

County of Santa Clara
Public Health Department

Health Officer
976 Lenzen Avenue, 2nd Floor
San José, CA 95126
408.792.3798



**UPDATED AND AMENDED ORDER OF THE HEALTH OFFICER OF THE
COUNTY OF SANTA CLARA REQUIRING UP-TO-DATE COVID-19
VACCINATION OF PERSONNEL IN HIGHER-RISK SETTINGS**

DATE OF ORDER: March 7, 2022

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, 120175, AND SANTA CLARA COUNTY ORDINANCE CODE SECTION A18-33, THE HEALTH OFFICER OF THE COUNTY OF SANTA CLARA (“HEALTH OFFICER”) ORDERS:

1. Background and Purpose.

- a. This Order updates and amends the December 28, 2021 Order of the Health Officer (“December 28th Order”), which was made in light of the ongoing threat posed by SARS-CoV-2, the virus that causes COVID-19. The December 28th Order was issued in light of a rapidly accelerating surge in COVID-19 cases, evidence that the Omicron variant of COVID-19 is significantly more transmissible than prior variants of the virus, and the fact that individuals who have had only their initial vaccine series are more susceptible to infection from the Omicron variant than those who have received a booster in addition to their initial series.
- b. This Order updates and amends the December 28th Order based on the fact that the surge in COVID-19 cases that was the impetus for that order has significantly abated, and case rates are returning to levels less likely to pose a substantial threat to (1) the capacity and stability of hospitals in Santa Clara County (“County”) and (2) those at greatest risk of serious illness and death from COVID-19.
- c. Evidence shows that individuals who have received a booster shot increase their immunity to a level that confers more protection from all circulating SARS-CoV-2 variants. The U.S. Centers for Disease Control and Prevention (CDC) and the California Department of Public Health (CDPH) recommend that all eligible persons receive a booster shot because immunity wanes several months after completion of the initial vaccine series.
- d. Vaccination remains a critical component in preventing COVID-19 and its associated harms. Individuals who have not received an initial vaccine series and any booster shots for which they are eligible are more likely to become infected and spread infection to others, and more likely to become seriously ill, require hospitalization, and

die. Community members must stay up to date on vaccination to maintain the protective effect of the high community-wide vaccination rates in our County. Ensuring that individuals working in higher-risk settings are both vaccinated and boosted when eligible is critical given the anticipated emergence of new COVID-19 variants, the risk that health systems will be overwhelmed if there is another surge in cases, and other ongoing risks associated with COVID-19. Individuals working in these settings (1) can expose highly vulnerable individuals who are at increased risk of severe illness and death, (2) must be protected from COVID-19 to ensure adequate staffing in these critical settings, and (3) in the case of jails, shelters, and skilled nursing facilities, can cause large outbreaks if infected. In considering options to stem future surges in COVID-19 transmission and associated demands on our healthcare delivery system, ensuring that individuals who work in higher-risk settings are all vaccinated and boosted when eligible is critically important.

- e. This Order requires that individuals who work in Higher-Risk Settings must be “fully vaccinated” and also obtain boosters when they become eligible. State Health Officer Orders require that many of these individuals be up to date on vaccination.¹ However, those State Health Officer Orders do not cover all individuals working in higher-risk settings and roles (e.g., paramedics and jail staff). This Order enhances the protection offered by the State Health Officer Orders to protect highly vulnerable workers and community members from infection, serious illness, and death from COVID-19.

2. Definitions. For purposes of this Order, the following definitions apply:

- a. A person is “fully vaccinated” two weeks after completion of the initial series of a federal Food and Drug Administration-approved COVID-19 vaccine (usually one or two doses), including by way of an emergency use authorization. For example, as of the date of issuance of this Order, an individual would be “fully vaccinated” at least two weeks after receiving a second dose of the Pfizer or Moderna COVID-19 vaccine or two weeks after receiving a single dose of the Johnson & Johnson COVID-19 vaccine.

¹ See September 28, 2021 Order of the State Health Officer regarding a Adult Care Facilities and Direct Care Worker Vaccine Requirement (most recently updated February 22, 2022), *available at*: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Adult-Care-Facilities-and-Direct-Care-Worker-Vaccine-Requirement.aspx>; August 19, 2021 Order of the State Health Officer regarding a State and Local Correctional Facilities and Detention Centers Health Care Worker Vaccination Requirement (most recently updated February 22, 2022), *available at*: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Correctional-Facilities-and-Detention-Centers-Health-Care-Worker-Vaccination-Order.aspx>; August 5, 2021 Order of the State Health Officer regarding a Health Care Worker Vaccine Requirement (most recently updated February 22, 2022), *available at*: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx>.

- b. “Up-to-Date” means that an individual is not only “fully vaccinated” but has also obtained any booster doses of a COVID-19 vaccination for which they are eligible as authorized by the federal Food and Drug Administration, within 15 days of first becoming eligible. If an individual develops a documented COVID-19 infection after being “fully vaccinated” but before receiving a booster for which they are eligible, they may wait for up to 90 days from the date from the start of their COVID-19 infection before obtaining a booster.
- c. “Business” includes any for-profit, non-profit, or educational entity, whether a corporate entity, organization, partnership, or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure. For clarity, “business” also includes a for-profit, non-profit, or educational entity performing services or functions under contract with a governmental entity.
- d. “Personnel” means any of the following individuals who perform onsite functions: employees; contractors and sub-contractors (such as those who deliver goods or perform services onsite); independent contractors; vendors; volunteers and interns; and any other individuals who routinely are onsite at the request of the business or governmental entity.
- e. “Higher-Risk Settings” are settings that involve working in shared air space or proximity to people who are at higher risk of severe illness, hospitalization, or death from COVID because of age or underlying medical condition, as well as congregate settings where outbreaks are likely to occur. For the purposes of this Order, Higher-Risk Settings are those portions of the following facilities where there is shared air space or proximity to patients, clients, or vulnerable populations:
 1. skilled nursing facilities, long-term care facilities, adult day care facilities, and memory care facilities;
 2. healthcare delivery facilities (such as hospitals, clinics, medical offices, dialysis centers, etc.) where patient care is provided, as well as medical first responders;
 3. jails and other correctional facilities; and
 4. congregate shelters.

For purposes of this Order, personnel who are not permanently stationed or regularly assigned to a Higher-Risk Setting but who in the course of their duties may enter or work in Higher-Risk Settings even on an intermittent or occasional basis or for short periods of time are considered to work onsite in Higher-Risk Settings.

3. COVID-19 Vaccination Requirements for Personnel in Higher-Risk Settings.

- a. Requirement for All Personnel in Higher-Risk Settings to Obtain Boosters When Eligible. All businesses and governmental entities must ensure that all personnel in Higher-Risk Settings who are “fully vaccinated” are also Up-to-Date on their COVID-

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19 vaccination. Personnel who are not in compliance with this subsection may not continue to work in Higher-Risk Settings after February 1, 2022, unless they have an individually vetted and approved medical or religious exemption and also comply with the minimum requirements in subsection (c) below.

- b. Requirement for All Personnel in Higher-Risk Settings to be Vaccinated. By no later than January 24, 2022, all businesses and governmental entities must ensure that any personnel who are *not* already “fully vaccinated” as of the effective date of the December 28th Order and who are in Higher-Risk Settings received their first dose of a COVID-19 vaccine. Effective March 21, 2022, all personnel subject to this subsection must be “fully vaccinated.” Personnel who are not in compliance with this subsection may not continue to work in Higher-Risk Settings after February 1, 2022, and March 21, 2022, respectively, unless they have an individually vetted and approved medical or religious exemption from vaccination and also comply with the minimum requirements in subsection (c) below. For clarity, once personnel are “fully vaccinated” pursuant to this subsection, they are then subject to the requirement in subsection (a) to remain Up-to-Date on their vaccination (i.e., to obtain a booster once eligible).
- c. Requirements Regarding Personnel with Approved Exemptions. Nothing in this Order is intended to limit any business’s or governmental entity’s ability under applicable law to determine whether to grant an employee’s request for a medical or religious exemption from the requirement to be vaccinated, consistent with all applicable laws, and to offer an appropriate reasonable accommodation. For those limited personnel with legally sufficient and approved exemptions, employers are encouraged to ensure compliance with any applicable reasonable accommodation requirements.

However, businesses and governmental entities must require that any personnel who are not Up-to-Date on vaccination and subject to subsections (a) or (b) comply with at least the following public health and safety measures: (1) get tested for COVID-19 at least once a week—and at least twice a week for personnel who work in general acute care hospitals, skilled nursing facilities, intermediate care facilities, and jails—using either a PCR or antigen test; and (2) wear a surgical mask or higher-level respiratory protection, such as a KN95, KF94, or N95 respirator, at all times while in the facility (or in the case of medical first responders at all times while providing patient care).

Because of the COVID-19 risks to any exempt personnel who are not Up-to-Date on vaccination, the business or governmental entity must provide such personnel, on request, with a well-fitting non-vented N95 respirator and strongly encourage such personnel to wear that respirator at all times when working with patients, residents, clients, or incarcerated people.

Regular testing and masking as required under this subsection are not as protective of public health as being Up-to-Date on vaccination in helping prevent transmission of COVID-19; accordingly, those measures are a minimum safety requirement for exempt

personnel in Higher-Risk Settings. Businesses and governmental entities are encouraged to require additional safety measures for such personnel. For example, factors a business or governmental entity may consider in determining appropriate safety measures for exempt personnel include, but are not limited to:

- (1) Whether the personnel will place other people at risk of transmission of COVID-19 because they are required to come into contact (including on an emergency basis) with other personnel or with persons whose vaccination status is unknown, who are not yet eligible for the vaccine, or who are members of a vulnerable population (e.g., the elderly, incarcerated people, and acute care patients);
- (2) The type and frequency of testing available to the personnel and whether the business or governmental entity has the ability to provide testing to personnel, without relying on public health resources, and track the requisite testing;
- (3) Whether the business or governmental entity can ensure compliance with the mask requirement whenever the personnel are around other people in the workplace; and
- (4) Whether the proposed accommodation imposes an undue burden because it is costly, infringes on other personnel's job rights or benefits, compromises workplace safety, decreases workplace efficiency, or requires other personnel to do more than their share of potentially hazardous or burdensome work.

Nothing under the Order limits the ability of a business or governmental entity under applicable law to determine whether it is unable to offer a reasonable accommodation to unvaccinated personnel with an approved exemption and to exclude such exempt personnel from a Higher-Risk Setting.

- d. Record Keeping Requirements. Businesses or governmental entities subject to this Section must maintain records with the following information for their personnel who are their employees, volunteers, or independent contractors: (1) full name and date of birth; (2) vaccine manufacturer; and (3) date of vaccine administration (for all applicable doses). Nothing in this subsection is intended to prevent an employer from requesting additional information or documentation to verify vaccination status, to the extent permissible under the law.
- e. Cooperation with Public Health Authorities. Businesses or governmental entities with personnel subject to this Section must cooperate with the Public Health Department's requests for records, documents, or other information regarding the business or governmental entity's implementation of the requirements of this Order. This cooperation includes, but is not limited to, identifying all jobs or positions within the organization and describing: (1) whether a given job or position is subject to the vaccination requirements of this Section, (2) how the business or governmental entity

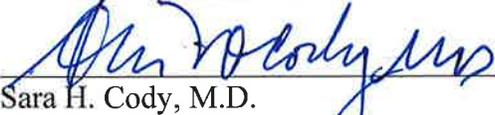
determined a job or position is subject to vaccination requirements of this Section, and (3) how the business or governmental entity is ensuring full compliance with the vaccination requirements set forth in this Section. Complete responses to these requests must be provided to the Public Health Department promptly upon request, and in any event within three business days after receiving the request.

4. **Recommendations from the Health Officer.** The Health Officer urges all businesses and governmental entities and individuals to follow the recommendations set forth below:
 - a. All eligible persons are strongly urged to get vaccinated and boosted against COVID-19 as soon as possible.
 - b. Businesses and governmental entities should implement mandatory vaccination requirements for all personnel that require Up-to-Date vaccination, subject only to the limited exemptions required by law.
 - c. Businesses and governmental entities should require all personnel not Up-to-Date with their vaccination to obtain frequent testing for COVID-19 consistent with current local, state, and federal recommendations. Any person, vaccinated or unvaccinated, who has any symptoms consistent with COVID-19 should get tested immediately.
 - d. Businesses that serve the public, especially those with activities that require patrons to remove their face mask to engage in the business (e.g., restaurants and bars), should require their patrons to be Up-to-Date on their vaccination and show proof of Up-to-Date vaccination prior to entry.
5. **Applicability.** All individuals, businesses, and other entities in the County are ordered to comply with the applicable provisions of this Order. For clarity, individuals who do not currently reside in the County must comply with all applicable requirements of the Order when they are in the County. Governmental entities must follow the requirements of this Order applicable to businesses, unless otherwise specifically directed by the Health Officer.
6. **Obligation to Follow Stricter Order.** Where a conflict exists between this Order and any order issued by the State Health Officer, the Governor, or a State agency (such as the California Division of Occupational Safety and Health (Cal/OSHA)) related to the COVID-19 pandemic, the most restrictive provision controls. For clarity, all individuals and entities must comply with State Orders, any mandatory guidance issued by the California Department of Public Health, any mandatory orders of the Governor or a State agency, or any other mandatory provision of State law to the extent it is stricter than any provision of this Order. Consistent with California Health and Safety Code section 131080 and the Health Officer Practice Guide for Communicable Disease Control in California, except if the State Health Officer issues an order expressly directed at this Order and based on a finding that a provision of this Order constitutes a menace to public health, any more restrictive measures in this Order

continue to apply and control in this County. In addition, to the extent any federal guidelines are inconsistent with this Order, this Order is controlling.

7. **Obligation to Follow Health Officer Directives and Mandatory State Guidance.** In addition to complying with all provisions of this Order, all individuals and entities, including all businesses and governmental entities, must also follow any applicable directives issued by the County Health Officer and any applicable mandatory guidance issued by the California Department of Public Health. To the extent that provisions in the directives of the County Health Officer and the guidance of the State Health Officer conflict, the more restrictive provisions apply.
8. **Enforcement.** Pursuant to Government Code sections 26602 and 41601, Health and Safety Code section 101029, and Santa Clara County Ordinance Code section A1-34 *et seq.*, the Health Officer requests that the Sheriff, all chiefs of police in the County, and all enforcement officers ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both. This Order is also subject to the civil enforcement authority established by Urgency Ordinance No. NS-9.291.
9. **Effective Date.** This Order is effective at 12:01 am on March 8, 2022. This Order shall continue to be in effect until it is rescinded, superseded, or amended in writing by the Health Officer. The December 28th Order is superseded by this Order as of the effective date.
10. **Copies.** Copies of this Order shall promptly be: (1) made available at the County Government Center at 70 W. Hedding Street, San José, California; (2) posted on the County Public Health Department's COVID-19 website (covid19.sccgov.org); and (3) provided to any member of the public requesting a copy of this Order.
11. **Severability.** If any provision of this Order or its application to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

IT IS SO ORDERED:


Sara H. Cody, M.D.
Health Officer of the County of Santa Clara

Dated: 3/7/22

Approved as to form and legality:


James R. Williams
County Counsel

Dated: 3/7/22

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