of the spread of COVID-19; and

WHEREAS, studies have indicated and public health experts have concluded that indoor dining is a significant driver of the COVID-19 pandemic, in part because it is not possible to wear a mask while eating or drinking; and

WHEREAS, safe, highly effective COVID-19 vaccines are now widely available in the United States; and

WHEREAS, administration of a COVID-19 vaccine is a medically accepted and recommended form of prophylactic treatment that dramatically reduces the likelihood of experiencing a symptomatic SARS-CoV-2 infection, and recent studies show that available COVID-19 vaccines also reduce asymptomatic infection and transmission; and

WHEREAS, COVID-19 vaccines are now readily available for all eligible individuals five years of age and older, while those four years of age and under remain ineligible for vaccination and therefore subject to greater exposure of infection and transmission; and

WHEREAS, it is well established that COVID-19 vaccines remain effective even against infection with the Delta variant and other recent variants of concern; and

WHEREAS, broad distribution and uptake of COVID-19 vaccines is essential to ending the COVID-19 pandemic; and

NOW, THEREFORE, pursuant to its authority under the Pennsylvania Disease Prevention and Control Law of 1955, Section 6-210 of The Philadelphia Code, Section 8-407 of the Philadelphia Home Rule Charter, and the Mayor’s “Declaration of Extraordinary Circumstance: Suspending the Formal Regulatory Process for Regulations Concerning a Novel Coronavirus,” the Board of Health hereby adopts the following emergency regulation, effective immediately upon delivery to the Department of Records, while the remaining procedures and formalities of Section 8-407 are followed to promulgate this as a formal regulation:

Section 1. Definitions.

Approved COVID-19 Vaccine. A vaccine that has been authorized or approved by either the Food and Drug Administration or the World Health Organization to prevent COVID-19, whether for emergency use or otherwise.

Completed Vaccination Series. An individual is considered to have received a Completed Vaccination Series when the individual has received the second dose in a two-dose series of an Approved COVID-19 Vaccine or a single dose in a one-dose Approved COVID-19 Vaccine.

Indoor Dining Location. Any location, whether open to the public or private, including personal residences, where food or drink is sold or served indoors for consumption onsite, except as follows.

The term does not include:

- (A) A location where only drinking water is served or permitted.
- (B) Early childhood education and K-12 schools.
- (C) Hospitals, congregate care facilities, or other residential or healthcare facilities.
- (D) Any location where food or drink is consumed as part of a religious practice.
- (E) A location where food or drink is sold by vending machine only and which does not contain a designated indoor eating area.
- (F) Any portion of a location that is outdoors, meaning the area is fully open to the outside on two or more sides, provided that entrance into any associated indoor food or drink service or eating areas are actively monitored to ensure compliance with this Regulation.
- (G) With respect to a business or commercial location where any indoor eating area is entirely segregated from other portions of the facility, the portion of the facility that is physically segregated from any indoor eating areas, provided that entrance into any such indoor eating areas are actively monitored by the business to assure compliance with this Regulation.
- (H) Food courts or markets, grocery stores, and airport facilities, except as specifically provided in subsection (B) of Section 2, below.
- (I) Food service locations that provide free food to those who may be homeless or in urgent need of food, such as soup kitchens.

Indoor Dining Worker. Any individual that works at an Indoor Dining Location in

any capacity.

Section 2. Limitations on Unvaccinated Individuals in Indoor Dining Locations.

(A) General Rule - Businesses Serving or Providing Food at an Indoor Dining Location.

Effective January 3, 2022, no business serving or providing food at an Indoor Dining shall allow any individual onsite at such location unless such individual meets the vaccination requirements set forth in this Section and in Sections 3 (Vaccination and Exemption Requirements for Indoor Dining Workers), 4 (Vaccination and Exemption Requirements for Customers and Other Non-Indoor Dining Workers), and 5 (Requirements for Athletes, Performers, and Supporting Staff), below, as applicable. In summary, and subject to applicable medical and religious exemptions as provided in the relevant sections identified below:

- **Indoor Dining Workers.** Effective January 3, 2022, such workers must have received at least one dose of an Approved COVID-19 Vaccine and, if applicable, effective February 3, 2022, must have received a Completed Vaccination. *See* Section 3, below.
- **Diners and other Non-Indoor Dining Workers Twelve (12) Years of Age and Over.** Effective January 3, 2022, such diners must have received a Completed Vaccination Series to dine at an Indoor Dining Location. *See* Section 4(A), below.
- **Diners 5 years and 3 Months of Age and Over but Under Twelve (12) Years of Age.** Effective January 3, 2022, such diners must have received at least one dose of an Approved COVID-19 Vaccine, and effective February 3, 2022, such diners must have received a Completed Vaccination Series to dine at an Indoor Dining Location. *See* Section 4(C), below.
- **Diners younger than 5 years and 3 months of age** are exempt from the requirements of this Regulation. *See* Section 4(C), below.
- **Athletes, performers, and supporting staff** are subject to the details of safety plans approved by the Department for the relevant facility. *See* Section 5, below.

Nothing in this regulation applies to individuals present at an Indoor Dining Location for a short duration (less than 15 minutes) for the purpose of picking up food to take out, using the restroom, or for a similarly short and transitory purpose, provided the individual is masked at all times.

This Regulation shall not preclude any business from establishing more strict vaccine requirements for its workforce, contractors, volunteers, customers or clientele, including requiring all persons onsite to be vaccinated (to the extent otherwise permitted under applicable law).

(B) Application to Specific Indoor Dining Locations.

(i) Onsite Dining at Grocery Stores, Food Courts, and Similar Locations.

With respect to food service at grocery stores that provide areas for dining on site; take-away food service at sports stadiums; food courts and markets, meaning locations containing multiple indoor food service locations providing food for take away service where general seating is provided for use by customers of any of the multiple food service locations; and similar locations; the vaccination requirements do not apply to take out only portions of such facilities – or to food service locations that provide take out service only. The vaccination requirements of this Regulation shall only apply to the following locations in such facilities:

(.1) Any generally accessible seating area where food or drink can be consumed by customers. Such seating must be cordoned off and screening must be provided to prevent access to those who do not comply with the vaccination requirements required by this Regulation. Indoor Dining Workers serving such seating area must also comply with the vaccination requirements.

(.2) Any establishment in a grocery store, food court or market, or similar location that provides an indoor seating area that is used for dining associated with such establishment, such as seating at a counter served by the establishment or a seating area associated with an establishment at which table service is provided. Customers making use of such seating area and all workers at such establishment must comply with the vaccination requirements of this Regulation.

(ii) Onsite Eating Locations at Airport Facilities. With respect to food service and dining locations in airport facilities, the vaccination requirements of this Regulation do not apply to such facilities, except with respect to the following specific food service and dining locations:

(.1) Any location that provides a restaurant style indoor seating area that is used for the consumption of food or beverages sold by such establishment that is enclosed from other areas of the airport on three or more sides. Customers making use of such seating area and all workers at such establishment must comply with the vaccinate requirements of this Regulation.

(.2) Any establishment that provides seating at a bar-style service counter that is used for consumption of food or beverages sold exclusively by such establishment. Customers making use of such counter area and all workers at such establishment must comply with the vaccination requirements of this Regulation.

(C) Additional Testing Requirements for Indoor Dining Locations that Seat Over 1,000 Customers. Indoor Dining Locations that seat over 1,000 customers, such as sports and large entertainment venues, must require any unvaccinated individual over five (5) years and three (3) months of age that qualifies for an exemption or exception under Section 4(b) or (c) of this Regulation to submit proof of a negative PCR or antigen test for COVID-19 from a sample that was collected from such individual within the twenty-four (24) hours preceding such individuals' entrance into the Indoor Dining Location.

(D) Private Event Spaces and Homes. Effective January 3, 2022, no individual may host or permit a gathering of 25 (twenty-five) or more individuals at an Indoor Dining Location in any private place, including a residence, private club, church or other facility, unless all attendees either (i) have received a Completed Vaccination Series; or (ii) qualify for an exemption or exception under Section 4(b) or (c) of this Regulation.

(E) Optional Exception for Testing Prior to January 17, 2022: Notwithstanding any other provisions of this regulation, prior to January 17, 2022, a business may choose to accept proof of a negative PCR or antigen test for COVID-19 from a sample that was collected from a customer within twenty-four (24) hours of the date of entrance to the Indoor Dining Location in lieu of requiring such customer to provide a vaccination status or claim an exemption. This authorization expires on January 17, 2022.

Section 3. Vaccination and Exemption Requirements for Indoor Dining Workers.

(A) General Rule – Indoor Dining Workers. No business serving or providing food at an Indoor Dining Location shall employ (including self-employ), contract with, or otherwise utilize the services of an Indoor Dining Worker after the relevant dates below unless such Indoor Dining Worker: (a) has been vaccinated in accordance with the following requirements; or (b) has received an exemption under Section 3(B), below, from such Indoor Dining Worker’s employer or the individual or entity that has engaged such Indoor Dining Worker’s services, and such worker complies with the accommodations adopted by the business for unvaccinated Indoor Dining Workers:

(i) Effective **January 3, 2022**, an Indoor Dining Worker must have received at least one dose of an Approved COVID-19 Vaccine.

(ii) Effective **February 3, 2022**, an Indoor Dining Worker must have received a Completed Vaccination Series.

(B) Exemptions and Accommodations for Indoor Dining Workers.

For the purposes of this Regulation only, and unless the business has adopted more strict requirements for its operations (subject to applicable law), a business subject to this Regulation shall grant an Indoor Dining Worker an exemption from the vaccination requirements of this Regulation if such individual qualifies for one or both of the exemptions below and agrees in writing to abide by the accommodation(s) required by the business serving or providing food at the Indoor Dining Location.

(i) Medical Exemption. For the purpose of this Regulation only, an exemption shall be granted if the business employing or otherwise engaging the services of the Indoor Dining Worker determines that the administration of any COVID-19 vaccine is contraindicated because the administration would be detrimental to the health of the Indoor Dining Worker. An Indoor Dining Worker shall request an exemption by submitting a certification from a licensed healthcare provider (meaning a physician, nurse practitioner, or physician assistant, licensed by an authorized state licensing board) that has provided an in-person physical

examination of the Indoor Dining Worker on at least one occasion certifying that the exemption applies and stating the specific reason that the vaccine is contraindicated for the Indoor Dining Worker. Such certification must be signed by both the healthcare provider and the Indoor Dining Worker subject to the requirements and penalties of Section 1-108 of The Philadelphia Code and in substantially the same form as a sample certification that the Department shall make available on the Department's website.

(ii) **Religious Exemption.** For the purpose of this Regulation only, an exemption shall be granted if the Indoor Dining Worker certifies in writing that such individual has a sincerely held religious belief that precludes such worker from receiving the COVID-19 vaccination and that the worker understands that philosophical, moral, or other non-religious objections to receiving the vaccine will not be accepted. Such certification must be signed by the Indoor Dining Worker subject to the requirements and penalties of Section 1-108 of The Philadelphia Code and in substantially the same form as a sample certification that the Department shall make available on the Department's website.

(C) **Accommodations for Exempt Indoor Dining Workers:** For the purpose of this Regulation only, each business serving or providing food at an Indoor Dining Location or at an Indoor Dining Location shall take steps to assure that each Indoor Dining Worker that has been granted an exemption under Section 3(B), above, is tested for COVID-19 on at least a weekly basis, and shall adopt one or more of the following accommodations for each such Indoor Dining Worker, provided that all individuals in such location must continue to wear face masks or other face coverings consistent with the June 15, 2021 Emergency Order Establishing Safety Measures for Full Reopening to Prevent the Spread of COVID-19, as it has been amended:

(i) **Masking:** Requiring the exempt Indoor Dining Worker to double mask indoors at all times while working. For the purpose of this Regulation, double masking means wearing a cloth mask tightly fitted over a properly fitted surgical mask or wearing a well fitted respirator equivalent to an N95.

(ii) **Virtual accommodation:** If feasible, allowing an Indoor Dining Worker to engage with the business through any manner such that the individual does not come into contact with other workers or customers of the business at any Indoor Dining Location.

(D) **Documentation Required:** Each business subject to this regulation shall maintain documentation of the vaccination status of each affiliated Indoor Dining Worker, any exemption requested by an Indoor Dining Worker under this Section, including all certifications submitted, whether or not such exemption request was granted and why, the accommodation or accommodations granted to each exempt Indoor Dining Worker, and records of ongoing COVID-19 testing for each exempt Indoor Dining Worker.

Section 4. Vaccination and Exemption Requirements for Diners and Other Non-Indoor Dining Workers.

(A) **General Rule – Diners and Other Non-Indoor Dining Workers.** Effective January 3, 2022, no business shall permit an individual who has not received a Completed Vaccination Series, including a customer, client, volunteer or employee of a

contractor of the business (but not including an individual with respect to whom the provisions of Sections 3 (Indoor Dining Workers), above, or Section 5 (Athletes, Performers, and Supporting Staff), below, apply), to be present at an Indoor Dining Location operated by such business or where such business operates unless:

(i) The individual has received a religious or medical exemption under subsection (B), below, or is a child under 12 that is excepted or subject to a modified requirement under subsections (C), below; and

(ii) For Indoor Seating Locations that seat more than 1,000 people only, the unvaccinated individual is over five (5) years and 3 months of age, the individual has submitted a negative PCR or antigen test for COVID-19 from a sample that was collected from such individual within twenty-four (24) hours of the date of entrance to the Indoor Dining Location.

(B) Medical and Religious Exemptions. An individual may establish an exemption for purposes of this Section 4 by signing a certification as follows, subject to the requirements and penalties of Section 1-108 of The Philadelphia Code.

(i) **Medical Exemption.** For the purpose of this Regulation only, a certification signed by a licensed healthcare provider (meaning a physician, nurse practitioner, or physician assistant, licensed by an authorized state licensing board) who has conducted an in-person physical examination of the individual on at least one occasion certifying that receiving an any Approved COVID-19 Vaccine would be detrimental to the health of the individual and that the healthcare provider has medically advised the individual not to receive any Approved COVID-19 Vaccine. The certification shall include the signature, printed name, and contact information of the individual and the licensed healthcare provider and shall be in substantially the same form as a sample certification that the Department shall make available on the Department's website.

(ii) **Religious Exemption.** For the purpose of this Regulation only, an exemption shall be granted if the individual certifies in writing that such individual has a sincerely held religious belief that precludes such individual from receiving any Approved COVID-19 Vaccine; and that the individual understands that philosophical, moral, or other non-religious objections to receiving the vaccine will not be accepted. The certification shall include the signature, printed name, and contact information of the individual and shall be in substantially the same form as a sample certification that the Department shall make available on the Department's website.

(C) Exception and Modified Rules For Children Under 12.

(i) For the purpose of this Regulation and the requirements of this Section 4, an individual that is in an age group for which there is no Approved COVID-19 Vaccine, currently individuals under five (5) years of age, is not subject to the vaccination requirements of this Regulation until such individual has qualified for vaccination for at least three months. No certification shall be required to be submitted or maintained related to this age-based exception.

(ii) Prior to **February 3, 2022**, children five (5) years and three (3)

months of age and older, but under twelve (12) years of age, are subject to a modified requirement and are excepted from the requirement to have received a full Completed Vaccination Series, so long as such child has received at least one dose of an Approved COVID-19 Vaccine at the time the child seeks to enter the Indoor Dining Location. This modified requirement expires February 3, 2022.

Section 5. Athletes, Performers, and Supporting Staff.

Athletes, performers, and supporting staff (such as coaches, trainers, road crew, and similar supportive staff) competing or performing at Indoor Dining Locations are not subject to this Regulation but must strictly comply with a safety plan approved by the Department for the facility at issue.

Section 6. Verifying Vaccine Status and Exemptions. Businesses governed by this Regulation may rely in good faith on (A) observably credible records of vaccination status provided by an individual, including Indoor Dining Workers, such as copies or pictures of a Center for Disease Control Vaccination Card or a state or authorized local government issued vaccination record; (B) a certification provided by an Indoor Dining Worker consistent with Section 3(B) or a certification provided by any other individual consistent with Section 4(B) of this Regulation. Individuals eighteen years of age or older must provide a photo identification card, or such other reliable form of identification identified by the Department in guidance, to establish identity consistent with the vaccine status and exemption documentation provided.

Section 7. Interpretation and Implementation:

(A) Stricter Regulation Permitted. Nothing in this Regulation prohibits any business, entity, or individual from implementing more stringent vaccine, masking, distancing or other or mandate on its customers or those it employs, contracts with, or engages in a volunteer capacity, whether or not such business or individual is covered under this Regulation, subject to all applicable law. Businesses choosing to impose more stringent requirements must comply with all other applicable laws, including but not limited to the Americans with Disabilities Act of 1990.

(B) Conflicts. Except to the extent of a direct conflict, this regulation shall be interpreted as consistent with applicable orders and requirements of the Commonwealth of Pennsylvania. In the event of a direct conflict, the most restrictive order or requirement controls. The City shall continue reviewing inquiries and submissions regarding the applicability of the City's orders to businesses and activities.

(C) Inspection Required. Each business serving or providing food at an Indoor Dining Location or at an Indoor Dining Location must allow inspection of records required to be maintained under Sections 3(D) and ongoing operations by the Department as a condition of operation. Copies of such records must be provided to the Department upon request. Any records inspected by or provided to the Department will be maintained confidentially consistent with the requirements of 35 P.S. § 521.15.

(D) Individual Liability. Falsely submitting certifications required by this

Regulation shall be a violation of Section 1-108 of The Philadelphia Code.

(E) Penalties. Failure to comply with this Regulation shall result in orders to cease operations and the imposition of penalties, fines, license suspensions, and other remedies as provided for by law, including such penalties and remedies set forth in the April 29, 2020, Emergency Regulation of the Board of Health Governing the Control and Prevention of COVID-19 Pertaining to Fines and Penalties.

(F) Duration. This regulation shall remain in effect until rescinded, superseded or amended by further order or regulation.

(G) Guidance. The Department of Health is directed to promulgate guidance by order or otherwise to interpret and otherwise implement the requirements of this Regulation.

Section 7. Effective Date: This regulation is effective immediately upon the filing of this regulation with the Department of Records.