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August 24, 2021

TO: Each Supervisor

FROM: Barbara Ferrer, Ph.D., M.P.H., M.Ed.
Director, Department of Public Health

Rafael Carbajal
Director, Department of Consumer and Business Affairs

SUBJECT: EVALUATION OF COVID-19 VACCINE REQUIREMENTS FOR INDOOR PUBLIC SPACES (ITEM 73-B, AGENDA OF AUGUST 10, 2021)

This memorandum is in response to the August 10, 2021 Board motion instructing the Department of Public Health (DPH), the Department of Consumer and Business Affairs (DCBA) and County Counsel to evaluate options for requiring proof of vaccination to enter certain public indoor settings. The motion called for the following:

- I. DPH, in concert with the DCBA and County Counsel, to report back within 14 days on possible options for requiring vaccines in certain indoor public spaces in the County of Los Angeles. The report should review the decisions of other jurisdictions that have adopted similar mandates (e.g., New York City, France, possibly City of Los Angeles), consider whether a mandate should require one dose or full vaccination, and whether the policy should apply to all indoor public spaces or certain non-essential businesses and events (e.g., should grocery stores be exempt).
- II. DPH to report back to the board in 14 days with the process for how people can prove their vaccination status and businesses can verify vaccination status using existing digital forms of records and/or paper records.

- III. DCBA and the Chief Executive Officer (CEO) to identify the barriers that small and microbusinesses with less than 10 employees and \$100,000 in annual revenue could face in implementing a vaccination mandate, and recommendations for addressing those barriers, including but not limited to, leveraging existing American Rescue Plan Act funded grant programs to support these businesses with any increased costs of compliance.

Background

Many locations across the United States and the world are experiencing significant surges in COVID-19 cases, hospitalizations, and deaths. This is due to a combination of increased person-to-person contact with little or no physical distancing and mask use, increased travel, the spread of a highly infectious variant of the virus that causes COVID-19, and insufficient rates of vaccination against COVID-19 among the population. The best available scientific studies show that a layered public health approach to slowing the spread of COVID-19, which is comprised of full vaccination, indoor masking requirements, improved ventilation, and physical distancing, is effective in mitigating the risk of COVID-19 transmission, protecting the capacity of the local health care system, and preventing unnecessary and premature deaths.

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. As of August 19, only 55% of all Los Angeles County residents are fully vaccinated.

To address stagnating rates of vaccination, some international jurisdictions, including France, Italy, Quebec, Canada, and some cities in the United States, including New York City, San Francisco, New Orleans, and Palm Springs, have recently issued orders that will require customers at certain indoor businesses to present proof of partial or full vaccination prior to entry. This memo describes the requirements of other jurisdictions, discusses the framework that applies to vaccination verification policies, and makes recommendations based on legal, public health and practical considerations to the Board of Supervisors.

Vaccination Verification Policies in Other Jurisdictions

European Nations

European countries were the first to embrace the idea of a vaccine requirement to access private indoor establishments and businesses. In France, President Macron announced a nationwide policy on July 12, 2021 that requires visitors who enter a café, restaurant, entertainment venue, shopping center, hospital, or long-distance train to present their COVID-19 health pass (“*Pass Sanitaire*”), also known as the European Union Digital COVID Certificate.¹ The Certificate is required for any person ages 12 and older and provides information about whether a person has been vaccinated, recently tested, or previously diagnosed with COVID-19. After President Macron’s announcement, vaccine sites received a rush of interest in vaccine appointments, and the government has reported that 7 million additional vaccinations have been given since the program was first announced.²

In addition, Italy’s Prime Minister Draghi announced a similar program requiring individuals to present a health passport (“*Green Pass*”) in order to access indoor dining, museums, gyms, theaters, and other social activities.³ Notably, Italy, like France, only requires proof of vaccination at least 14 days beforehand, a recent negative test, or proof of recovery from COVID-19 and the termination of medical isolation.⁴ In Italy, the national vaccination rate rose from 61.33% to 63.9% in four weeks.⁵ In September, the program will be extended to include public transit such as ferries, buses, planes, and high-speed trains. Businesses in Italy face fines of €1,000 euros (a little over \$1,000 U.S. dollars) and can be closed for 10 days if they fail to comply.

Quebec, Canada

Despite Quebec’s high rate of vaccination (70 percent of Quebecois are fully vaccinated and 84 percent of eligible adults have received one dose of vaccine), Quebec’s provincial government recently announced a plan to require proof of vaccination at certain businesses in an effort to stem the spread of the Delta variant in the province, allow

¹ Chrisfalis A. France mandates COVID health pass for restaurants and cafes. The Guardian, July 12, 2021. Available: <https://www.theguardian.com/world/2021/jul/12/france-mandates-covid-health-pass-for-restaurants-and-cafes>. Accessed 8/15/2021.

² Ledsom A. France protests- but vaccine passport enforcement is working. Forbes, August 8, 2021. Available: <https://www.forbes.com/sites/alexledsom/2021/08/08/france-protests-but-vaccine-passport-enforcement-is-working/?sh=319066a8103a>. Accessed 8/16/2021.

³ Horowitz J. Italians (mostly) embrace a ‘Green Pass’ to prove vaccination on its first day. NY Times, Aug. 6, 2021. Available: <https://www.nytimes.com/2021/08/06/world/europe/italy-green-pass-vaccination-covid.html>. Accessed 8/15/2021.

⁴ National Tourism Agency of Italy. COVID-19 Updates: Information for Tourists. (August 6, 2021). <http://www.italia.it/en/useful-info/covid-19-updates-information-for-tourists.html> Accessed 8/23/21.

⁵ Reuters. Are vaccine passports moving the needle on getting people inoculated? Aug. 5, 2021. Available: <https://www.cp24.com/news/are-vaccine-passports-moving-the-needle-on-getting-people-inoculated-1.5535875?cache=piqndqvkh%3FcontactForm%3Dtrue%3Fot%3DAjaxLayout>. Accessed 8/16/2021.

businesses to remain open, and increase vaccination rates among adults aged 20 to 39.⁶ Quebec's policy goes into effect September 1 and will require proof of vaccination to enter certain high-risk businesses, including gyms, team sports, restaurants, and bars, as well as low and moderate-risk activities with large groups of people, such as attendance at arts and entertainment events, festivals and sports stadiums.⁷ Although customers will have the option to present their vaccine card or other paper-based proof of vaccination, Quebec is offering an electronic vaccination passport to residents that enables them to enter their personal information into a system that will then provide their vaccine status for business owners without sharing personal information.⁸

Cities in the United States

Currently, the cities of New York, San Francisco, and New Orleans have each enacted vaccination verification requirements. On August 4, 2021, the City of New York City became the first American city to institute a vaccination verification requirement, when Mayor Bill de Blasio announced the "Key to NYC Pass" program. On August 17, 2021, New York began requiring businesses that offer indoor dining such as bars and restaurants, indoor fitness establishments such as gyms and yoga studios, and indoor entertainment venues such as movie theaters, concert venues, museums, and theaters to check for proof of vaccination for all customers ages 12 and older.⁹ Customers must present proof that they have received at least one dose of vaccine. Unlike the European policies, New York will not allow persons to provide proof of a recent negative test or "test out" of the vaccination verification requirement. New York's requirements also extend to employees at these businesses, who must be fully vaccinated by October 13, 2021. Both the city and the state of New York have cell phone applications to enable easier checking of vaccination status, and businesses are also advised that they may accept a Centers for Disease Control and Prevention (CDC) white vaccine card, a photo of a vaccine card, or a copy of a person's vaccination record. An official immunization record is required as proof of vaccination for those who received the vaccine outside of the United States. There will be a month-long grace period on enforcement to give businesses the opportunity to adjust to the policy. Thereafter, businesses that fail to comply risk fines

⁶ Jonas S. Quebec to implement COVID-19 vaccine passport on Sept. 1 in the face of 'inevitable' 4th wave. CBC News. Aug 10, 2021. Available: <https://www.cbc.ca/news/canada/montreal/quebec-vaccine-passport-1.6136031>. Accessed 8/17/2021.

⁷ Quebec Provincial Government. COVID-19 vaccination passport webpage. Available: <https://www.quebec.ca/en/health/health-issues/a-z/2019-coronavirus/progress-of-the-covid-19-vaccination/covid-19-vaccination-passport>. Accessed 8/17/2021.

⁸ Quebec Provincial Government. Proof of COVID-19 vaccination webpage. Available: <https://www.quebec.ca/en/health/health-issues/a-z/2019-coronavirus/progress-of-the-covid-19-vaccination/proof-covid-19-vaccination>. Accessed 8/17/2021.

⁹ NYC Health, COVID-19: Vaccine, Key to NYC page. Available: <https://www1.nyc.gov/site/doh/covid/covid-19-vaccines-keytonyc.page>. Accessed 8/16/2021.

starting at \$1,000 and subsequent violations increasing to \$2,000 and up to \$5,000 for every violation thereafter.^{10,11}

On August 12, 2021, San Francisco issued a similar vaccination verification requirement via a County Health Officer Order (“Safer Return Together”).¹² Significantly, the San Francisco order requires all customers age 12 and older to submit proof that they are fully vaccinated (a higher bar than New York) before being admitted into large indoor events (those between 1,000 and 4,999 people), establishments where food and drink is served, entertainment venues, and fitness establishments. Under the San Francisco order, persons who are unable to show proof of vaccination are required to be seated outside at restaurants, may not purchase concessions for indoor consumption at theaters, or and may not consume food or beverages at food courts within indoor shopping malls. The vaccination verification requirement does not apply to patrons under the age of 12. Persons may not “test out” of the full vaccination requirement. Like New York, San Francisco requires staff working at the businesses to be fully vaccinated by October 13, 2021. San Francisco does not have an electronic vaccination verification system. Instead, the order lists acceptable forms of proof of vaccination, which include a CDC vaccine card, a photo of a vaccination card, documentation from a health care provider, or a personal digital vaccination record.¹³

On August 16, 2021, New Orleans became the third large U.S. city to implement a vaccine verification policy, requiring customers to submit proof of having received at least one dose of vaccine or a negative COVID-19 test within 72 hours prior to entry into certain indoor businesses.¹⁴ The New Orleans policy specifically applies to indoor dining and drinking, indoor fitness, indoor entertainment and performances, including professional sporting events, event spaces, pool halls, bowling alleys, indoor play centers, adult entertainment facilities, casinos, racetracks, outdoor events with more than 500 people, and indoor amusement facilities. Businesses may accept a CDC vaccine card or an official vaccine record from another state or country, or the city’s electronic application, known as the LA Wallet App’s SMART Health Card.¹⁵

The City of Palm Springs issued a Local Emergency Supplementary Order that goes into effect on August 26, 2021 which requires proof of vaccination status or a negative COVID-

¹⁰ NYC Health. (August 16, 2021). Emergency Executive Order 225. Key to NYC: Requiring COVID-19 Vaccination for Indoor Entertainment, Recreations, Dining and Fitness Settings. <https://www1.nyc.gov/office-of-the-mayor/news/225-001/emergency-executive-order-225>. Accessed 8/23/21.

¹¹ Goldman H. NYC to require vaccinations for museums, stadiums, casinos. Bloomberg News, Aug. 16, 2021. Available: <https://www.bloomberg.com/news/articles/2021-08-16/nyc-to-require-vaccinations-for-museums-stadiums-casinos>. Accessed 8/16/2021.

¹² Order of the Health Officer No. C19-07y (updated). Aug. 12, 2021. Available: <https://sfdph.org/dph/alerts/files/C19-07-Safer-Return-Together-Health-Order.pdf>. Accessed 8/13/2021.

¹³ Id. at Appendix B, page 1.

¹⁴ NOLA Ready: COVID-19 in New Orleans. Current Guidelines page. Available: <https://ready.nola.gov/incident/coronavirus/safe-reopening/>. Accessed 8/16/2021.

¹⁵ More information about the LA Wallet is available here: <https://lawallet.com/>.

19 test for indoor dining at bars and restaurants.¹⁶ Similar to the New Orleans policy, patrons at a bar or restaurant in Palm Springs must show proof of having received at least one dose of vaccine or a negative COVID-19 test within 72 hours of entry. The Palm Springs emergency order lists as acceptable proof of vaccination: a CDC vaccine card, a photo of a vaccination card, documentation from a health care provider, or a digital vaccination record, such as the California Digital Vaccine Record administered by the California Department of Public Health (CDPH)¹⁷, that issues a QR code and digital copy of a person's vaccination record.

In addition, the Los Angeles City Council recently voted to direct the City Attorney to prepare an ordinance that would require customers to show proof of at least partial vaccination in order to access indoor public spaces in the city, including restaurants, bars, gyms, entertainment venues, movie theaters, and retail establishments. Recently, several Los Angeles businesses and venues have independently and voluntarily elected to adopt their own vaccination verification policies to lower the risk of COVID-19 transmission within their establishments and to protect their workers. A partial list of these businesses includes a group of about 73 restaurants¹⁸ and between 20¹⁹ to 49²⁰ bars that require proof of vaccination or a negative test for entry. In addition, certain entertainment venues are presently requiring additional precautions: The Hollywood Pantages Theater requires vaccination for adults and a negative test for children under 12 years of age²¹; AEG Presents, a promoter of large festivals and concerts, such as Coachella, will require vaccination for both attendees and staff²²; and the Los Angeles Philharmonic will require all patrons to be fully vaccinated to attend their performances at the Walt Disney Concert Hall.²³

¹⁶ City of Palm Springs. (August 12, 2021) "Local Emergency Supplementary Order Regarding Proof of Vaccination Status, or Negative COVID-19 Test for Indoor Dining at Bars and Restaurants."

<https://www.palmspringsca.gov/home/showpublisheddocument/79763/637643930664370000>

¹⁷ California Department of Public Health. Digital COVID-19 Vaccine Record.

<https://myvaccinerecord.cdph.ca.gov/>

¹⁸ Elliott, Farley. (August 6, 2021) "A Running List of LA Restaurants Requiring Vaccine Proof for Indoor Dining." *Los Angeles Eater*. <https://la.eater.com/2021/8/6/22613292/los-angeles-restaurants-requiring-vaccination-card-indoor-dining-covid-19-delta-variant>

¹⁹ Breijo S. "Restaurants and bars implement their own health policies as Delta-variant cases rise." *LA Times*, Aug. 2, 2021. Available: <https://www.latimes.com/food/story/2021-08-02/restaurants-and-bars-implement-vaccine-passports-covid-tests-health-guidelines-as-delta-variant-cases-rise>, Accessed 8/18/2021.

²⁰ Ray, Lexis-Olivier. (July 20, 2021). "Here is the Quickly Growing List of LA Bars Not Allowing Unvaccinated People on Premises." *LA Taco*. <https://www.lataco.com/bars-asking-vaccine-proof-covid/>

²¹ City News Service. Hollywood Pantages to require proof of vaccination for 'Hamilton' shows. NBC4. July 30, 2021. Available: <https://www.nbclosangeles.com/news/local/hollywood-pantages-to-require-proof-of-vaccination-for-hamilton-shows/2655319/>.

²² AEG Presents Vaccination Announcement Page, available: <https://www.aegpresents.com/health-policy/>. Accessed 8/18/2021.

²³ Gelt J. L.A. theaters and orchestras harden their rules: Vaccinations required, no exemptions. *LA Times*, Aug. 17, 2021. Available: <https://www.latimes.com/entertainment-arts/story/2021-08-17/covid-vaccination-delta-mandate-exceptions-la-phil-theaters>.

Legal Implications of COVID-19 Orders

When reviewing the constitutionality of COVID-19 public health orders on secular businesses, courts typically allow governmental officials significant deference to protect the public's health. Earlier this year, the County of Los Angeles prevailed in a lawsuit that challenged its November 2020 prohibition of outdoor dining at a time when vaccines were not available and the County was experiencing a major surge in COVID-19 cases, hospitalizations, and deaths. The court acknowledged that state and local governments have the primary responsibility for addressing COVID-19 matters, such as, quarantine requirements, mask mandates, and business and employee protections. Regarding COVID-19 requirements placed on secular businesses, public health orders must have a real and substantial relation to the government's compelling interest in limiting the spread and negative health impacts of COVID-19. Such public health orders will be valid if reasonably related to protecting the public from COVID-19 transmission and the means adopted to accomplish the goal are reasonably appropriate to achieve the purpose of that order. It must be noted here that courts will employ a higher level of scrutiny when analyzing public health measures that impact places of worship differently than secular businesses.

Specifically, regarding vaccination mandates, in July the federal Department of Justice's Office of Legal Counsel (OLC) issued an opinion that determined that the COVID-19 vaccines' Emergency Use Authorization (EUA) status under the Food, Drug, and Cosmetics Act (FDCA) does not prevent public and private entities from imposing vaccination requirements. Per the OLC, although potential recipients of the COVID-19 vaccine must be informed of their option to refuse, this does not prevent public or private entities from requiring the vaccination as a condition of employment, to attend a university, or to participate in events. Public and private entities are permitted to require the vaccines under the FDCA's EUA provisions because the individual still has the option to refuse the vaccination but will simply have to face the consequences of refusal.

On August 23, 2021, the U.S. Food and Drug Administration (FDA) approved the license for the Pfizer-BioNTech COVID-19 vaccine for the prevention of COVID-19 disease in individuals 16 years of age and older. The Pfizer COVID-19 vaccine continues to be available under EUA for those 12 through 15 years old and for a third dose in certain immunocompromised individuals.

Previously, in June 2021, in a highly publicized case, a federal District Court in Texas rejected an attempt by Houston medical workers to challenge the legality of their employer hospital's decision to require that all employees receive a COVID-19 vaccine. The court explained that the vaccine mandate is part of the bargain of at-will employment and does not constitute coercion, since the hospital is simply "trying to do their business of saving lives without giving [employees] the COVID-19 virus. It is a choice made to keep staff, patients and their families safer."

There are accommodation issues for those that have recognized vaccination exemptions that will need further legal analysis.

Options for Requiring Vaccination Verification at Certain Indoor Public Spaces

Your Board has asked for possible options for requiring vaccination verification in certain indoor public spaces, which could be used as a measure to combat the spread of the Delta variant among both unvaccinated and fully vaccinated Los Angeles County residents. This section will discuss various vaccination verification decision points and provides options based upon level of risk presented and health protection benefits.

I. Vaccination Status – Fully Vaccinated or Partially Vaccinated

The initial option for a vaccination requirement for indoor businesses is to determine the appropriate vaccination status to require for customers as well as employees and whether to include a “test out” or negative COVID-19 test option. While some jurisdictions have opted for a less stringent standard which allows customers to enter indoor portions of businesses by either providing proof of one vaccine dose (partial vaccination) or a recent negative test result, Public Health believes that the most protective approach for a vaccination requirement is to require full vaccination, as defined by the CDC. As of the date of this report, full vaccination is defined as two weeks after having had two doses in a two-dose COVID-19 vaccine series (Pfizer-BioNTech and Moderna), one dose of the Johnson & Johnson COVID-19 vaccine for U.S. residents, or for individuals who have been vaccinated outside the United States, completion of one of the COVID-19 vaccine series authorized by the World Health Organization (WHO) for Emergency Use Listing (EUL). Recent studies suggest that being partially vaccinated is much less effective at protecting against Delta variant infection than being fully vaccinated.²⁴ DPH is seeing unfortunate higher rates of infection, hospitalizations, and deaths among those who are not fully vaccinated. Similarly, allowing indoor entry to either partially or unvaccinated persons, whether employees or customers, who show proof of a negative test or use a “test-out” option, is suboptimal. An FDA-authorized COVID-19 diagnostic test result only demonstrates the person’s COVID-19 infection status at the time the test is taken. Moreover, including a “test-out” option for the unvaccinated or a partial vaccination option would fail to provide an appreciable level of risk reduction for other patrons and employees within indoor settings. As such, these less protective options do not promote optimal safety in the workplace and may leave patrons and employees with a false sense of safety that results in increased risk of COVID-19 transmission at these establishments.

²⁴ Van Beusekom M. Study: 2 COVID vaccine doses much more effective than 1 against Delta. Center for Infectious Disease Research and Policy. July 22, 2021. Available: <https://www.cidrap.umn.edu/news-perspective/2021/07/study-2-covid-vaccine-doses-much-more-effective-1-against-delta>. Accessed 8/16/2021.

II. Types of Indoor Businesses and Settings Present Higher Levels of Risk of COVID-19 Transmission

The second option to consider regarding a vaccination requirement for indoor businesses is to determine the type(s) of indoor public settings to which the requirement would apply. Right now, Los Angeles County is experiencing a high level of COVID-19 community transmission. When the County's level of community transmission based upon CDC thresholds increased from moderate to substantial, Public Health on July 17, 2021, proactively issued the first indoor masking requirement in the nation. Our County required masking at all indoor public settings regardless of a person's vaccination status. By the end of July, both the State of California and the CDC issued similar indoor masking guidance. Currently, the CDC recommends that everyone (including those who are fully vaccinated) wear a mask indoors in public if you live or work in an area of substantial or high transmission of COVID-19 to maximize protection from the Delta variant and prevent possibly spreading it to others.

Because Los Angeles County is and has remained at a level of high community transmission, additional layers of protection in certain indoors settings where COVID-19 transmission is more likely to occur must be considered to avoid further negative impacts to the populous and business community. These are indoor public settings where persons are not required to wear masks at all times such as restaurants, bars, and other establishments that serve food or beverages. The following establishments present 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. This would include indoor portions of businesses that serve food and drinks, such as restaurants, bars, breweries, distilleries, nightclubs, and lounges. There are also other businesses that have ancillary food and beverage service to their main business function, such as cardrooms, arcades, family entertainment centers, and adult entertainment centers that fall into this category.
- 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. This category includes gyms, fitness centers, dance studios and yoga studios. Often, in these locations, participants are not adequately distanced from others.
- 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. This category includes movie theaters, concert venues, and live performance venues.

Public Health recommends that this initial vaccination requirement for indoor businesses apply first to those indoor public settings that present a higher risk of transmission, as described above, because of exceptions to the universal indoor masking requirement,

increased levels of physical exertion by customers, or large numbers of people at an establishment or the close proximity of employees and/or customers for long periods of time.

III. Categories of Persons to Whom Vaccination Verification Requirements Should Apply

The next option to consider is to whom any potential vaccination requirement for indoor businesses should apply. For entry into the indoor portions of the covered business, any verification requirement should clearly apply to all persons 12 years of age or older, as that category of persons have already been eligible to receive the COVID-19 vaccine for months. Public Health believes for practical reasons that any verification requirement should not apply to children under 12 years of age. They are not yet eligible for vaccination and it would pose an undue hardship to families seeking to obtain services at business with a vaccination requirement.

From an infection control and risk reduction perspective, the vaccination requirement for indoor businesses should also apply to employees of the higher-risk businesses as it would to customers. Like San Francisco and New York, Public Health recommends that all employees who regularly work on-site for a business that is categorized as higher risk provide proof that they are fully vaccinated before entering or working in any indoor portion of the business. The goal of vaccination verification is to reduce the risk of transmission, while also encouraging increased rates of full vaccination. Ensuring that staff are also fully vaccinated lowers the overall risk in these business environments. There may be concerns among stakeholders regarding this proposal, including the potential that such a requirement could compound the current labor shortage. At the same time, protective measures such as a vaccination requirement may provide greater confidence for workers who otherwise may not feel adequately protected from COVID-19 exposure at work. Of note, both NYC and San Francisco provide a two-month window for employees to become fully vaccinated.

IV. Acceptable Methods of Proof of Vaccination

There are several options to consider when setting up a system to verify vaccination status. One option is to follow the process that the State and County have used in the past, in accordance with the [August 5, 2021 CDPH Vaccine Record Guidelines & Standards](#), to use either paper records such as the CDC vaccine card, the World Health Organization's updated yellow card ("*Carte Jaune*"), a photo of the person's vaccination card, a letter or digital COVID-19 vaccination records that are currently available from the State and Los Angeles County (Healthvana), or documentation of vaccination from a healthcare provider. The QR Code on the State's digital record can be scanned and read by a SMART Health Card-compliant device. The upside to this approach is that it is familiar (e.g., it has been used in the past by customers and businesses) and would not require any additional investment of resources by the County. The concern raised by

some of the larger venues is that this approach of having a mix of options for verification, including vaccination cards that need to be checked manually, could slow customers' access to enter an establishment. While this is a concern, there are many businesses and event venues already requiring vaccination verification that have successfully addressed this challenge.

One option to move to a more streamlined COVID-19 vaccination verification process is to have the County invest in the development of a digital vaccination pass to verify vaccination status as other jurisdictions such as New York and New Orleans have done. While this will take some time, there is an opportunity to work with the State to expand the use of California's Digital Vaccine Record. One challenge to the use of a digital vaccine pass is that the public has significant concerns about being "tracked" by the government and may be reluctant to use such an electronic tool. Nonetheless, moving to a digital verification option will make it easier for businesses to check vaccination status without having to go through each customer's individual vaccination record to verify their name, ID, and date(s) of vaccination and would speed customers' entry into businesses. A countervailing concern is the "digital divide" experienced by certain populations including seniors, lower-income, or unhoused individuals. A digital only verification system could pose significant barriers to individuals who do not possess a smart phone and/or are not familiar with how such a digital record would work.

Self-attestation of vaccination status is not an option. The State will no longer allow self-attestation to be used by an individual to verify their status as fully vaccinated for certain indoor settings where verification is required.

V. Scope and Enforcement

Should a vaccination requirement be implemented for certain indoor public settings, it will be most effective as a tool to lower levels of COVID-19 transmission if it is a countywide mitigation measure. Both Public Health and our business and labor partners agree that this will work best if there is a single vaccination requirement within the entire County. This will avoid confusion and assist with uniform implementation. As always, businesses and other municipalities can require more stringent measures.

Compliance with any mandate is best supported by providing time and resources to educate businesses, labor partners, employees, and customers. As with any other sector-specific mandate, an education first approach is necessary to help businesses comply with the requirement. After providing businesses with education and technical assistance, compliance can then be enforced by local authorities, including but not limited to Public Health inspectors, when visiting businesses to ensure that those subject to the requirements have an operational system in place for checking vaccination status of customers entering the business. As an example, for businesses found not to be in compliance once full implementation is required, Public Health recommends issuing a notice of violation with a 24-hour correction period. Upon a revisit, Public Health would

consider issuing an administrative citation if an inspector found ongoing non-compliance. There could also be increasing penalties for continued non-compliance or willful refusal to verify vaccination status, which could include permit or license suspension, a closure order, or other civil penalty. By way of comparison, if a business does not implement the verification requirement within 24 hours of receiving a notice of violation, San Francisco will suspend the permit and close the facility until the business submits a health and safety plan that addresses all violations. If a violation remains unaddressed, fines may be imposed.

There should be ample public messaging and time for businesses to create materials and train their staff to correctly implement any verification process. Additionally, support for small businesses should be made available during the implementation process.

VI. Effect on Indoor Masking

Science continues to evolve as we learn more about COVID-19 and its variants. Again, the best science currently available tells us that a layered approach to prevention, including but not limited to masking indoors, improved ventilation, and vaccination against COVID-19, is the most effective strategy to prevent transmission of the highly contagious Delta variant. And, as mentioned previously, the CDC currently recommends that everyone (including those who are fully vaccinated) wear a mask indoors in public if you live or work in an area of substantial or high transmission of COVID-19 to maximize protection from the Delta variant and prevent possibly spreading it to others.

Based on the continued high rate of community transmission in LA County, Public Health will not consider removing the indoor mask requirement until the County returns to and maintains a moderate level of community transmission. Fully vaccinated people who do get infected are able to transmit the infection to other people. In addition, because children under the age of 12 are not currently eligible for vaccination, indoor masking should be maintained to protect them from transmission.

VII. Exemptions, Exceptions, and Clarifications

With any potential requirement that will impact hundreds of businesses within Los Angeles County, consideration must be given to the types of visitors to higher-risk businesses that would be exempted or claim exceptions from a vaccination verification requirement. Initially, and as stated above, Public Health recommends that children under the age of 12 be exempted from the requirement as they are not currently eligible for COVID-19 vaccination. Other relevant and well-taken exemptions and exceptions were made by San Francisco in its order, and are listed below:

- San Francisco exempts certain visiting performers and professional players from the vaccine policy, but they must: remain 6 feet away from members of the public, provide proof of a negative COVID-19 test taken within 48 hours prior to the event; wear a well-fitted mask at all times except while actively performing or playing; and

not enter any indoor area of any other business subject to this policy except where they must be to play or perform.

- San Francisco explicitly states that the verification requirement does not apply to outdoor portions of the venue (e.g., you can dine outdoors if you are not vaccinated or exercise in the outdoor portion of a fitness center). San Francisco also permits patrons who are not fully vaccinated to briefly enter the business to use the restroom or to pick-up a to-go order provided that they are wearing a well-fitted mask.
- San Francisco enables restaurants/bars/food courts/theaters to check the vaccine status when a person orders rather than upon entry to the establishment provided that individuals are wearing masks.

VIII. Concerns Expressed by Business Sector Partners

Public Health and DCBA consulted with several business sector partners to discuss the possible impacts of a vaccination verification requirement for indoor public settings (See the Attachment for the list of business sector and labor partners consulted). Our private sector partners expressed conditional support for a vaccination verification requirement. They uniformly want to avoid the necessity of returning to limited capacity requirements and expressed that if vaccination verification was an alternative to more restrictive infection control measures that they would be supportive.

Our private sector partners anticipated these and many other issues with a verification requirement and made specific suggestions. The points raised by our private sector partners are listed below:

Countywide Approach

Sector partners noted any vaccination verification requirement should be consistent across the entire county. Some even expressed support for aligning with the San Francisco order for statewide consistency. The lack of a consistent vaccine verification requirement across the state was a significant concern, particularly for amusement parks.

Patron Requirement vs. Employee Requirement

Some businesses cited the difficult hiring environment for frontline workers right now. Some expressed concern that a vaccine mandate would exacerbate existing labor shortages in some sectors by reducing the pool of available workers and causing some workers to leave. While some partners stated that an employee vaccine mandate would take longer to enact than a patron vaccine requirement, others expressed greater confidence in being able to confirm vaccine status of employees than patrons.

Clear Implementation Timeline

Multiple partners asked for a phase-in period, citing many steps are required before being ready to implement the requirement. For example, businesses noted needing sufficient

time to train their staff members on procedures, identifying acceptable methods of proof of vaccination, and allowing sufficient time for their staff members to become fully vaccinated.

Enforcement, Liability, and Costs to Implement

Many partners noted that there could be customer service enforcement issues, similar to those experienced when customers refuse to wear a mask, that will cause anxiety among staff and could lead to altercations with non-compliant customers. Most partners also expressed concerns regarding how to verify medical, religious, and age-related exemptions and the threat of altercations and liability when faced with not allowing guests into areas due to exemptions/verification. Businesses also have questions regarding whether accommodations must be offered to customers with verifiable medical, religious, and age-related exemptions or non-verifiable vaccine status (e.g., all food service must be conducted outdoors, allow to briefly enter the business to use the restroom or to pick-up a to-go order if they wear a well-fitted mask).

The costs of implementing the mandate (e.g., costs associated with procuring SMART Health Card-compliant devices needed to scan California's Digital Vaccine Record) as well as the potential hardship posed on hiring or the threat of employees leaving the job, were raised as potential challenges. Overall, implementation has the potential to increase labor costs, as it may require staff to be deployed to meet the requirement, taking them away from existing job responsibilities. Electronic or paper-based systems businesses may use to document the vaccination status of regular customers or employees may also require an additional expense for businesses. And finally, costs associated with making needed modifications that support compliance and/or related accommodations (e.g., outdoor dining areas, online or phone systems to facilitate to-go ordering) may require additional expenses for businesses. Supports, particularly for small businesses, would prove critical to successful implementation.

Clearly Defined Spaces and Categories of Persons

Private sector partners requested that impacted indoor settings be clearly defined. Businesses want to limit the number of customers that they would be required to verify vaccination status. Businesses questioned whether the verification requirement would only apply for admission into indoor food service areas if the remainder of the indoor business continued to operate with universal masking but without requiring vaccination verification of non-dining customers. Some businesses requested verification of dine-in customers only. Other businesses were willing to move all dining operations outdoors to avoid the need to verify customers' vaccination status. In addition, hospitality businesses requested clarification on the responsibility for verifying the vaccination status of guests (e.g., facility operator or event organizer) at an indoor private event held on their premises.

Communication

Private sector partners uniformly requested that any vaccination verification requirement have a robust public and business sector education campaign prior to implementation.

Multiple partners requested that a vaccine requirement for patrons be coupled with a significant media campaign to assure the public is well informed about any new requirements. They specifically requested that the allowable vaccine types be listed, acceptable forms of vaccination verification be depicted using clear images, and a clear policy on exemptions be included. Partners also requested the need for signage that communicates clearly to customers that the vaccination verification is a government requirement.

Our private sector partners expressed a strong desire for all eligible persons to be vaccinated, so that our rates of community transmission, hospitalizations and premature deaths may decrease. Some noted that the current high level of COVID-19 community transmission is not sustainable for their businesses. Substantially lowering these negative health impacts will help these businesses and their workers return to new normal operations. Although they expressed support for the County's efforts and appreciation for Public Health and DCBA's outreach, each sector noted that a vaccination verification requirement would bring challenges of varying degrees for their businesses.

IX. Concerns Expressed by Labor Partners

Public Health and DCBA consulted with labor partners to discuss the possible impacts of a vaccination verification requirement to enter indoor public settings. Partners overwhelmingly supported the requirement to create safer environments and offered valuable insight regarding the challenges, concerns, and fears expressed by the employees they represent. Feedback generally centered around the following themes:

Robust Worker Protections

Most partners noted that a vaccination requirement is not a substitute for following other COVID-19 related safety measures, including mandatory masking, distancing, staggered shifts, access to Personal Protective Equipment (PPE), and ensuring the availability and use of paid sick leave for vaccination appointments, post-vaccination side effects, and employee or family illness. Several partners recommended that employers hire and train employees to serve as Health and Safety Officers, designated to help the business and customers with compliance. In this role, employees would not only help businesses meet the vaccination verification requirement but would also possess a deep understanding of COVID-19 protocols, infection control best practices, employee rights, and employer responsibilities. And finally, while noting their support for life-saving vaccines, some partners did elevate that a vaccination requirement should include an administrative leave option rather than termination for unvaccinated employees. Such a requirement would avoid exacerbating worker shortages and prevent impeding workers from earning a living.

Strong Enforcement of the Mandate and Employee Rights

Once again noting their support for required vaccination verification, partners did note the pressing need to protect the safety of employees verifying vaccination status. Employees serving as the aforementioned Health and Safety Officers would need training on

communication, conflict resolution, and maintaining safety in different types of settings. Additional security personnel would also be considered helpful, especially in sectors that are heavily comprised by racial/ethnic groups that have already been unjustly and disproportionately targeted by misinformation and violence during the COVID-19 pandemic.

Worker organizations highlighted the challenges faced by employees when trying to access their paid sick leave due to COVID-19 infection or to recuperate from post-vaccination side effects. They also acknowledged that this challenge has existed before the pandemic and that many workers have not gotten vaccinated due to the fear of losing their job because they need to take time off for the vaccination appointment or to recover from post-vaccination side effects. While partners understand DPH would not be the enforcement agency for the state paid sick leave policies, partners did note that any support Los Angeles County could offer to businesses so that they honor worker rights (e.g., stronger communication, subsidies) would prove helpful, particularly for workers who do not feel confident to move forward with filing a claim or complaint due to fear of retaliation since enforcement of this right is not strong.

Overall, some partners identified that enforcement would be challenging, particularly in low compliance industries.

Paid Onsite Education and Wraparound Services

Our labor partners stressed the importance of ensuring access to education resources (e.g., training, talking points) for employers and employees. Content could include a range of topics such as education to help workers feel comfortable with the vaccines, employee rights and employer responsibilities, clearly delineated processes for submitting complaints, and managing conflict when being asked to enforce the vaccination requirement. Sector partners raised the importance of having access to healthcare workers to help answer questions from staff directly, rather than having to rely on community organizers or other staff that may have limited COVID-19 related expertise to respond to members' vaccine-related concerns. Further, partners also elevated the need to have representatives available to discuss COVID-19, other health topics, and available resources at work and at locations where employees congregate outside of work. Topics could include, helping workers connect to health care resources beyond a COVID-19 vaccine (e.g., enrollment in MyHealthLA).

Several opportunities to build upon existing community-based education and referral/linkage initiatives arose during these conversations. DPH will continue to work to ensure that appropriate connections are made to existing resources (e.g., DPH Speakers Bureau, community health worker initiatives, and mobile vaccination units, among others).

Clarity Around Impacted Locations

Sector leaders also noted the importance of a clear definition of "public spaces." While some workplaces are limited to employees, partners raised the importance of considering

the risk posed by frequent visitors including vendors, drivers, and quality control staff who may be non-compliant with existing COVID-19 related safety measures.

Supports for Businesses

Grants to support smaller businesses, described by our partners as businesses with less than 25 staff, would be helpful for these entities to hire staff to serve as Health and Safety Officers. In addition, sustainable funding for current and future worker organizations that support coordination of vaccine clinics and provide worker education and technical support would be greatly beneficial for the funded entities, as well as the communities they serve. Also, funding to ensure businesses can procure needed SMART Health Card-compliant devices to scan the QR Code on the state's digital record can prove helpful, particularly to smaller business.

Partners also noted the importance of continuous collaboration between Public Health and DCBA in order to directly communicate and provide education on the requirements to business owners and managers. This approach ensures business owners/managers receive the same information as that being shared with employees during on the ground education and outreach activities. Further, opportunities for businesses to learn from one another, like through sector-specific workgroups, have been elevated as potentially valuable forums for businesses, particularly during initial implementation of a vaccination requirement.

X. Barriers Faced by Small and Microbusinesses

Microbusinesses with less than 10 employees and \$100,000 in annual revenue could face barriers in implementing a vaccine mandate. The following are recommendations for addressing those barriers, including leveraging funding opportunities to support those businesses with increased costs of compliance.

Financial and Operational Burden on Microbusinesses

Cost Burdens on Businesses

Requiring businesses to confirm proof of vaccination will create a financial and operational burden on businesses, specifically microbusinesses.

Challenges

Due to labor shortages, some businesses are understaffed and may be challenged by the requirement to check vaccination status. Additionally, businesses may have to incur the costs of purchasing equipment needed to verify proof of vaccination, posting signage, or modifying their business operations to conform to the mandate.

Opportunities to Support Businesses

DCBA may be able to utilize American Rescue Plan (ARP) funds to provide grants to small businesses to offset the cost of equipment purchases. However, this support is dependent on timely availability of ARP funds. Depending on direction provided by the

Board of Supervisors, DCBA will review available ARP funds to determine if certain grant opportunities can be leveraged to offset costs incurred by microbusinesses to comply with the mandate.

DCBA can support Public Health in a robust public and business education and outreach campaign to both promote vaccinations and raise awareness of this mandate. The campaign will publicize methods of compliance and connect businesses to any available resources, such as Supplemental Paid Sick Leave, that would cover the costs incurred for allowing employees to obtain vaccinations and digital toolkits developed that businesses may use to comply with the mandates.

Leveraging Existing Efforts to Conduct Education and Outreach to Microbusinesses

The County should leverage existing efforts to conduct a robust education and outreach campaign targeting microbusinesses. This can include leveraging Public Health's Community Health Worker Outreach Initiative and Public Health Councils program.

Community Health Worker Outreach Initiative (CHWOI)

The CHWOI Program mobilizes Community Health Workers to connect communities to resources that improve their health and well-being. Community Health Workers are trusted community members who often share the ethnicity, language, and life experiences of the communities they serve and are vital to connecting non-English speaking communities to critical resources.

Public Health Councils

The Public Health Councils were adopted in November 2020 in anticipation of mitigating the COVID-19 impacts on both businesses and workers. The intent of these Councils is to train employees to better identify health violations in the workplace and act as a conduit between public health and the employers to ensure that employers are aware of resources and follow health protocols. Community based organizations were contracted to collaborate with and train workers in enumerated industries to ensure effective resolution of health issues. Additionally, the County adopted an anti-retaliation ordinance to allow for safe reporting that is free of coercion.

Education and outreach will be key for the successful implementation of this mandate. Each of the above efforts can be expanded to ensure that our targeted businesses are aware of the mandate, understand the requirements, connect to any available resources, our facilitate the reporting of noncompliance of the mandate.

Next Steps

DCBA will continue to coordinate with DPH to gather additional feedback from impacted business sectors, as well as development of any digital toolkits. Additionally, to support businesses in complying with the mandate as the program rolls out, DCBA will continue to work closely with the County's Chief Executive Office to explore opportunities to

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leverage various funding sources, such as ARP dollars, and explore alternate sources in case such funding is unavailable.

If you have questions or would like additional information, please let us know.

BF:RC:rr

Attachment

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors

ATTACHMENT: Business Sector and Labor Partners Consulted to Determine Feasibility of Mandate

Business Sector Partners

Organization	Sector
AEG Presents	Entertainment Venues, Live Performances
AMC Theatres	Movie Theaters
Banc of California Stadium	Entertainment Venue
Bicycle Club	Cardrooms
California Restaurant Association	Food establishments
Cinemark Theatres	Movie Theaters
Commerce Casino	Cardrooms
Equinox	Gyms / Fitness
Hawaiian Gardens Casino	Cardrooms
Hollywood Park Casino	Cardrooms
Hotel and Lodging Association	Hospitality
JW Marriott Hotel	Hospitality
LA Tourism and Convention Board	Hospitality
LACMA	Museums
Lucky Lady Casino	Cardrooms
MOCA	Museums
National Associations of Theater Owners	Entertainment Venues, Movie Theaters
Regal Cinemas	Movie Theaters
Regency Theatres	Movie Theaters
Skirball Cultural Center	Museums
So Fi Stadium	Entertainment Venue
STAPLES Center	Entertainment Venue
The Academy Museum of Motion Pictures	Museums
The Broad	Museums
The California Science Center	Museums
The Crystal Casino	Cardrooms
The Getty Center	Museums
The Grammy Museum	Museums
The Hollywood Pantages Theater	Live Performances
The Huntington Library, Art Museum, and Botanical Gardens	Museums
The LA Philharmonic	Live Performances
The Lucas Museum of Narrative Art	Museums
The Natural History Museum	Museums
The Peterson Automotive Museum	Museums
Universal Studios Hollywood	Amusement Parks

Labor Partners

Organization	Sector
CA Healthy Nail Salon Collective	Nail salon owners and workers
CLEAN Carwash Campaign	Carwash workers
Garment Workers Center	Garment Workers (PHC program grantee)
Hospitality Training Academy (HTA)	Hotel workers, restaurant workers. Training arm of Unite Here Local 11 (PHC program grantee)
IATSE Local 33	Entertainment Union: lighting, video, audio, rigging, automation
Institute of Popular Education of Southern CA (IDEPSCA)	Day laborers, household workers, home care, etc.
Koreatown Immigrant Worker Alliance (KIWA)	Grocery, restaurant, garment, misc. (PHC program grantee)
LA Alliance for a New Economy (LAANE)	Grocery & retail workers, labor policy advocacy (PHC program grantee)
LA/OC Building Trades	Construction
Los Angeles County Federation of Labor	Coalition of labor unions in LA representing over 800k workers
Maintenance Cooperation Trust Fund (MCTF)	Non-union janitorial workers
Restaurant Opportunities Center (ROC LA)	Restaurant workers (PHC program grantee)
SEIU 2015	Home healthcare workers
So Cal Coalition for Occupational safety and Health (COSH)	Coalition partner (PHC program training contractor)
Teamsters Local 396	Logistics, UPS, sanitation, recycling, etc.
Thai Community Development Center	Restaurant, homecare, misc (PHC program & Equity Initiative grantee)
UCLA Labor, Occupational Safety and Health Program (LOSH)	Academic partner (PHC program training contractor)
UFCW Local 770	Grocery, pharmacy, meat packing & cannabis
Unite Here Local 11	Hospitality, and restaurant, large venue workers
Warehouse Workers Resource Center (WWRC)	Warehouse workers (PHC program grantee)